

PAYMENT OF WAGES AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

This act amends the labor code to address issues related to the payment of wages. This act requires posting of information. This act increases administrative and criminal penalties.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34-28-4, as enacted by Chapter 85, Laws of Utah 1969

34-28-9, as last amended by Chapter 375, Laws of Utah 1997

34-28-12, as enacted by Chapter 85, Laws of Utah 1969

76-6-409, as last amended by Chapter 215, Laws of Utah 1994

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34-28-4** is amended to read:

34-28-4. Notice of paydays -- Failure to notify a misdemeanor.

(1) ~~[It shall be the duty of every]~~ An employer ~~[to]~~ shall:

(a) notify [his] the employer's employees:

(i) at the time of hiring of:

(A) the day and place of payment[;] of wages; and

(B) the rate of pay[;]; and

(ii) of any change with respect to [any of these items] an item described in Subsection (1)(a)(i) prior to the time of the change[. Alternatively, however, every employer shall have the option of giving such notification by posting these facts and keeping them posted]; or

(b) post or keep posted the information described in Subsection (1)(a) conspicuously at or near the place of work where [such] the posted notice can be seen by each employee as [he] the employee comes or goes to [his] the place of work.

(2) (a) An employee shall post in a location meeting the requirements of Subsection (1)(b)



28 a statement:

29 (i) concerning an employee's rights under this chapter; and

30 (ii) meeting the requirements established by rule by the commission.

31 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
32 commission shall make rules concerning the content and form of the statement required to be
33 posted under Subsection (2)(a).

34 ~~[(2) Failure]~~ (3) An employer is guilty of a class B misdemeanor if that employer fails:

35 (a) to post and to keep posted any notice required by this section; or [failure]

36 (b) fails to give notice [as prescribed in this section shall be deemed a misdemeanor and
37 punishable as such] required by this section.

38 Section 2. Section ~~34-28-9~~ is amended to read:

39 **34-28-9. Enforcement of chapter -- Rulemaking authority.**

40 (1) (a) The division shall:

41 (i) ensure compliance with this chapter;

42 (ii) investigate any alleged violations of this chapter; and

43 (iii) determine the validity of any claim for any violation of this chapter filed with it by an
44 employee.

45 (b) The commission may make rules consistent with this chapter governing wage claims
46 and payment of wages.

47 (c) The minimum wage claim that the division may accept is \$50.

48 (d) The maximum wage claim that the division may accept is \$10,000.

49 (e) The wage claim shall be filed within one year of the date the wages were earned.

50 (2) (a) The division may assess against an employer who fails to pay an employee in
51 accordance with this chapter[;]:

52 (i) a penalty of 5% of the unpaid wages owing to the employee which shall be assessed
53 daily until paid for a period not to exceed 20 days; and

54 (ii) in addition to the penalty assessed under Subsection (2)(a)(i), a penalty of \$3,000 if the
55 wages and penalties are not paid in full within 30 days or the day the abstract of a final award is
56 filed under Subsection (3).

57 (b) The division shall:

58 (i) retain 50% of the money received from the penalty payments for the costs of

59 administering this chapter;

60 (ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and

61 (iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee.

62 (3) (a) An abstract of any final award may be filed in the office of the clerk of the district
63 court of any county in the state. If so filed, it shall be docketed in the judgment docket of that
64 district court.

65 (b) The time of the receipt of the abstract shall be noted by the clerk and entered in the
66 judgment docket.

67 (c) If filed and docketed, the award constitutes a lien from the time of the docketing upon
68 the real property of the employer situated in the county for a period of eight years from the date
69 of the award unless previously satisfied.

70 (d) Execution may be issued on the award within the same time and in the same manner
71 and with the same effect as if the award were a judgment of the district court.

72 (4) (a) The commission may employ counsel, appoint a representative, or request the
73 attorney general, or the county attorney for the county in which the plaintiff or the defendant
74 resides, depending on the district in which the final award is docketed, to represent the commission
75 on all appeals and to enforce judgments.

76 (b) The counsel employed by the commission, the attorney general, or the county
77 representing the commission, shall be awarded:

78 (i) reasonable attorneys' fees, as specified by the commission; and

79 (ii) costs for:

80 (A) appeals when the plaintiff prevails; and

81 (B) judgment enforcement proceedings.

