

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

A Bill

HOUSE BILL 1950

5 By: Representative Hausam
6 By: Senator Mahony
7

For An Act To Be Entitled

8
9
10 AN ACT TO AMEND THE MINIMUM WAGE ACT OF THE STATE OF
11 ARKANSAS TO DELETE REFERENCES TO THE LABOR BOARD; TO
12 AMEND THE DEFINITION OF EMPLOYER; TO REPLACE CRIMINAL
13 PENALTIES WITH CIVIL PENALTIES; TO REQUIRE ADOPTION
14 OF ADMINISTRATIVE RULES PURSUANT TO THE
15 ADMINISTRATIVE PROCEDURES ACT; AND FOR OTHER
16 PURPOSES.
17

Subtitle

18
19 AM ACT TO AMEND THE MINIMUM WAGE ACT OF
20 THE STATE OF ARKANSAS, ARKANSAS CODE 11-
21 4-201 ET SEQ.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code 11-4-203 is amended to read as follows:
27 11-4-203. Definitions.

28 As used in this subchapter, unless the context otherwise requires:

29 (1) "Director" means the Director of the Department of Labor;

30 ~~(2) "Board" means the Labor Board;~~

31 ~~(3)~~(2) "Wage" means compensation due to an employee by reason of
32 his employment, payable in legal tender of the United States or checks on
33 banks convertible into cash on demand at full face value, subject to such
34 deductions, charges, or allowances as may be permitted by this subchapter or
35 by regulations of the director under this subchapter;

36 ~~(4)~~(3) "Employ" includes to suffer or to permit to work;

1 ~~(5)~~(4)(A) "Employer" includes any individual, partnership,
2 association, corporation, business trust, or any person or group of persons
3 acting directly or indirectly in the interest of an employer in relation to
4 an employee.

5 (B)(i) "Employer" shall not include any individual,
6 partnership, association, corporation, business trust, or any person or group
7 of persons acting directly or indirectly in the interest of an employer in
8 relation to an employee for any workweek in which that employs fewer than
9 four (4) employees in a regular employment relationship are employed.

10 (ii) Nor shall "employer" or any provisions of this
11 subchapter be deemed to include or apply to any person, firm, corporation, or
12 other entity subject to the minimum wage and overtime provisions of the
13 federal Fair Labor Standards Act of 1938;

14 ~~(6)~~(5) "Independent contractor" means any individual who
15 contracts to perform certain work away from the premises of his employer,
16 uses his own methods to accomplish the work, and is subject to the control of
17 the employer only as to the result of his work;

18 ~~(7)~~(6) "Employee" includes any individual employed by an
19 employer but shall not include:

20 (A) Any individual employed in a bona fide executive,
21 administrative, or professional capacity or as an outside commission-paid
22 salesman who customarily performs his services away from his employer's
23 premises taking orders for goods or services;

24 (B) Students performing services for any school, college,
25 or university in which they are enrolled and are regularly attending classes;

26 (C) Any individual employed by the United States or by the
27 state or any political subdivision thereof, except public schools and school
28 districts;

29 (D) Any individual engaged in the activities of any
30 educational, charitable, religious, or nonprofit organization where the
31 employer-employee relationship does not in fact exist or where the services
32 are rendered to the organizations gratuitously;

33 (E) Any bona fide independent contractor;

34 (F) Any individual employed by an agricultural employer
35 who did not use more than five hundred (500) man-days of agricultural labor
36 in any calendar quarter of the preceding calendar year;

1 (G) The parent, spouse, child, or other member of an
2 agricultural employer's immediate family;

3 (H) An individual who:

4 (i) Is employed as a hand-harvest laborer and is
5 paid on a piece-rate basis in an operation which has been, and is customarily
6 and generally recognized as having been, paid on a piece-rate basis in the
7 region of employment;

8 (ii) Commutes daily from his permanent residence to
9 the farm on which he is so employed; and

10 (iii) Has been employed in agriculture fewer than
11 thirteen (13) weeks during the preceding calendar year;

12 (I) A migrant who:

13 (i) Is sixteen (16) years of age or under and is
14 employed as a hand-harvest laborer;

15 (ii) Is paid on a piece-rate basis in an operation
16 which has been, and is customarily and generally recognized as having been,
17 paid on a piece-rate basis in the region of employment;

18 (iii) Is employed on the same farm as his parents;
19 and

20 (iv) Is paid the same piece-rate as employees over
21 age sixteen (16) years are paid on the same farm;

22 (J) Any employee principally engaged in the range
23 production of livestock;

24 (K) Any employee employed in planting or tending trees,
25 cruising, surveying, or felling timber, or in preparing or transporting logs
26 or other forestry products to the mill, processing plants, or railroad or
27 other transportation terminal if the number of employees employed by his
28 employer in such forestry or lumbering operations does not exceed eight (8);
29 or

30 (L) An employee employed by a nonprofit recreational or
31 educational camp that does not operate for more than seven (7) months in any
32 calendar year;

33 ~~(8)~~(7) "Occupation" means any occupation, service, trade,
34 business, industry, or branch or group of industries or employment or class
35 of employment in which employees are gainfully employed;

36 ~~(9)~~(8) "Gratuities" means voluntary monetary contributions

1 received by an employee from a guest, patron, or customer for services
2 rendered; and

3 ~~(10)~~(9) "Man-day" means any day during any portion of which an
4 employee performs any agricultural labor. Any individual otherwise excluded
5 as an "employee" under subdivision ~~(7)~~(6)(1) of this section shall be
6 considered an employee in computing man-days of agricultural labor.

7
8 SECTION 2. Arkansas Code 11-4-206 is amended to read as follows:
9 11-4-206. Penalties.

10 (a)(1) Any employer who willfully hinders or delays the director or
11 his authorized representative in the performance of his duties in the
12 enforcement of this subchapter; willfully refuses to admit the director or
13 his authorized representative to any place of employment; willfully fails to
14 make, keep, and preserve any records as required under the provisions of this
15 subchapter; willfully falsifies any such record; willfully refuses to make
16 the record accessible to the director or his authorized representative upon
17 demand; willfully refuses to furnish a sworn statement of the record or any
18 other information required for the proper enforcement of this subchapter to
19 the director or his authorized representative upon demand; willfully fails to
20 post a summary of this subchapter or a copy of any applicable regulations as
21 required by § 11-4-216; ~~willfully~~ pays or agrees to pay minimum wages at a
22 rate less than the rate applicable under this subchapter; or otherwise
23 willfully violates any provision of this subchapter, or of any regulation
24 issued under this subchapter, shall be deemed in violation of this subchapter
25 and shall, ~~upon conviction, be fined not more than one hundred dollars (\$100)~~
26 be subject to a civil penalty of not less than fifty dollars (\$50.00) and not
27 more than one thousand dollars (\$1,000) for each violation.

28 (2) For the purposes of this subsection, each violation shall
29 constitute a separate offense.

30 (b) Any employer who willfully discharges or in any other manner
31 willfully discriminates against any employee because the employee has made
32 any complaint to his employer, ~~to the board,~~ or to the director or his
33 authorized representative that he has not been paid minimum wages in
34 accordance with the provisions of this subchapter or because the employee has
35 caused to be instituted or is about to cause to be instituted any proceeding
36 under or related to this subchapter or because the employee has testified or

1 is about to testify in any such proceeding shall be deemed in violation of
2 this subchapter and shall, ~~upon conviction, be fined not more than one~~
3 ~~hundred dollars (\$100)~~ be subject to a civil penalty of not less than fifty
4 dollars (\$50.00) and not more than one thousand dollars (\$1,000) for each
5 violation.

6 (c) For the purposes of this section, each day the violation continues
7 shall constitute a separate offense.

