

Legislation Text

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Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by creating a wage theft coordinator for the City and adding definitions, duties, penalties, fees, procedural requirements, a private right of action and other related items regarding wage theft ; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to add a new Chapter as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.

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CHAPTER 9-4300. WAGE THEFT COMPLAINTS.

§ 9-4301. Definitions.

"Authorized Organization" means a group of employees, labor organization or party acting on behalf of an employee to whom any type of wages is payable.

"Employer" shall have the same meaning as in the Pennsylvania Minimum Wage, Act of Jan. 17, 1968, P.L. 11, No. 5, as amended and the Wage Payment and Collection Law, Act of July 14, 1961, P.L. 637, No. 329, as amended.

"Employee" shall have the same meaning as the term "employee" in the Pennsylvania Minimum Wage Act, Act of Jan. 17, 1968, P.L. 11, No. 5, as amended.

"Proper Party" means:

- (a) An employee alleging wage theft; or*
- (b) Any member of an entity which alleges wage theft.*

"Wages" shall have the same meaning as in the Pennsylvania Wage Payment and Collection Law, Act of July 14, 1961, P.L. 637, No. 329, as amended.

"Reasonable time" shall be presumed to be no later than fourteen (14) calendar days from the date on which the work is performed unless the employer has established, by policy or practice, a pay schedule whereby employees earn and are consistently paid wages according to regularly recurring pay periods, in which case such pay schedule shall govern.

“Maximum Threshold Amount” means ten thousand dollars (\$10,000.00).

“Minimum Threshold Amount” means one hundred dollars (\$100.00).

“Wage Theft” means a violation of the Pennsylvania Wage Payment and Collection Law, Act of July 14, 1961, P.L. 637, No. 329, as amended, or a violation of the Pennsylvania Minimum Wage Act, Act of Jan. 17, 1968, P.L. 11, No. 5, as amended, or any other federal or state law regulating the payment of wages, where the work is performed in Philadelphia or the employment contract underlying the violation is made in Philadelphia.

§ 9-4302. Wage Theft Coordinator; Duties.

(1) Coordinator. The Managing Director shall designate a wage theft coordinator to carry out the duties set forth in this Chapter.

(2) The wage theft coordinator shall have the following duties:

(a) Receive and review each wage theft complaint submitted by a Proper Party;

(b) If the complaint is above the Maximum Threshold Amount or below the Minimum Threshold Amount, assist and advise persons with complaints by providing them with information regarding available remedies, and provide such other assistance as the coordinator may deem appropriate; and

(c) Adjudicate complaints as provided in this Chapter.

(d) Oversee a public outreach and education program designed to inform workers and employers of their rights and duties in complying with Chapter and other labor laws. Special emphasis should be placed on outreach to workers with limited English proficiency and other at-risk groups.

(e) Refer complaints and complainants to other governmental agencies for further action, if deemed necessary.

§ 9-4303. Procedures for Wage Theft Complaints.

(1) Filing Wage Theft Complaints.

(a) A proper party must allege a wage theft violation in which the unpaid wages are equal to or greater than the minimum threshold amount and equal to or less than the maximum threshold amount.

(b) A signed complaint for wage theft must be filed with the wage theft coordinator less than three years from the date the wage theft occurred. A wage theft complaint properly filed under this Section tolls the applicable statute of limitations for any action in state or federal court concerning the same set of facts and circumstances.

(c) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the employer or employers and for the wage theft coordinator to determine both that an allegation of

wage theft has been made and that the threshold amount has been met.

(d) Upon the filing of any complaint, the wage theft coordinator shall promptly determine that the wage theft complaint alleges wage theft, names at least one employer, and meets the threshold amount criterion. The duty of the wage theft coordinator in determining whether a complaint meets this criterion is limited to receiving the complaint and comparing the information provided in the complaint to the criteria required herein. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment.

(e) Upon making such determination, the wage theft coordinator shall serve the complaint and a written notice on the employer or employers charged with the commission of a wage theft practice, setting forth the allegations, rights and obligations of the parties. Such service shall be by personal service or certified mail.

(2) Answer.

(a) Each employer shall file an answer to the complaint with the wage theft coordinator not later than thirty (30) days after receipt of the complaint. Such answer shall include all available records of the hours worked by the complaining employee or employees, the amounts paid to those employees, and any credits or deductions that may have been lawfully taken.

