

2018 Regular Session

HOUSE BILL NO. 519

BY REPRESENTATIVE SMITH

(On Recommendation of the Louisiana State Law Institute)

LABOR: Creates the Louisiana Wage Payment Act

1 AN ACT

2 To amend and reenact the heading of Chapter 6 of Title 23 of the Louisiana Revised Statutes
3 of 1950 and R.S. 23:631 through 634 and to repeal R.S. 23:635 and 636, relative to
4 the payment of employees; to provide for the Louisiana Wage Payment Act; to
5 provide definitions; to provide for the terms of employment; to provide for the
6 payment of wages; to provide for civil actions; to provide for penalties; to provide
7 defenses; to prohibit the assessment of fines; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. The heading of Chapter 6 of Title 23 of the Louisiana Revised Statutes
10 of 1950 and R.S. 23:631 through 634 are hereby amended and reenacted to read as follows:

11 CHAPTER 6. ~~PAYMENT OF EMPLOYEES~~ LOUISIANA WAGE PAYMENT ACT

12 PART I.

13 §631. ~~Discharge or resignation of employees; payment after termination of~~
14 ~~employment~~ Definitions; terms of payment; posting; recordkeeping

15 A.(1)(a) ~~Upon the discharge of any laborer or other employee of any kind~~
16 ~~whatever, it shall be the duty of the person employing such laborer or other~~
17 ~~employee to pay the amount then due under the terms of employment, whether the~~
18 ~~employment is by the hour, day, week, or month, on or before the next regular~~
19 ~~payday or no later than fifteen days following the date of discharge, whichever~~
20 ~~occurs first.~~

1 ~~(b) Upon the resignation of any laborer or other employee of any kind~~
2 ~~whatever, it shall be the duty of the person employing such laborer or other~~
3 ~~employee to pay the amount then due under the terms of employment, whether the~~
4 ~~employment is by the hour, day, week, or month, on or before the next regular~~
5 ~~payday for the pay cycle during which the employee was working at the time of~~
6 ~~separation or no later than fifteen days following the date of resignation, whichever~~
7 ~~occurs first.~~

8 ~~(2) Payment shall be made at the place and in the manner which has been~~
9 ~~customary during the employment, except that payment may be made via United~~
10 ~~States mail to the laborer or other employee, provided postage has been prepaid and~~
11 ~~the envelope properly addressed with the employee's or laborer's current address as~~
12 ~~shown in the employer's records. In the event payment is made by mail the employer~~
13 ~~shall be deemed to have made such payment when it is mailed. The timeliness of the~~
14 ~~mailing may be shown by an official United States postmark or other official~~
15 ~~documentation from the United States Postal Service.~~

16 ~~(3) The provisions of this Subsection shall not apply when there is a~~
17 ~~collective bargaining agreement between the employer and the laborer or other~~
18 ~~employee which provides otherwise.~~

19 ~~B. In the event of a dispute as to the amount due under this Section, the~~
20 ~~employer shall pay the undisputed portion of the amount due as provided for in~~
21 ~~Subsection A of this Section. The employee shall have the right to file an action to~~
22 ~~enforce such a wage claim and proceed pursuant to Code of Civil Procedure Article~~
23 ~~2592.~~

24 ~~C. With respect to interstate common carriers by rail, a legal holiday shall not~~
25 ~~be considered in computing the fifteen-day period provided for in Subsection A of~~
26 ~~this Section.~~

27 ~~D.(1) For purposes of this Section, vacation pay will be considered an~~
28 ~~amount then due only if, in accordance with the stated vacation policy of the person~~
29 ~~employing such laborer or other employee, both of the following apply:~~

1 ~~(a) The laborer or other employee is deemed eligible for and has accrued the~~
2 ~~right to take vacation time with pay.~~

3 ~~(b) The laborer or other employee has not taken or been compensated for the~~
4 ~~vacation time as of the date of the discharge or resignation.~~

5 ~~(2) The provisions of this Subsection shall not be interpreted to allow the~~
6 ~~forfeiture of any vacation pay actually earned by an employee pursuant to the~~
7 ~~employer's policy.~~

8 A. For the purposes of this Chapter, the following terms have the meaning
9 ascribed as follows:

10 (1) "Employee" means any natural person who performs services for wages
11 or pursuant to any contract of employment, written or oral, express or implied, unless
12 the person has been and will continue to be free from any control or direction over
13 the performance the services both pursuant to a contract and in fact the service is
14 either outside the usual course of the business for which the service is performed, or
15 the service is performed outside of all the paces of business of the enterprise for
16 which the service is performed and the person is customarily engaged in an
17 independently established trade, occupation, profession, or business.

18 (2) "Employer" means any natural or juridical person or persons who hires
19 any employee to perform services for wages or who suffers or permits any natural
20 person to perform services for wages.