82 (5) (a) The commission may enter into reciprocal agreements with the labor department
83 or corresponding agency of any other state or with the person, board, officer, or commission
84 authorized to act on behalf of that department or agency, for the collection in any other state of
85 claims or judgments for wages and other demands based upon claims previously assigned to the
86 commission.

87 (b) The commission may, to the extent provided by any reciprocal agreement entered into
88 under Subsection (5)(a), or by the laws of any other state, maintain actions in the courts of the
89 other states for the collection of any claims for wages, judgments, and other demands and may

90 assign the claims, judgments, and demands to the labor department or agency of any other state
91 for collection to the extent that may be permitted or provided by the laws of that state or by
92 reciprocal agreement.

93 (c) The commission may maintain actions in the courts of this state upon assigned claims
94 for wages, judgments, and demands arising in any other state in the same manner and to the same
95 extent that the actions by the commission are authorized when arising in this state if:

96 (i) the labor department or other corresponding agency of any other state or of any person,
97 board, officer, or commission of that state authorized to act on behalf of the labor department or
98 corresponding agency requests in writing that the commission commence and maintain the action;
99 and

100 (ii) the other state by legislation or reciprocal agreement extends the same comity to this
101 state.

102 Section 3. Section **34-28-12** is amended to read:

103 **34-28-12. Violations -- Misdemeanor.**

104 (1) ~~[Any]~~ Except as provided in Subsection (2) and including a violation of Subsection (3),
105 an employer who [shall violate, or fail to comply with any of the provisions of] violates this
106 chapter ~~[shall be]~~ is guilty of a class B misdemeanor.

107 (2) ~~[Any]~~ An employer [who shall refuse] is guilty of theft of service as provided in
108 Section 76-6-409 if the employer refuses to pay the wages due and payable;

109 (a) when demanded; and

110 (b) as provided in this chapter [provided;]; or [who shall]

111 (c) falsely [deny] denies:

112 (i) the amount [thereof;] of wages due or payable; or

113 (ii) that [the same is] the wages are due[;]; and

114 (d) with intent to:

115 (i) secure for [himself] the employer or any other person any discount upon [such] the
116 indebtedness; or [with intent to]

117 (ii) annoy, harass, oppress, hinder, delay or defraud the person to whom [such] the
118 indebtedness is due[; or who].

119 (3) An employer violates this chapter if the employer hires an additional [employees
120 without advising each of them] employee and fails to advise the employee of every;

121 (a) wage claim due and unpaid; and ~~[of every]~~

122 (b) judgment under this chapter that the employer has failed to satisfy~~[- shall be guilty of~~
123 ~~a misdemeanor]~~.

124 Section 4. Section **76-6-409** is amended to read:

125 **76-6-409. Theft of services.**

126 (1) A person commits theft if ~~[he]~~ that person obtains services which ~~[he]~~ that person
127 knows are available only for compensation by deception, threat, force, or any other means designed
128 to avoid the due payment for them.

129 (2) A person commits theft if, having control over the disposition of services of another,
130 to which ~~[he]~~ that person knows ~~[he]~~ that person is not entitled, ~~[he]~~ that person diverts the
131 services to ~~[his]~~ that person's own benefit or to the benefit of another who ~~[he]~~ that person knows
132 is not entitled to them.

133 (3) A person commits theft of services under this section if that person violates Subsection
134 34-28-12(2).

135 ~~[(3)]~~ (4) In this section "services" includes~~[- but is not limited to,];~~

136 (a) labor, professional service, public utility and transportation services, restaurant, hotel,
137 motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools,
138 vehicles, or trailers for temporary use, telephone or telegraph service, steam, admission to
139 entertainment, exhibitions, sporting events, or other events for which a charge is made~~[-(4) Under~~
140 ~~this section "services" includes];~~

141 (b) gas, electricity, water, sewer, or cable television services, only if the services are
142 obtained by threat, force, or a form of deception not described in Section 76-6-409.3~~[-(5) Under~~
143 ~~this section "services" includes]; and~~

144 (c) telephone services only if the services are obtained by threat, force, or a form of
145 deception not described in Sections 76-6-409.5 through 76-6-409.9.

Legislative Review Note
as of 2-1-01 3:33 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel