

Wyoming Administrative Rules

Workforce Services, Department of

Labor Standards

Chapter 1: Rules of Practice & Procedure for the Filing, Investigation & Resolution of Unpaid Wage Claims under Labor Standards

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Chapter I

RULES OF PRACTICE AND PROCEDURE FOR THE FILING, INVESTIGATION, AND RESOLUTION OF UNPAID WAGE CLAIMS UNDER LABOR STANDARDS

Section 1. Authority.

These rules and regulations are promulgated and enacted by the Department of Workforce Services pursuant to W.S. 27-2-104 and in accordance with W.S. 16-3-115 of the Wyoming Administrative Procedures Act.

Section 2. Application and Scope.

These rules and regulations are promulgated to assist the Department of Workforce Services in its duty to enforce laws enacted by the legislature relating to labor as is required by W.S. 27-2-104.

Section 3. Definitions.

(a) “Claim” means a signed written complaint filed with Labor Standards by the employee on a form provided by Labor Standards claiming unpaid wages are due and owed employee under W.S. 27-4-101, 27-4-104, or W.S. 27-4-507.

(b) “Employee” means any person, who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(c) “Claimant” means any employee submitting a claim as defined in subsection (a).

(d) “Employer” means any individual, partnership, association, joint stock company, trust, corporation, labor organization, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same employing any person against whom a claim is made.

(e) “Department” means the Wyoming Department of Workforce Services.

(f) “Labor Standards” means Labor Standards, a program within the Department of Workforce Services.

(h) “Wages” means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis.

Section 4. Filing Procedures.

(a) Upon receipt of a claim, Labor Standards shall enter its receipt, assign a docket/claim number and indicate the statute alleged to have been violated.

(b) Labor Standards shall serve, by regular mail to the employer's last known address or by personal delivery, a copy of the claim, a blank answer form, together with a letter of instructions.

(c) The employer shall have ten (10) days from the letterhead date to submit an answer to such claim; the employer shall have fifteen (15) days where the employer is located outside of Wyoming. Labor Standards may refer the claim for an administrative hearing pursuant to W.S. 27-4-504 should the employer fail to submit an answer within the above time frames. When a deadline for submitting an answer or a reply to an answer falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the next working day. However, such days shall otherwise be counted in computing time limits. The employer's answer or claimant's reply to an answer is deemed submitted when one or more of the following have occurred:

(i) In Person. When an employer or claimant submits an answer or reply to an answer in person with a representative of Labor Standards, that submittal is deemed to occur the day the person physically delivers the document into the hands of the Labor Standards representative authorized to receive it.

(ii) By Mail. When an employer or claimant submits an answer or reply to an answer with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

(iii) By Facsimile. When an employer or claimant submits an answer or reply to an answer with Labor Standards by fax, that document is deemed to have been filed as of the date the document is received. The fax must contain sufficient information to identify the party providing the information and the purpose for which it is intended. The party sending the fax assumes the risk of transmission errors or illegibility.

(d) Where the employer concedes the validity of the claim, Labor Standards shall request payment of the claim amount.

(e) Labor Standards shall serve a copy of the employer's answer by regular mail or personal delivery upon the claimant.

(f) The claimant shall submit a reply to the employer's answer within ten (10) days from Labor Standards letterhead date; the Claimant shall have fifteen (15) days where the Claimant is located outside of Wyoming. Claimant's reply shall be deemed submitted when it has been date stamped by Labor Standards

Section 5. Investigation.

For the purpose of determining the validity of the filed 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, 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 W.S. 27-4-504 should the employer fail to cooperate with the investigation.

Section 6. Wage Offset Rules

These rules are promulgated to govern what sums may be lawfully offset by an employer from money due the employee.

(a) Definitions.

(i) "Wages" means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis.

(ii) "Compensation" means remuneration, pay, salary 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.

(iii) "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.

(iv) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, labor organization, the administrator or executor of an estate of a deceased person, the receiver, trustee, or successor of any of the above, the State of Wyoming, any political subdivision or both, commission, department, institution, or school district.

(v) "Employee" means any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(vi) "Department" means the Department of Workforce Services or its designee.