(b) In its answer, an employer may admit liability for either part of or the entire amount in dispute.

(3) Subpoenas.

(a) The wage theft coordinator shall have the power to subpoena records from any party to the complaint. Said records shall be returned to the wage theft coordinator within thirty (30) days after receipt of the subpoena.

(4) Standards for Resolving Factual Disputes.

(a) In the event that there is a factual dispute as to whether wages are owed or the amount of wages that are owed, the complainant shall bear the burden of proof by a preponderance of the evidence.

(b) A complainant may meet the burden of proof by presenting sufficient evidence to show the amount of work performed, or the extent of work performed, and the amount of compensation due for the work performed, when:

(i) The respondent employer has a legal obligation to keep records of an employee's hours worked and/or records of compensation provided to an employee; and

(ii) Such records are imprecise, inadequate or do not exist.

(c) Failure to provide any records by the employer or employers shall raise a rebuttable presumption that the wages complained of were not paid.

(d) An employer may present other evidence to negate the reasonableness of the inferences to be drawn from the complainant's evidence in (b), but the burden is on the employer to do so.

(e) Any person who, makes or causes to be made any false entry or false statement of fact in any complaint, answer, report, account, record or other document submitted to the wage theft coordinator, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, may be fined by the wage theft coordinator not more than two thousand dollars (\$2000.00).

(5) *Adjudication by Wage Theft Coordinator.*

(a) Within sixty (60) days of receipt of the Answer, or within 110 days of receipt of the Complaint, whichever is earlier, the wage theft coordinator shall issue a written adjudication of the Complaint. The adjudication shall include written findings of fact and conclusions of law.

(b) If wages are determined to be owed and the employer has not admitted that those wages are owed in its Answer, the wage theft coordinator shall order them paid. In addition, the wage theft coordinator shall order penalties consistent with this Code to be paid to the complainant. Each week in which any wages are unpaid is a separate violation.

(c) If wages are determined to be owed and the employer has admitted that those wages are owed in its Answer, the wage theft coordinator shall order them paid. In addition, the wage theft coordinator may order penalties consistent with this Code to be paid to the complainant. Each week in which any wages are unpaid is a separate violation.

(d) Payments in full must be made within sixty (60) days of the date of the order. The wage theft coordinator may allow a reasonable payment plan, not to exceed six (6) months in length, to be entered into by the parties upon good cause shown.

(e) If full payment is not made within the time periods contemplated in subsections (c) or (d), the wage theft coordinator shall file a petition in a court of competent jurisdiction for a judgment in the amount of the remaining unpaid balance. Additionally, the wage theft coordinator shall periodically publish a list of the employers with current unpaid balances, and the amount of the unpaid balance.

(f) A final decision by the wage theft coordinator may be appealed by either party by filing a new lawsuit in any court of competent jurisdiction within 30 days of the wage theft coordinator's decision. The determination of the wage theft coordinator as well as the complaint, answer, investigatory notes, and documents received shall be made available to any party for use in a subsequent lawsuit.

§ 9-4304. *Retaliation Prohibited.*

An employer shall not take retaliatory personnel action or discriminate against an employee because the

employee has exercised rights protected under this Chapter. The wage theft coordinator may keep a complainant's name confidential until the validity of a complaint can be verified if the complainant alleges that there is a substantial risk of retaliation by the employer.

§ 9-4305. Private Right of Action.

(1) An employee or an Authorized Organization may file an action under this Chapter in any court of competent jurisdiction. Upon a finding of a violation of this Chapter by the respondent employer, the court shall award the employee the unpaid wages due, costs, reasonable attorney's fees, and penalties pursuant to this Chapter.

(2) If during the pendency of an adjudication by the wage theft coordinator, prior to the issuance of a final decision, a complainant employee or Authorized Organization brings a private action in their own right, whether under this Ordinance, state law, or federal law, in any state or federal court, seeking unpaid wages based upon the same facts and allegations as the complainant employee's complaint to the County, or affirmatively or by consent opts to participate in any such litigation, that complainant employee's complaint of wage theft to the wage theft coordinator shall be deemed withdrawn with respect to any respondent employer named as a defendant in such court action. This Section shall be interpreted narrowly so as to leave unaffected any cumulative rights which were not the subject of the complainant employee's complaint.

