

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 600

By: Senator G. Leding

For An Act To Be Entitled

AN ACT TO ESTABLISH THE RIGHT TO KNOW AND GET YOUR
PAY ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE RIGHT TO KNOW AND GET
YOUR PAY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 11-4-405 is repealed.

~~11-4-405. Payment on discharge.~~

~~(a) An employer that discharges an employee is required to pay all wages due by the next regular payday.~~

~~(b) An employer that fails to make the payment required under subsection (a) of this section within seven (7) days of the next regular payday shall owe the employee double the wages due.~~

SECTION 2. Arkansas Code Title 11, Chapter 4, is amended to add an additional subchapter to read as follows:

Subchapter 7 - Right to Know and Get Your Pay Act

11-4-701. Title.

This subchapter shall be known and may be cited as the "Right to Know and Get Your Pay Act".

11-4-702. Legislative findings and purpose.

(a) The General Assembly finds that:



(1) The public policy of this state is to require an employer to provide an employee the information concerning the number of hours of labor performed, what deductions have been taken from the employee's gross wages, and other reasonable notification to determine how the employee's net wages have been calculated;

(2) The failure of an employer to issue a pay stub, especially to low-wage earners, frequently leads to wage theft that results in an inability of earners to meet personal expenses, including without limitation costs related to health care, rent, and food, which has negative effects on the economy, including a significantly increased need for welfare support;

(3) Wage theft results in a loss of tax revenue to this state, as well as the loss of sales tax revenue to the state and localities; and

(4) Businesses should be able to compete on a level playing field, but businesses that perpetrate wage theft have an unfair competitive advantage, which jeopardizes the competitive position of business and industry in this state.

(b) The purpose of this subchapter is to promote the general welfare of the people of this state related to the issue of wage theft.

11-4-703. Definitions.

As used in this subchapter:

(1)(A) "Employee" means a person who performs work or service of any type for compensation on a full-time or part-time basis.

(B) "Employee" does not include an:

(i) Individual employed by a parent, spouse, or child;

(ii) Individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility;

(iii) Individual employed outside of this state; or

(iv) Independent contractor;

(2) "Employer" means any individual, partnership, association, corporation, business trust, the State of Arkansas, any political subdivision of the state, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(3) "Pay stub" means an itemized statement that includes without

limitation an employee's gross and net pay, rate of pay, pay period, name of employer, employer address and telephone number, total hours worked per pay period for hourly employees, and the deductions from pay for that pay period with a descriptor of the deductions that includes the name, title, or other identifying words or numbers for each deduction; and

(4)(A) "Wage" means the amount at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis.

(B) "Wage" includes without limitation vacation, holiday, and sick leave payments that are due an employee under an employer policy or employment contract.

11-4-704. Notification to employees.

(a) An employer shall notify each employee in writing at the time of hiring of the following:

(1) Normal hours and wages agreed upon;

(2) Time and place of payment; and

(3) Deductions that will be made from the wages of the employee, including without limitation deductions for payments to an insurance program.

(b) The employer may provide written notification by posting the normal hours and time and place of payment conspicuously at or near the place of work.

(c)(1) A change of a term under subsection (a) of this section is required to be made in writing at least seven (7) calendar days before the new term becomes effective.

(2) Subdivision (c)(1) of this section shall not apply to wage increases.

(d) An employer shall:

(1) Pay all wages due at the time and place designated; and

(2) Issue a pay stub to the employee.

11-4-705. Recordkeeping and itemized statement requirements.

(a)(1) In addition to any requirement under this title and unless expressly provided for specific employers or employees within this title, an employer shall pay an employee all wages and tips accruing to the employee on the regular payday.

(2) For an hourly employee, a pay period may be daily, weekly, bimonthly, or semimonthly unless expressly provided otherwise for specific employers or employees within this title.

(3) Wages based upon bonuses, commissions, or other forms of calculation may be paid as infrequently as annually if prescribed in advance unless expressly provided otherwise for specific employers or employees within this title.

