



SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Hansen, Sokola; Reps. Morrison, K. Williams,
Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 208

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYER'S FAILURE TO PAY WAGES.

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

Section 1. Amend § 1103, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1103. Employees separated from the payroll before regular ~~paydays~~ payday; damages for failure to pay wages.

(a)(1) Whenever an employee quits, resigns, is discharged, ~~suspended~~ suspended, or laid off, the wages earned by the employee shall become due and payable by the employer on the ~~next regularly scheduled payday(s) either through the~~ later of the following:

a. The next date the wages would be paid through the last day worked under the employer's regular pay cycle as if the employment had not stopped.

b. Three business days after the last day worked.

(2) The employer must make the payment due under paragraph (a)(1) of this section using either of the following methods:

a. The usual pay channels or by mail, if requested by the employee, as if the employment had not been suspended or terminated.

b. If requested by the employee, by mail to the address provided in the employee's request or if no address is provided, the most recent address provided to the employer.

(b)(1) Wages paid under subsection (a) of this section must be paid in compliance with the requirements under §§ 1104 and 1107 of this title.

(2) If an employer, without any reasonable grounds for ~~dispute~~, dispute under § 1104 or § 1107 of this title, fails to pay an employee ~~wages~~, wages as required under this chapter, the employer ~~shall, in addition, be~~ is also liable to the employee for liquidated damages in the amount of ~~40~~ the lower of the following:

21 a. Ten percent of the unpaid wages for each day, except Sunday and legal holidays, upon which ~~such~~ the
22 failure continues after the day upon which payment is ~~required or in an~~ required.

23 b. An amount equal to the unpaid wages, ~~whichever is smaller, except that, for the purpose of such~~
24 ~~liquidated damages, such~~ wages.

25 (3) For purposes of liquidated damages under paragraph (b)(2) of this section, the failure to pay shall ~~is not be~~
26 deemed to continue after the date of the filing of a petition of bankruptcy with respect to the employer if the employer
27 is adjudicated ~~bankrupt thereupon~~ bankrupt.

28 (c) An employer who is unable to prepare the payroll due to a labor dispute, power failure, ~~blizzard~~ blizzard, or
29 like weather catastrophe, epidemic, ~~fire~~ fire, or explosion ~~shall not be deemed to have violated~~ is not in violation of this
30 chapter.

SYNOPSIS

Senate Bill No. 208 clarifies that an employer is liable to an employee for liquidated damages if the employer does not make wages available on the next payday after an employee quits, resigns, is discharged, suspended, or laid off.

Senate Substitute No. 1 for Senate Bill No. 208 revises these clarifications so it is clear which sections of existing law, §§ 1104 and 1107 of Title 19, provide the basis for an employer to have reasonable grounds to dispute that an employee is owed wages, and like SB 208, does not make any changes to existing law regarding when an employer may withhold or divert any portion of an employee's wages:

1. Section 1104 of Title 19 requires that in a dispute over the amount of wages, the employer must pay all wages conceded by the employer to be due and the employee may pursue a claim for any balance claimed.

2. Section 1107 of Title 19 prohibits an employer from withholding or diverting any portion of an employee's wages unless required or empowered to do so by state or federal law. Since 1979, Regulation 1328 of Title 19 of the Delaware Administrative Code has provided that an employer may, under written agreement, withhold wages for a cash advance or the value of goods and services, but withholding wages for damaged or unreturned property is a violation of § 1107 of Title 19.

Specifically, Senate Substitute No. 1 for SB 208 differs from SB 208 by doing the following:

1. In subsection (a), includes the changes from Senate Amendment No. 1 to SB 208, which clarify the manner that final wages earned by a former employee must be provided and a date by which that payment must be made. The date by which an employer must pay final wages changes current law by extending the time, allowing an employer to make this payment the later of the next regular pay cycle or 3 days after the last day the employee worked.

2. In subsection (b), clarifies that §§ 1104 and 1107 of Title 19 provide the reasonable grounds that may be a basis for an employer to dispute that an employee is owed wages.

3. In subsection (c), revises the correction of the grammar in existing law so that it is clear that an employer is not in violation of Chapter 11 of Title 19 if the employer is unable to prepare payroll due to a labor dispute, power failure, weather catastrophe, epidemic, fire, or explosion.

Like SB 208, this Substitute Bill also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual and revises the section heading to accurately describe the content of the section.

Author: Senator Walsh