8 (d) The Director of the Department of Labor shall determine the amount
9 of such penalty and shall consider the appropriateness of such penalty to the
10 size of the business and the gravity of the violation.

11 (e) The determination by the director shall be final, unless within
12 fifteen (15) days after receipt of notice thereof by certified mail, the
13 person, firm, corporation, partnership, or association charged with the
14 violation notifies the director in writing that he contests the proposed
15 penalty. In the event a penalty is contested, a final determination shall be
16 made pursuant to the Arkansas Administrative Procedure Act, §§ 25-15-201
17 through 25-15-214.

18 (f) Upon a final administrative determination, the amount of such
19 penalty may be recovered in a civil action brought by the director in a court
20 of competent jurisdiction, without paying costs or giving bond for costs.

21 (g) Sums collected under this section shall be paid into the
22 Department of Labor Special Fund.

23 (h) Assessment of a civil penalty by the director shall be made no
24 later than three (3) years after the date of the occurrence of the violation.

25 (i) In addition to the civil penalty provided by this section, the
26 Director of the Department of Labor is authorized to petition any court of
27 competent jurisdiction, without paying costs or giving bond for costs, to
28 enjoin or restrain any person, firm, corporation, partnership, or association
29 who violates the provisions of this subchapter, or any regulation issued
30 thereunder.

31
32 SECTION 3. Arkansas Code 11-4-207 is repealed.

33 ~~11-4-207. Labor Board Creation Members.~~

34 ~~(a) There shall be established under this subchapter a Labor Board~~
35 ~~which shall be composed of nine (9) members in the following manner: three~~
36 ~~(3) representatives of employers, three (3) representatives of employees, and~~

1 ~~three (3) disinterested persons representing the public.~~

2 ~~(b) The members of the board shall be appointed by the Governor, with~~
3 ~~the advice and consent of the Senate, and shall serve for a period of six (6)~~
4 ~~years.~~

5 ~~(c) Members of the Labor Board may receive expense reimbursement in~~
6 ~~accordance with § 25-16-901 et seq.~~

7
8 SECTION 4. Arkansas Code 11-4-208 is repealed.

9 ~~11-4-208. Authority of board.~~

10 ~~(a) For any occupation, the board shall make and revise such~~
11 ~~administrative regulations, including definitions of terms, as they may deem~~
12 ~~appropriate to carry out the purposes of this subchapter or necessary to~~
13 ~~prevent the circumvention or evasion thereof and to safeguard the minimum~~
14 ~~wage rates established.~~

15 ~~(b) The regulations may include, but are not limited to, regulations~~
16 ~~governing:~~

17 ~~(1) Outside or commission salespeople;~~

18 ~~(2) Learners and apprentices, their number, proportion, and~~
19 ~~length of service;~~

20 ~~(3) Part time pay, bonuses, and fringe benefits;~~

21 ~~(4) Special pay for special or extra work;~~

22 ~~(5) Permitted charges to employees or allowances for board,~~
23 ~~lodging, apparel, or other facilities or services customarily furnished by~~
24 ~~employers to employees;~~

25 ~~(6) Allowances for gratuities; or~~

26 ~~(7) Allowances for other special conditions or circumstances~~
27 ~~which may be usual in a particular employer-employee relationship.~~

28 ~~(c) Regulations or revisions issued by the board pursuant to this~~
29 ~~section shall be made only after a public hearing, at which any person may be~~
30 ~~heard by the board, at least ten (10) days subsequent to publication of~~
31 ~~notice of the hearing in a newspaper of general circulation throughout the~~
32 ~~State of Arkansas.~~

33 ~~(d) The regulations or revision shall take effect as provided in Acts~~
34 ~~1953, No. 183 [Repealed].~~

35
36 SECTION 5. Arkansas Code 11-4-209 is amended to read as follows:

11-4-209. Director - Powers and duties.

(a) For any occupation, the director shall make and revise such administrative regulations, including definitions of terms, as he may deem appropriate to carry out the purposes of this subchapter or necessary to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established.