(b) In addition to the records an employer is required to maintain under § 11-4-217, an employer shall keep a record for a period of three (3) years of the:

(1) Name and address of each employee;

(2) Email address of each employee, if the employer uses email addresses for any purpose under this subchapter;

(3) Wages paid each payday; and

(4) Deductions made to an employee's wages.

(c)(1) An employer shall furnish each employee with a pay stub for each pay period in paper or electronic format.

(2) For an hourly employee, the employer shall also provide the total hours worked per pay period by the employee on the pay stub.

11-4-706. Payment of wages.

(a) An employer shall pay all wages due to the employee in lawful United States currency or by negotiable warrant or check bearing even date with the payday.

(b) Upon an employee's written request, an employer may deposit wages due the employee to the employee's credit at a financial institution doing business in the state and insured by an agency of the United States Government.

(c) An employer shall not withhold or divert a portion of an employee's wages unless the employer:

(1) Is required or permitted to do so by state or federal law;

or

(2) Has given written notification to the employee of the amount and term of the deduction.

11-4-707. Discharged employees.

(a) When an employer separates an employee from the payroll, due to termination of employment by the employer, the employer shall pay to the employee all wages due within forty-eight (48) hours from the time of separation.

(b) The employer shall otherwise pay all wages due to an employee within five (5) days or the next regular payday, whichever occurs first.

(c) An employer that fails to make the payment required under subsections (a) or (b) of this section within seven (7) days of the required date of payment is liable to the employee under this section for double the amount of wages due, as well as any other damages the employee is entitled to recover under this subchapter.

11-4-708. Unconditional payment of wages conceded due.

(a) In the case of a dispute over wages, within three (3) days of a written request by the employee, the employer shall:

(1) Give written notice to the employee of the amount of wages that the employer concedes is due; and

(2) Pay the amount conceded under subdivision (a)(1) of this section without condition.

(b) If the employer fails to comply with subdivisions (a)(1) or (2) of this section, the employer is liable for damages in the amount of twice the wages due, as well as any other damages the employee is entitled to recover under this subchapter.

(c) Acceptance by an employee of a payment that is less than the amount due the employee does not constitute a release of the remaining balance of the employee's claim.

(d) A release of a claim required by an employer as a condition of partial payment is void.

11-4-709. Enforcement by civil action.

(a)(1)(A) In case of a failure of an employer to provide a pay stub required by §§ 11-4-704 and 11-4-705, the employee may file a civil action and shall be awarded an amount of one thousand dollars (\$1,000), in addition to reasonable attorney's fees and litigation costs, for the prosecution of the action, as well as any other damages to which the employee is entitled to recover under this subchapter.

(B) If the court or the jury finds that the employer intentionally violated §§ 11-4-704 and 11-4-705, the employee shall be awarded double damages as well as any other damages the employee is entitled to recover under this subchapter.

(2) The employee shall not be liable for the attorney's fees incurred by the employer in the defense of a case in which the employer is found not liable for failure to provide a pay stub.

(b)(1)(A) In a case of a failure to pay wages due to an employee as required by §§ 11-4-706 and 11-4-707, an employee may file a civil action for unpaid wages.

(B) In all cases in which the wages are unpaid when due, in addition to the amount of the unpaid wages, an employee shall be entitled to recover an additional twenty-five percent (25%) of the amount of the unpaid wages as damages, in addition to reasonable attorney's fees, litigation costs, and the unpaid wages due, for the prosecution and collection of the unpaid wages as well as any other damages the employee is entitled to recover under this subchapter.

(C) If the court or the jury finds that the employer intentionally violated §§ 11-4-706 and 11-4-707, the employee shall be awarded double damages as well as any other damages to which the employee is entitled to recover under this subchapter.

(2) As part of a civil action for failure to pay wages, an employee may include any claim under this subchapter.