(vii) "Labor Standards" means Labor Standards, a program within the Department of Workforce Services and its designee for these rules.

(b) Offsets.

The following sums shall constitute proper offsets from wages due an employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) That the employee's negligence is determined by a judicial proceeding;

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

(C) That the negligence and damages arise in the course of the employment; and

(D) That the employer has not received payments, compensation, or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages. Where the employer has received payments, compensation, 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.

(vii) Any sums deducted from wages pursuant to "Attachment" (W.S. 1-15-201 through 1-15-212) or "Garnishment" (W.S. 1-15-401 through 1-15-425) and W.S. 27-4-106 through 27-4-108.

(viii) 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:

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

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

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

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

(B) 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;

(C) 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

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

(x) 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:

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

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

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

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

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

(C) That such items have not been returned to the employer upon termination.

(c) Payment of Undisputed Wages.

(i) 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.

(ii) 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.

(d) 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.

(e) Check Stubs.

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 W.S. 27-4-101(b).

(f) Enforcement.

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

Section 7. Initial Review & Determination.

(a) Upon conclusion of the investigation and all necessary inquiries, Labor Standards shall make a preliminary finding as to the validity of the claim filed. Labor Standards shall notify the parties of the preliminary finding by certified mail.

(b) Either party may submit a request that the preliminary finding be administratively reviewed. Review requests shall be in writing and submitted to Labor Standards within the time period as stated in the preliminary finding. The administrative review will be conducted by someone within Labor Standards other than the compliance officer who made the preliminary finding. The request may be made in one of the following ways:

(i) In Person. When an employer or claimant submits an answer or reply to an answer in person with a representative of Labor Standards, that submittal is deemed to occur the day the person physically delivers the document into the hands of the Labor Standards representative authorized to receive it.

(ii) By Mail. When an employer or claimant submits an answer or reply to an answer with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

(iii) By Facsimile. When an employer or claimant submits an answer or reply to an answer with Labor Standards by fax, that document is deemed to have been filed as of the date the document is received. The fax must contain sufficient information to identify the party providing the information and the purpose for which it is intended. The party sending the fax assumes the risk of transmission errors or illegibility.

(A) If neither party timely requests an administrative review of the preliminary finding, the preliminary finding becomes Labor Standard's determination.

(B) The administrative review may confirm, reverse, modify or vacate the preliminary finding. A vacated preliminary finding means the file contained insufficient evidence to support the original preliminary finding. Vacated preliminary findings shall be returned to the original compliance officer for further investigation and re-issuing of the preliminary finding. If the preliminary finding is confirmed, reversed, or modified, this becomes the final determination.

(C) Where the preliminary finding has found the claim to be invalid, Labor Standards shall notify the parties by certified mail.

(D) Where the preliminary finding has found the claim to be valid, Labor Standards shall notify the parties by mail.

Section 8. Conference.

(a) Where Labor Standards deems appropriate or upon request of either party, and upon agreement by both parties, an informal conference may be held.

(b) The conference may be used to establish facts, narrow the issues, and attempt resolution of the claim.

Section 9. Fair Hearings.

(a) Any party aggrieved by a determination may request in writing a fair hearing pursuant to W.S. 27-2-109(g) or W.S. 27-4-504(b).

(b) In the event an employer fails to pay wages as determined due by Labor Standards and fails to request a fair hearing within ten (10) days calendar days of receipt

of the determination, fifteen (15) where the employer is out of state, Labor Standards shall issue an order requiring payment of wages due. Labor Standards order shall constitute the final agency action.

(c) Any request for fair hearing must be submitted to Labor Standards by the aggrieved party within ten (10) days of the date of receipt of the determination or fifteen (15) days if the employer is out of state. A request for fair hearing shall be deemed submitted to Labor Standards when it has been received and date stamped by Labor Standards.

Section 10. Hearings.

(a) Any hearing held pursuant to Section 8 of this Chapter shall be conducted in accordance with the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115.

(b) Pursuant to W.S. 27-4-504(a), the hearing officer's decision shall constitute the final agency action.

(c) Any individual may appear for himself in any proceeding before any appeal tribunal. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(d) Any party may appear by an attorney at law admitted to practice in the State of Wyoming or who is admitted pro hac vice.