(b) The regulations may include, but are not limited to, regulations governing:

(1) Outside or commission salespeople;

(2) Learners and apprentices, their number, proportion, and length of service;

(3) Part-time pay, bonuses, and fringe benefits;

(4) Special pay for special or extra work;

(5) Permitted charges to employees or allowances for board, lodging, apparel, or other facilities or services customarily furnished by employers to employees;

(6) Allowances for gratuities; and

(7) Allowances for other special conditions or circumstances which may be usual in a particular employer-employee relationship.

(c) Regulations shall be promulgated pursuant to the Arkansas Administrative Procedure Act, §§ 25-15-201 through 25-15-214.

(d) The director or his authorized representatives shall:

(1) Have authority to enter and inspect the place of business or employment of any employer in the state for the purpose of:

(A) Examining and inspecting any or all books, registers, payrolls, and other records of any employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any employees;

(B) Copy any or all of the books, registers, payrolls, and other records as he may deem necessary or appropriate; and

(C) Question employees for the purpose of ascertaining whether the provisions of this subchapter and regulations issued thereunder have been and are being complied with;

(2) Have authority to require from the employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and such information pertaining to his employees as

1 the director or his authorized representative may deem necessary or
2 appropriate;

3 (3) Publish all regulations ~~made by the board as provided in §~~
4 ~~11-4-208 promulgated pursuant to this subchapter;~~ and

5 (4) Otherwise implement and enforce the provisions of this
6 subchapter and the regulations and decisions of the board issued thereunder.

7

8 SECTION 6. Arkansas Code 11-4-214 is amended to read as follows:

9 11-4-214. Handicapped workers.

10 (a) Any person handicapped by lack of skill, age, or physical or
11 mental deficiency or injury in any way that his earning capacity is impaired
12 shall be granted a temporary special exemption license or permit authorizing
13 the employment of the person at wages lower than the minimum prescribed in
14 this subchapter until such time as the board director shall hold a hearing
15 and prescribe regulations regarding exemption of the persons as authorized in
16 this section.

17 (b)(1) The ~~board~~ director may provide by regulation, after notice and
18 public hearing at which any person may be heard, for the employment in any
19 occupation of individuals whose earning capacity is impaired by age or
20 physical or mental deficiency or injury at wages lower than the minimum wage
21 rate provided in § 11-4-210 as ~~it~~ he may find appropriate to prevent
22 curtailment of opportunities for employment, to avoid undue hardship, and to
23 safeguard the minimum wage rate under this subchapter.

24 (2) In addition, the ~~board~~ director may by regulation or special
25 order provide for the employment of handicapped clients in work activities
26 centers under special certificates at wages which are less than the minimum
27 prescribed in § 11-4-210 which the ~~board~~ director determines constitutes
28 equitable compensation for the clients in work activities centers.

29 (c) For the purposes of this section, the term "work activities
30 centers" shall mean centers planned and designed exclusively to provide
31 therapeutic activities for handicapped clients whose physical and mental
32 impairment is so severe as to make their productivity capacities
33 inconsequential.

34

35

36 SECTION 7. Arkansas Code 11-4-215 is amended to read as follows:

1 11-4-215. Learners, apprentices, and full-time students.

2 (a) For any occupation the ~~board~~ director may provide, by regulation,
3 after a public hearing at which any person may be heard, for the employment
4 in the occupation of learners, apprentices, and full-time students at wages
5 lower than the minimum wage rate provided in § 11-4-210(b) as it may find
6 appropriate to prevent curtailment of opportunities for employment and to
7 safeguard the minimum wage rate under this subchapter.

8 (b) No employee shall be employed at wages fixed pursuant to this
9 section except under special license issued under applicable regulations of
10 the ~~board~~ director.

11

12 SECTION 8. Arkansas Code 11-4-216 is amended to read as follows:

13 11-4-216. Posting of law.

