

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 456

Short Title: Attys.Fees/Labor Violations.

(Public)

Sponsors: Representatives Michaux; Kennedy and Stamey.

Referred to: Judiciary II.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WAGE AND HOUR ACT TO PROVIDE FOR ATTORNEYS' FEES AND LIQUIDATED DAMAGES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.22 reads as rewritten:

"§ 95-25.22. Recovery of unpaid wages.

(a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through 95-25.12, as the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due.

~~In its discretion, the court may award exemplary damages in an amount not in excess of the amount found to be due as provided above.~~

(a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the court shall award liquidated damages in an amount equal to the amount found to be due as provided in subsection (a) of this section, provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Article, the court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due as provided in subsection (a) of this section.

1 (b) Action to recover such liability may be maintained in the General Court of
2 Justice by any one or more employees.

3 (c) Action to recover such liability may also be maintained in the General Court
4 of Justice by the Commissioner at the request of the employees affected. Any sums thus
5 recovered by the Commissioner on behalf of an employee shall be held in a special
6 deposit account and shall be paid directly to the employee or employees affected.

7 (d) The court, in any action brought under this ~~section~~ Article may, in addition to
8 any judgment awarded plaintiff, order costs and fees of the action and reasonable
9 attorneys' fees to be paid by the defendant. In an action brought by the Commissioner
10 in which a default judgment is entered, the clerk shall order attorneys' fees of three
11 hundred dollars (\$300.00) to be paid by the defendant.

12 The court may order costs and fees of the action and reasonable attorneys' fees to be
13 paid by the plaintiff if the court determines that the action was frivolous.

14 (e) The Commissioner is authorized to determine and supervise the payment of
15 the amounts due under this section, including interest at the legal rate set forth in G.S.
16 24-1, from the date each amount first came due, and the agreement to accept such
17 amounts by the employee shall constitute a waiver of the employee's right to bring an
18 action under subsection (b) of this section.

19 (f) Actions under this section must be brought within two years pursuant to G.S.
20 1-53.

21 (g) Prior to initiating any action under this section, the Commissioner shall
22 exhaust all administrative remedies, including giving the employer the opportunity to be
23 heard on the matters at issue and giving the employer notice of the pending action."

24 Sec. 2. This act is effective upon ratification and applies to actions brought on
25 or after that date.