

STATE OF KANSAS



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GOVERNOR JEFF COLYER, M.D.
LANA GORDON, SECRETARY

House Committee on Commerce, Labor and Economic Development Hearing on HB 2461 Neutral Testimony February 13, 2018

Chairman Mason and Members of the Committee:

Thank you for the opportunity to provide some information on the Kansas Wage Payment Act (KWPA)¹ and what the Kansas Department of Labor (KDOL) does to assist Kansas workers and employers with their rights and responsibilities under the KWPA.

The KWPA requires employers to pay, on regularly scheduled intervals and at least once per month, employees the wages the employees earn.² The KWPA also prohibits employers from withholding, deducting, or diverting employee's wages, except in certain limited circumstances.³ Employers who willfully fail to pay wages when due are subject to penalties of up to 100% of the amount of wages owed in addition to the back wages.⁴

Individuals can pursue wage claims through two routes. Most individuals avail themselves of the administrative process administered by KDOL. Specifically, K.S.A. 44-322, 44-322a, and K.A.R. 49-21-1, 49-22-2, and 49-21-3 set forth this procedure. Claims go through a typical administrative process with an initial attempt to resolve through education and agreement, an administrative hearing with an initial order if unsuccessfully resolved, a final agency order, and an appeal through the Kansas Judicial Review Act.⁵ Most cases are resolved prior to hearing.

Once a final order has been issued, if the amount of the claim is less than \$10,000, the Secretary of labor shall take assignment of the claim and take such appropriate action to enforce or defend such claim.⁶ This means reasonable attempts at collection including written requests for payment, initiating a civil suit to enforce the order, and intercepting amounts owed to the debtor by the State. Wage claimants are charged a nominal fee,

¹ K.S.A. 44-313, *et seq.*

² K.S.A. 44-314

³ K.S.A. 44-319

⁴ K.S.A. 44-315

⁵ K.S.A. 44-322a

⁶ K.S.A. 44-324. Note: If the amount is \$10,000 or greater, the Secretary has discretion whether to take assignment.

up to \$25 for this service. If the Secretary successfully obtains a judgment, the court shall award reasonable attorney fees.⁷ Typically, fees that are awarded equal \$300.

Alternatively, unpaid workers may assert a claim in civil court for violation of the KWPA. This is done either *pro se* or with the assistance of retained counsel. HB 2461 grants authority to the courts to award costs and attorney fees to private attorneys if they prevail in a civil action wage claim.

KDOL is neutral on HB 2461. As stated above, most wage claims are pursued through the administrative process. The employment standards division does an outstanding job of educating workers and employers of their rights and responsibilities and resolving disputes over unpaid wages. Last year, more than \$833,000 was collected on behalf of unpaid workers.

Again, thank you for the opportunity to briefly explain the KWPA and the work KDOL does to assist workers and employers with their rights and responsibilities under the KWPA. I look forward to answering any questions you may have.

Respectfully submitted,

/s/ Justin L. McFarland

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⁷ *Id.*