14 (a) Every employer subject to any provisions of this subchapter or of
15 any regulations issued under this subchapter shall keep a summary of this
16 subchapter, approved by the ~~board~~ director, and copies of any applicable
17 regulations issued under this subchapter, or a summary of the regulations
18 approved by the ~~board~~ director, posted in a conspicuous and accessible place
19 in or about the premises wherein any person subject thereto is employed.

20 (b) Employers shall be furnished copies of the summaries of this
21 statute and regulations by the director on request without charge.

22

23 SECTION 9. Arkansas Code 11-4-217 is amended to read as follows:

24 11-4-217. Records kept by employer.

25 (a) Every employer subject to any provision of this subchapter or of
26 any regulation issued under this subchapter shall make and keep for a period
27 of not less than three (3) years in or about the premises wherein any
28 employee is employed a record of the name, address, and occupation of each of
29 his employees, the rate of pay and the amount paid each pay period to each
30 employee, and such other information as the ~~board~~ director shall prescribe by
31 regulation as necessary or appropriate for the enforcement of the provisions
32 of this subchapter or of the regulations thereunder.

33 (b) The records shall be open for inspection or transcription by the
34 director or his authorized representative at any reasonable time.

35 (c) Every employer shall furnish to the director or to his authorized
36 representative on demand a sworn statement of the records and information

1 upon forms prescribed or approved by the director.

2

3 SECTION 10. Arkansas Code 11-4-219 is amended to read as follows:

4 11-4-219. Judicial review.

5 (a) Any interested person in any occupation for which any
6 administrative regulation has been issued under the provisions of this
7 subchapter who may be aggrieved by any regulation may obtain a review thereof
8 in the circuit court of the county of the residence of the aggrieved party by
9 filing in the court within twenty (20) days after the date of publication of
10 the regulation a written petition praying that the regulation be modified or
11 set aside.

12 (b) A copy of the petition shall be served upon the director, ~~and the~~
13 ~~service shall be deemed notice to the board.~~

14 (c)(1) The court shall review the record of the proceedings before the
15 ~~board~~ director, and the ~~board's~~ director's findings of fact shall be affirmed
16 if supported by substantial evidence. The court shall determine whether the
17 regulation is in accordance with law.

18 (2) If the court determines that the regulation is not in
19 accordance with law, it shall remand the case to the ~~board~~ director with
20 directions to modify or revoke the regulation.

21 (d)(1) If application is made to the court for leave to adduce
22 additional evidence by any aggrieved party, the party shall show to the
23 satisfaction of the court that the additional evidence is material and that
24 there were reasonable grounds for the failure to adduce the evidence before
25 the ~~board~~ director.

26 (2) If the court finds that the evidence is material and that
27 reasonable grounds exist for failure of the aggrieved party to adduce the
28 evidence in prior proceedings, the court shall remand the case to the ~~board~~
29 director with directions that the additional evidence be taken before the
30 ~~board~~ director.

31 (3) The ~~board~~ director may modify ~~its~~ his or her findings and
32 conclusions, in whole or in part, by reason of the additional evidence.

33 (e) Hearings in the circuit court on all appeals taken under the
34 provisions of this subchapter shall take precedence over all matters except
35 matters of the same character. The jurisdiction of the court shall be
36 exclusive and its judgment and decree shall be final except that it shall be

1 subject to review by the Supreme Court.

2 (f)(1) The commencement of proceedings under subsections (a)-(d) of
3 this section shall not, unless specifically ordered by the court, operate as
4 a stay of an administrative regulation issued under the provisions of this
5 subchapter.

6 (2) The court shall not grant any stay of an administrative
7 regulation unless the person complaining of the regulation shall file an
8 amount in the court, undertaking with a surety satisfactory to the court, for
9 payment to the employees affected by the regulation in the event the
10 regulation is affirmed. The surety shall be in an amount by which the
11 compensation the employees are entitled to receive under the regulation
12 exceeds the compensation they actually receive while the stay is in effect.

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