21 (3) "Termination" means the cessation of employment whether by discharge,
22 end of term, or resignation.

23 (4) "Wages" means all remuneration including commission, except as
24 provided in Subpart F of Part VIII of Chapter 1 of Title 51 of the Revised Statutes
25 of 1950, owed by an employer for services performed by an employee, whether
26 computed on a time, day, task, piece, contractual, overtime, or other basis and
27 includes accrued paid time off as defined in Subsection (I) of this Section.

28 B.(1) At the time of hire, it shall be the duty of each employer to inform each
29 employee in writing of the basic terms of employment. The basic terms of

1 employment at a minimum shall include the full name and address of the employer,
2 the employee's job title, the wages to be paid, the method by which they will be paid,
3 where they will be paid, and the frequency of payment. The employer and the
4 employee shall sign the basic terms of employment and a copy shall be furnished to
5 the employee. All changes in the basic terms of employment shall be documented
6 by the employer and contemporaneously communicated in writing to the employee.

7 (2) Every employer shall keep a true and accurate record of the basic terms
8 of employment of each employee, any subsequent changes, of the daily and weekly
9 hours worked including overtime, and of the wages paid each pay period. The
10 employer shall maintain the last three years of records for no less than five years
11 after termination. The failure to keep and maintain records shall give rise to a
12 rebuttable presumption in favor of the employee with regard to the basic terms of
13 employment, hours worked, and wages paid.

14 C. The employer shall use a form containing the following information to
15 clarify the basic terms of employment:

16 NOTICE OF BASIC TERMS OF EMPLOYMENT

17 Name of employer and DBA: _____

18 Address of employer: _____

19 Telephone number of employer: _____

20 To: (name of employee) _____

21 Address of employee: _____

22 Date: _____

23 Louisiana law requires employers to inform all employees in writing at the
24 time of hire of basic terms of employment. The following applies to this
25 employment as of the above date:

26 Job title: _____

27 Wages to be paid: _____

28 Method of payment: _____

29 Location of payment: _____

1 Frequency of payment: _____

2 Additional basic terms of employment: _____

3 Acknowledgment

4 I, _____ (name of employee), hereby acknowledge receipt, on _____ (date),
5 of a copy of the foregoing basic terms of employment.

6 _____

7 Signature of employee

8 _____

9 Signature of employer

10 D. An employer shall post a notice in the same location as other required
11 notices are posted that states the following:

12 "Your employer has a duty to inform you in writing at the time of hire of its
13 full name and address, how much you will be paid, how often you will be paid, and
14 how you will be paid, and to advise you in writing of any changes."

15 E.(1) It shall be the duty of the employer to pay wages then due on each
16 regular payday. Any employer that fails to designate regular paydays shall pay its
17 employees on the first and sixteenth days of the month or as near as is practicable to
18 those days.

19 (2) Every public service organization and every person engaged in
20 manufacturing of any kind or engaged in boring for oil and in mining operations who
21 employees ten or more employees shall make full payment to employees, except
22 those who are employed in a bona fide executive, administrative, supervisory, or
23 professional capacity or any employee considered exempt pursuant to the federal
24 Fair Labor Standards Act for services performed no less than twice during each
25 calendar month which paydays shall be two weeks apart as near as is practicable.
26 The payment or settlement shall include all amounts due for labor or services
27 performed during any payroll period and shall be payable no later than the payday
28 at the conclusion of the next payroll period, provided that, except in the case of

1 public service corporations, this Section shall not apply to the clerical force or to
2 sales persons.

3 F. While employed, an employee who is not paid the wages due on or before
4 a regular payday may make a written demand for payment. Within seven days of
5 receipt of a demand for payment, his employer shall provide a written response
6 detailing reasons for nonpayment of claimed wages and shall pay any undisputed
7 wages.

8 G. Upon termination, the employer shall pay the wages then due pursuant
9 to the basic terms of employment on or before the next regular pay day for the cycle
10 during which the employee was working at the time of termination, or fifteen days
11 after the date of termination, whichever occurs first. Payment shall be made in
12 accordance with the basic terms of employment.

13 H. After separation of employment, if a former employee is not paid as
14 required after the time periods for payment have lapsed, he may make a written
15 demand for payment. The demand shall include a basis for the claim and a
16 reasonable request for an alternative method or location of payment. Within seven
17 days of the receipt of the demand for payment, an employer shall provide a written
18 response which includes the reasons for nonpayment. Any undisputed wages shall
19 be paid in accordance with any reasonable request regarding method and location.

20 I.(1) Paid leave will be considered a wage then due only if, in accordance
21 with the stated policy or practice of the employer, all of the following apply:

22 (a) The employee is deemed eligible for and has earned and accrued the right
23 to take paid leave.

24 (b) The employee has not taken or been compensated for the paid leave as
25 of the date of termination.

