

Wyoming Administrative Rules

Workforce Services, Department of

Labor Standards

Chapter 1: Unpaid Wage Claims

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Chapter 1

UNPAID WAGE CLAIMS

Section 1. Authority. This Chapter is promulgated by the authority of Wyoming Statute § 27-2-104(a)(v).

Section 2. Purpose. This Chapter prescribes procedures by which the Department shall carry out its mandate to enforce all laws enacted by the legislature of Wyoming relating to labor, wages, and hours of labor, as required by Wyoming Statute § 27-2-104(a)(i).

Section 3. Definitions.

(a) "Claim" means a signed written or electronic complaint filed with Labor Standards by the employee on a form provided by Labor Standards, claiming unpaid wages are due and owed to the employee pursuant to Wyoming Statute §§ 27-4-101, -104, or -507.

(b) "Claimant" means any employee submitting a claim as defined in subsection (a).

(c) "Compensation" means remuneration, pay, salary, bonus, or commission to be received by an employee for labor, services or as a result of his or her employment whether the compensation is determined on a time, task, weight, piece, hourly, chore or other basis.

(d) "Fringe Benefits" means any payments to the employee or to a fund for the benefit of the employee which are due the employee under an agreement with the employer or under a policy of the employer including but not limited to: vacation; holiday; welfare; pension; subsistence; or profit sharing.

(e) "Labor Standards" means a program within the Department of Workforce Services.

Section 4. Filing Procedures.

(a) Upon receipt of a claim, Labor Standards shall serve, by regular mail to the employer's last known address or by personal delivery, a copy of the claim together with a letter of instructions for responding to the claim.

(b) The employer shall have ten (10) days from the letterhead date to submit a response to such claim.

(c) Where the employer concedes the validity of the claim, Labor Standards shall order payment of the claimed amount.

(d) Labor Standards shall serve a copy of the employer's answer by regular mail or

personal delivery upon the claimant.

(e) The claimant shall submit a reply to the employer's answer within ten (10) days from the letterhead date.

(f) If either party fails to submit a timely response or reply, Labor Standards shall proceed with its investigation based on that information which has been filed.

Section 5. Investigation. For the purpose of determining the validity of any claim, Labor Standards may:

(a) Interview and obtain additional statements from either party;

(b) Examine, copy and inspect any relevant records or documents held by the parties or other persons;

(c) Interview and obtain written or oral statements of third persons relevant to the claim;

(d) Contact and receive relevant information from any other governmental agencies and/or officials;

(e) Make any and all relevant inquiries necessary in making a determination; and

(f) Refer the claim for an administrative hearing pursuant to Wyoming Statute § 27-4-504, should the employer fail to cooperate with the investigation.

Section 6. Wage Offset Rules. The following sums shall constitute proper offsets from wages due an employee:

(a) Any sums deducted from wages pursuant to the Internal Revenue Code or any other Federal tax provision.

(b) Any sums deducted from wages pursuant to the Social Security Administration Act or the Federal Insurance Contribution Act.

(c) Any sums deducted from wages as dues, contributions, or other fees to any labor organization or association; or as contributions for any employee's participation or eligibility in any health, welfare, insurance, retirement, or other benefit plan or program, provided:

(i) That such employee has granted written authorization for such deductions; and

(ii) That such deductions shall terminate upon the employee's written

revocation of said authorization.

(d) Any sums deducted from wages as payments, repayments, contributions, or deposits, to any credit union, banking, savings, loan, trust or other financial institution, provided:

(i) That such employee has granted written authorization for such deductions; and

(ii) That such deductions shall terminate upon the employee's written revocation of said authorization.

(e) Any sums deducted from wages as payment for any purchase of goods or services by the employee from the employer, provided:

(i) That the goods or services sold by the employer are sold in the ordinary course of his or her business;

(ii) That the employee has actual or constructive possession of the goods or services purchased; and

(iii) That the employee's purchase is evidenced by the employee's written acknowledgement.

(f) Any sums deducted from wages for damages suffered by the employer due to the employee's negligence, theft, or fraud, provided:

(i) That the employee's negligence, theft, or fraud is determined by a judicial proceeding;

(ii) That the amount of the damage suffered by the employer is determined by a judicial proceeding;

(iii) That the negligence, theft, or fraud and damages arise in the course of the employment; and

(iv) That the employer has not received payments or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages. Where the employer has received payments or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages caused by the employee's negligence, the sum of the offset shall not exceed the amount of any applicable deductible or two hundred fifty dollars (\$250.00), whichever is less.

(g) Any sums deducted from wages pursuant to "Attachment" (Wyoming Statute §§ 1-15-201 through -212), "Garnishment" (Wyoming Statute §§ 1-15-401 through -425), or

Wyoming Statute §§ 27-4-106 through -108.

(h) Any sums deducted from wages as repayment to the employer by the employee of any cash advances, loans or payments of expenses for optional benefits such as tuition assistance, relocation and training, made to the employee by such employer, provided:

(i) That the cash advance, loan or payment of expenses to the employee occurred while said employee was in the employ of such employer; and

(ii) That the employee's receipt of such cash advance, loan or payment of expenses is evidenced by the employee's written acknowledgement.