(3) Nothing in this Chapter or its implementing regulations shall be construed as to require a complaint to be filed with the wage theft coordinator before bringing an action in court or before any other governmental agency.

§ 9-4306. Joint and Several Liability.

In an action brought under this Chapter, two or more respondents may be held as jointly and severally liable for any amount payable to the complainant or the City, or both; however, the total amount the complainant or the City may receive from jointly and severally liable respondents shall not exceed the total amount for which respondents are jointly and severally liable.

§ 9-4307. Penalties for Wage Theft.

Penalties for each violation of this Chapter, where no good faith contest of the wages owed exists, may be imposed to the extent allowed by the Home Rule Act, 53 P.S. § 13131. The maximum allowable penalties may be imposed if the violation is wanton and willful.

§ 9-4308. Other Penalties and Licensing Actions.

(1) The City, by and through its officials, boards and commissions, may deny, suspend or revoke any license or permit issued or pending, if, during the 3 year period prior to the date of the application, the applicant admitted guilt or liability or has been found guilty, liable or responsible, in any judicial or administrative proceeding, of committing or attempting to commit a violation of:

(a) Pennsylvania Wage Payment and Collection Law, Act of July 14, 1961, P.L. 637, No. 329, as amended, the Pennsylvania Minimum Wage Act, Act of Jan. 17, 1968, P.L. 11, No. 5, as amended, or any other federal or state law regulating the payment of wages.

(b) *Any violation of this Chapter.*

(2) *Any license or permit issued by the City, its boards or commissions, may be revoked or suspended if the applicant, licensee or permittee is a person who was subject to a final judgment or other decision for violation of any of the laws set forth in subsection (1) above within 3 years prior to the effective date of this Ordinance, and the judgment was not satisfied within the lawful period for doing same, or the expiration of the period for filing an appeal; or if an appeal is made, the date of the final resolution of that appeal and any subsequent appeal resulting in a final administrative or judicial affirmation of violation of any of the laws set forth in subsection (1) above.*

(3) *The period of non-issuance, revocation or non-renewal shall be 1 year, and the licensee or permittee or the person who is the principal of a license or permit shall not again be licensed or permitted in any other manner during such period.*

(4) *Appeals of license suspensions, revocations or denials pursuant to this Chapter are governed by Section 9-103 of this Title, and any other rules and regulations established by the City.*

(5) *An applicant for a commercial activity license or any other license or permit related to a business enterprise, shall be provided with a copy of this Chapter. All applicants shall certify that the applicant has not been found guilty, liable or responsible, in any judicial or administrative proceeding, of committing or attempting to commit a violation of any of the laws set forth in subsection (1) above within the past three (3) years. This provision shall apply to all persons or entities whose final administrative decision or adjudication or judicial judgment or conviction was entered on or after the effective date of this Chapter, with the exception of judgments that remain unsatisfied as set forth in subsection (2) above.*

(6) *Application of this Ordinance is subject to applicable state or federal laws.*

§ 9-4309. *Notice and Posting.*

(1) *Employers shall give notice that employees are entitled to file complaints for unpaid wages under this Chapter; that retaliation against employees who file complaints under this Chapter is prohibited and that each employee has the right to file a complaint or bring a civil action if the employer fails to pay all wages earned by the employee. This information shall also be included in any employee handbooks that are distributed to employees.*

(2) *Employers shall comply with this Section by either (a) supplying each of their employees with a notice in English and in any language that is the first language spoken by at least 5% of the employer's workforce that contains the information required in subsection (1); or (b) displaying a poster in a conspicuous and accessible place in each establishment where such employees are employed which contains in English and in any language that is the first language spoken by at least 5% of the employer's workforce, all information required under subsection (1).*

(3) *The wage theft coordinator shall create and make available to employers posters that contain the information required under subsection (1) for their use in complying with this subsection.*

(4) *An employer who willfully violates the notice and posting requirements of this Section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.*

§ 9-4310. *Effective Date.*

This Chapter shall take effect July 1, 2016.

Explanation:

Italics indicate new matter added.