26 (2) Paid leave that is considered a wage shall not be forfeited.

27 J. After the earlier of the employer's response or the expiration of the seven
28 day time period, the employee shall have the right to file a summary or ordinary

1 proceeding to enforce the provisions of this Section, provided, however, a summary
2 proceeding shall not be available to any employee in a class action.

3 K. When the court finds that an employer has materially and consistently
4 failed to maintained the records of the employee in accordance with this Section, it
5 may order the employer to pay a civil penalty to the employee who is a prevailing
6 party. When the wages due are one thousand dollars or less, the penalty may be
7 between two hundred fifty dollars and seven hundred fifty dollars. When the wages
8 due are greater than one thousand dollars, the penalty may be between five hundred
9 dollars and one thousand dollars.

10 L.(1) An employer shall not retaliate against an employee who informs the
11 employer of a violation of this Section or seeks to enforce his rights in accordance
12 with the provisions of this Section. The burden of proving retaliation is on the
13 employee.

14 (2) In addition to any damages and attorney fees, an employee who proves
15 retaliation shall be entitled to the maximum possible penalty in accordance with the
16 provisions of this Chapter.

17 M. The provisions of this Section shall not apply to the extent of a conflict
18 with a collective bargaining agreement between the employer and an employee.

19 §632. Liability of employer for failure to pay; attorney fees; good-faith ~~exception~~
20 defense; safe harbor

21 ~~A.(1) Except as provided for in Subsection B of this Section, any~~ Any
22 employer who fails or refuses to comply with the payment provisions of R.S. 23:631
23 shall be liable to the employee either for ninety working days wages at the
24 employee's ~~daily~~ rate of pay, or ~~else~~ for full wages from the ~~time the employee's~~
25 ~~demand for payment is made~~ earlier of the employer's response or the expiration of
26 the seven-day time period until the employer ~~shall pay or tender the amount of~~
27 ~~unpaid~~ pays the wages due to such employee, whichever is the lesser amount of
28 penalty wages.

29 (2) The rate of pay shall not be less than the applicable minimum wage.

1 (3) Penalty wages are in addition to any damages an employee is otherwise
2 entitled to in accordance with state or federal law.

3 ~~B. When the court finds that an employer’s dispute over the amount of~~
4 ~~wages due was in good faith, but the employer is subsequently found by the court to~~
5 ~~owe the amount in dispute, the employer shall be liable only for the amount of wages~~
6 ~~in dispute plus judicial interest incurred from the date that the suit is filed. If the~~
7 ~~court determines that the employer’s failure or refusal to pay the amount of wages~~
8 ~~owed was not in good faith, then the employer shall be subject to the penalty~~
9 ~~provided for in Subsection A of this Section.~~

10 (1) An employer may assert good faith as an affirmative defense to a claim
11 for the payment of penalty wages.

12 (2) If the good faith defense is based on the issue of whether a person should
13 be properly classified as an employee but is unsuccessful, the court shall consider
14 evidence of the employer's efforts to determine the proper classification in making
15 a determination of whether the employer acted in good faith.

16 (3) A good faith defense is not available to an employer who has failed to
17 provide a timely written response or to pay any undisputed wages in accordance with
18 R.S. 23:631, or who has paid the employee wages in cash without written
19 acknowledgment of receipt.

20 ~~C. Reasonable~~ In the event a well-founded suit for any unpaid wages is filed
21 by an employee after the expiration of the time periods for demand and response
22 provided in R.S. 23:631, reasonable ~~attorney fees shall be allowed the laborer or~~
23 ~~awarded to the employee by the court which shall be~~ and ~~taxed as costs to be paid~~
24 ~~by the employer, in the event a well-founded suit for any unpaid wages whatsoever~~
25 ~~be filed by the laborer or employee after three days shall have elapsed from time of~~
26 ~~making the first demand following discharge or resignation.~~

27 D. If the court finds a joint employment relationship, each employer shall be
28 solitarily liable for any wages, penalties, damages, interest, attorney fees, and costs
29 owed.

1 ~~§633. Payment twice monthly for certain occupations; penalty for violations~~

2 A. ~~It shall be the duty of each employer subject to this Section to inform his~~
3 ~~employees at the time of hire what wages they will be paid, the method in which they~~
4 ~~will be paid and the frequency of payment along with any subsequent changes~~
5 ~~thereto. Except as provided under Subsection B of this Section, any employer that~~
6 ~~fails to designate paydays must pay his employees on the first and sixteenth days of~~
7 ~~the month or as near as is practicable to those days.~~