(j) Any sums deducted from wages resulting from cash shortages, provided:

(i) That the employee gives written acknowledgement upon beginning employment that he or she shall be responsible for any such shortages;

(ii) That the employer and employee verify in writing the amount of cash that is in the register or cash box at the beginning of the employee's work period;

(iii) That the employer and employee verify in writing the amount of cash that is in the register or cash box immediately at the end of the employee's work period; and

(iv) That the employee be the sole and absolute user and have sole access to the register or cash box from the time checked in until the time checked out.

(k) Any sums deducted from wages as payment for any purchase of tools, equipment, uniforms, or other items required for the employment of the employee, provided:

(i) That the employee has actual or constructive possession of the items; and

(ii) That the employee's purchase and receipt of the item is evidenced by written acknowledgement.

(l) Any sums deducted from wages as payment for tools, equipment, uniforms, or other items assigned to the employee by the employer, provided:

(i) That such item was assigned to the employee to be used within the scope of the employee's employment;

(ii) That the employee gave written acknowledgement of the receipt of such items; and

(iii) That such items have not been returned to the employer upon

termination.

(m) Any sums deducted from wages as payment for any purchase an employee makes on an employer's credit card, provided:

(i) The employee provided written acknowledgement that the employee would be responsible for personal purchases made on the card;

(ii) The purchased items were entirely for the benefit of the employee and in no way associated with the employer's business or the employee's job; and

(iii) The employer produces an itemized receipt of all purchases at issue and also demonstrates the employee made such purchases during the period of employment.

(n) Any sums deducted from wages as repayment for any pre-employment drug test, fingerprinting, credit check, or background check, provided:

(i) Such test or check is required by law or is otherwise a bona fide requirement for the performance of the position to which the employee applied;

(ii) That the employee is made aware in writing of the cost of such tests or checks prior to undergoing them;

(iii) That the employee has provided written acknowledgement agreeing to reimburse the employer for the cost of such tests or checks; and

(iv) That the employee's responsibility to provide such reimbursement ends after a specific period of time not to exceed one year of service.

(o) Payment of Undisputed Wages. In the case of a dispute over wage offsets, the employer shall give written notice to the employee, his counsel, or Labor Standards of the amount of wages which he or she concedes to be due and shall pay such amount without condition within the time required by statute.

(p) Acceptance by the employee of any partial payment of wages made hereunder shall not constitute a release or waiver as to the balance of any claim for the remaining unpaid wages.

(q) Improper Agreements. Any agreement and/or contract, written or otherwise, between any employer and any employee or his representative, in contravention of the lawful offsets enumerated in this Chapter shall be null and void.

(r) Check Stubs Required. All lawful offsets enumerated in this Chapter shall be itemized on a statement or a detachable check stub and provided to the employee as required

by Wyoming Statute § 27-4-101(b).

(s) Enforcement. No employer shall be permitted to deduct from wages due an employee any sums not enumerated in this Chapter.

Section 7. Conference. Where Labor Standards deems appropriate or upon request of either party, and upon agreement by both parties, an informal conference may be held. The conference may be used to establish facts, narrow the issues, and attempt resolution of the claim.

Section 8. Final Determination. Upon conclusion of the investigation and all necessary inquiries, Labor Standards shall make a final determination as to the validity of the claim filed. The final determination may find the claim to be invalid, valid in the original amount claimed, or valid in an amount different from that claimed. Labor Standards shall notify the parties of the final determination by certified mail.

Section 9. Fair Hearings.

(a) Any party aggrieved by Labor Standards' final determination may request a fair hearing pursuant to Wyoming Statute §§ 27-2-109(g) or 27-4-504(b). A request for a fair hearing shall be in writing and received by Labor Standards within fifteen (15) days of receipt of the final determination.

(b) Any hearing held pursuant to this Chapter shall be conducted in accordance with the Wyoming Administrative Procedures Act, Wyoming Statute §§ 16-3-107 through -115, and the Wyoming Office of Administrative Hearings' rules for Contested Case Proceedings, which are hereby incorporated by reference and can be found at:

<https://rules.wyo.gov/Search.aspx?RefNum=270.0001.2.07202017>

(i) The rules for Contested Case Proceedings were adopted by the Wyoming Office of Administrative Hearings and in effect on July 20, 2017.

(ii) No later amendments to the rules for Contested Case Proceedings are incorporated by reference.

(c) Within thirty (30) days of the close of the hearing, the hearing officer shall issue its written decision and send a copy to each party and to Labor Standards.

Section 10. Order to Pay.

(a) In the event an employer fails to pay wages due as determined by Labor Standards and fails to request a fair hearing within fifteen (15) days of receipt of the final determination, Labor Standards shall issue an order requiring payment of wages due. The order shall be sent by certified mail. The employer shall submit the ordered amount to Labor Standards within fifteen (15) days of receipt of the order.

(b) If the hearing officer's written decision determines wages are due, Labor Standards shall issue an order requiring payment of wages due, together with any interest or fees ordered by the hearing officer pursuant to Wyoming Statute § 27-4-104(b). The order shall be sent by certified mail. The employer shall submit the ordered amount to Labor Standards within fifteen (15) days of receipt of the order.