(3) The employee shall not be liable for the attorney's fees incurred by the employer in the defense of a case in which the employer is found not liable for unpaid wages.

(4) Recovery of less than the amount demanded by an employee entitled to recover shall not defeat the right to the additional twenty-five percent (25%) of the unpaid wages as damages, in addition to reasonable attorney's fees, litigation costs, and the unpaid wages due, as provided in subdivision (b)(1)(B) of this section.

(c) When attorney's fees are due an employee or his or her assigns, the attorney's fees shall be taxed and collected as other costs in the case.

(d) Except as otherwise required by this subchapter, actions under this subchapter are governed by the Arkansas Rules of Civil Procedure.

(e) The statute of limitations for filing a civil action alleging a

violation of this subchapter is three (3) years from the date the employee reasonably should have been aware of the violation.

11-4-710. Retaliation prohibited.

(a) As used in this section, "retaliation" means without limitation:

- (1) Discharge;
- (2) Demotion;
- (3) Willful prevention or attempt to prevent an individual from securing other employment by word, writing, or any other action;
- (4) Harassment;
- (5) Reduction in an employee's hours or pay;
- (6) Reporting an employee's or former employee's suspected citizenship or immigration status, or the suspected immigration status of a family member of the employee or former employee, to a federal, state, or local agency;
- (7) An action against an employee or any other person for exercising or attempting to exercise a right to the payment of wages under this subchapter that would dissuade a reasonable person from making a complaint, bringing an action or proceeding, participating in an action or proceeding, or testifying in an action or proceeding concerning the right to the payment of wages as required under this subchapter; or
- (8) A threat to subject an employee or other person to any of the actions described in subdivisions (a)(1)-(7) of this section because the employee or person has exercised or may exercise or attempt to exercise the right to the payment of wages as required under this subchapter.

(b) An employer shall not retaliate or discriminate against an employee with respect to hiring, tenure, or other term or condition of employment because the employee:

- (1) Inquired about rights under this subchapter;
- (2) Reported a violation of this subchapter to the employer or Secretary of the Department of Labor and Licensing;
- (3) Filed a complaint alleging a violation of this subchapter with the employer or secretary;
- (4) Filed a civil action alleging a violation of this subchapter; or
- (5) Testified or will testify in a proceeding related to a

violation of this subchapter.

(c)(1) In a claim of retaliation under or related to this subchapter, the employee may recover economic and noneconomic damages in a civil action, as well as a penalty of five thousand dollars (\$5,000).

(2) The court shall allow the prevailing party reasonable attorney's fees and litigation costs.

(3) A civil action for a claim of retaliation shall be commenced within three (3) years from the date the employee reasonably should have been aware of the retaliatory action.

11-4-711. Prohibition against private agreements.

This subchapter may not be contravened or set aside by a private agreement, including without limitation an agreement to arbitrate or to waive a right to class action for an alleged violation of this subchapter.

11-4-712. Department of Labor and Licensing duties.

(a)(1)(A) Within sixty (60) days of the effective date of this subchapter, the Secretary of the Department of Labor and Licensing shall issue a one-page summary of this subchapter in English, Spanish, and Marshallese.

(B) The secretary shall update the summary at least annually.

(2) An employer shall post a copy of the summary prepared by the secretary in a conspicuous location and with other wage and hour information required to be posted by federal or state law.

(3) The summary shall include the telephone number and email address for the Department of Labor and Licensing that the department has dedicated to wage theft and pay stub issues.

(b)(1) The department shall operate during normal business hours a telephone number and email address dedicated to theft and pay stub issues.

(2) All telephone or email responses shall include the address for the Arkansas Bar Association's ARKANSASFINDALAWYER page.

(c) The department shall maintain databases of:

(1) Federal and state cases alleging a violation of this subchapter; and

(2) Calls and emails inquiring about wage theft and pay stub

issues.

(d) The secretary shall issue rules designed to prove remittance and receipt of pay stubs.