8 B. ~~Every person, engaged in manufacturing of any kind, or engaged in~~
9 ~~boring for oil and in mining operations, employing ten or more employees, and every~~
10 ~~public service corporation, shall make full payment to employees for services~~
11 ~~performed no less than twice during each calendar month, which paydays shall be~~
12 ~~two weeks apart as near as is practicable, and such payment or settlement shall~~
13 ~~include all amounts due for labor or services performed during any such payroll~~
14 ~~period and shall be payable no later than the payday at the conclusion of the next~~
15 ~~payroll period, provided that, except in cases of public service corporations, this~~
16 ~~Section shall not apply to the clerical force or to salesmen.~~

17 C. ~~For purposes of this Section, the term "employee" does not include any~~
18 ~~individual employed in a bona fide executive, administrative, supervisory, or~~
19 ~~professional capacity or any employee considered exempt pursuant to the federal~~
20 ~~Fair Labor Standards Act.~~

21 D. ~~Employers shall post, in the same location where they post other~~
22 ~~employee notices required by state or federal laws, a notice provided by the~~
23 ~~Louisiana Workforce Commission that states, as follows:~~

24 ~~"Your employer has a duty to inform you at the time of your hire what your~~
25 ~~wage rate will be, how often you will be paid and how you will be paid, and of any~~
26 ~~subsequent changes thereto. If your employer should, for reasons within his control,~~
27 ~~fail to pay you according to that agreement, you must first lodge a complaint with~~
28 ~~him. If no action is taken to resolve your complaint, you may report the violation to~~
29 ~~the office of workforce development within the Louisiana Workforce Commission."~~

1 federal minimum wage rate and the employee is not a part-time or seasonal
2 employee as defined in R.S. 23:1021.

3 C. If an employer has previously furnished his employee with a written
4 policy that states that the employer may deduct money from an employee's wages for
5 damage to property, the employer may recover actual damages when an employee
6 willfully or negligently damages or breaks the employer's property or property for
7 which the employer is responsible.

8 D. When an employer has entered into a written contract with his employee
9 granting permission to do so, an employer may recover amounts that are advanced
10 to or on behalf of an employee and the employee is contractually obligated to pay the
11 employer, provided the contractual obligation is in a writing that clearly states the
12 right of the employer to deduct the amounts from the employee's wages.

13 E. An employer may recover, from an employee's wages, damages suffered
14 when the employee is convicted of or has pled guilty to the crime of theft of the
15 employer's property.

16 ~~§635.~~ §634. Assessment of fines against employees unlawful; ~~exceptions~~

17 ~~No person, acting either for himself or as agent or otherwise, An employer~~
18 ~~shall not~~ assess any fines against his ~~employees~~ employee or deduct any sum as fines
19 from ~~their~~ his employee's wages. ~~This Section shall not apply in cases where the~~
20 ~~employees wilfully or negligently damage goods or works, or in cases where the~~
21 ~~employees wilfully or negligently damage or break the property of the employer, or~~
22 ~~in cases where the employee is convicted or has pled guilty to the crime of theft of~~
23 ~~employer funds, but in such cases the fines shall not exceed the actual damage done.~~

24 * * *

25 Section 2. R.S. 23:635 and 636 are hereby repealed in their entirety.

26 Section 3. The Louisiana State Law Institute is hereby directed to designate R.S.
27 23:631 through 634 as Part I of Chapter 6 of Title 23 of the Louisiana Revised Statutes of
28 1950 and R.S. 23:637 through 653 as Part II of Chapter 6 of Title 23 of the Louisiana
29 Revised Statutes of 1950.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 519 Original

2018 Regular Session

Smith

Abstract: Creates the La. Wage Payment Act.

Present law requires that upon separation of employment, an employer pay his employee the amount owed in the usual fashion on or before the next payday, or within 15 days, whichever is sooner.

Present law provides that in the case of a dispute of the amount of wages due, the employer shall pay the undisputed amount and that the employee may file a wage claim for the balance in question.

Proposed law provides that if an employee is still employed with the employer and has not received wages, that he may make a written demand to which the employer shall answer within seven days.

Proposed law provides that after termination, if a former employee is not paid as required by proposed law that he must make a written demand to which the employer shall respond within seven days with reasons for nonpayment.

Proposed law retains present law by requiring that the employer pay any wages not in dispute at the time of demand.

Proposed law provides for civil remedies and damages for nonpayment of wages when appropriate.

Present law requires that employers post a notice indicating that the employer has a duty to notify each employee as to the terms of his employment including his wage rate, method, and place of payment. Proposed law retains present law regarding the notice and further provides a form outlining the basic terms of employment so that expectations are clear for both parties.

Proposed law requires that the employer maintain the records for a period of three years total for a period of at least five years after termination.

Proposed law provides that paid leave is considered a wage due if it has been earned and accrued and unused.

Proposed law provides technical amendments and instructions to the Louisiana State Law Institute to redesignate and reorganize parts of present law.

(Amends R.S. 23:631-634; Repeals R.S. 23:635 and 636)