CHAPTER 10

Payment of Wages

**SECTION 41‑10‑10.** Definitions.

As used in this chapter:

(1) “Employer” means every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.

(2) “Wages” means all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986; 1990 Act No. 463, Section 1, eff May 7, 1990.

Effect of Amendment

The 1990 amendment deleted in subsection (2) “and severance” following “sick leave”.

CROSS REFERENCES

Department of Labor incorporated into Department of Labor, Licensing, and Regulation, see Section 1‑30‑65.

Effect of bringing an action under the provisions of Title 39, Chapter 65, on the right to bring an action under this section, see Section 39‑65‑80.

RESEARCH REFERENCES

ALR Library

18 ALR 5th 577 , Validity, Construction, and Effect of State Laws Requiring Payment of Wages on Discharge of Employee Immediately or Within Specified Period.

Encyclopedias

97 Am. Jur. Proof of Facts 3d 81, Litigating an Employment Discrimination Class Action.

21 Am. Jur. Trials 625, Preparation and Trial of Federal Class Actions.

S.C. Jur. Appeal and Error Section 83, Argument in the Briefs.

S.C. Jur. Labor Relations Section 19, Powers.

S.C. Jur. Labor Relations Section 32, Coverage.

S.C. Jur. Labor Relations Section 33, Requirements.

S.C. Jur. Labor Relations Section 35, Duties of the Commissioner of Labor.

S.C. Jur. Labor Relations Section 42, Employees’ Rights.

S.C. Jur. Master and Servant Section 43, “Wages” and “Salary” Defined.

S.C. Jur. Master and Servant Section 55, Vacation and Severance Pay.

S.C. Jur. Public Officers and Public Employees Section 44.1, Whistleblower Statute.

Treatises and Practice Aids

Employment Coordinator Benefits Section 9:34, South Carolina.

Employment Coordinator Compensation Section 31:55, South Carolina; Status as Wages.

Employment Coordinator Compensation Section 31:97, South Carolina; Holiday and Severance Pay as Wages.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

LAW REVIEW AND JOURNAL COMMENTARIES

Show Me the Money! Post‑termination Payment of the Commissioned Salesperson. South Carolina Lawyer, page 36 (Sept/Oct 2002).

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1. In general

The South Carolina Payment of Wages Act (SCPWA) is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. Degidio v. Crazy Horse Saloon and Restaurant, Inc., 2016, 190 F.Supp.3d 499. Labor and Employment 2173(2)

Actions seeking damages for a violation of the Wage Payment Act are actions at law. Baugh v. Columbia Heart Clinic, P.A. (S.C.App. 2013) 402 S.C. 1, 738 S.E.2d 480, rehearing denied, certiorari denied, on remand 2015 WL 1887834. Labor and Employment 2193

Officer of employer, as the person directly responsible for non‑payment of wages to employee, was personally liable for the non‑payment, under the Payment of Wages Act; Act defined employer to include any agent or officer of the above classes employing any person in this State.” Temple v. Tec‑Fab, Inc. (S.C.App. 2006) 370 S.C. 383, 635 S.E.2d 541, rehearing denied, certiorari granted, certiorari denied, affirmed in part, reversed in part 381 S.C. 597, 675 S.E.2d 414. Labor And Employment 2178

Trial court lacked jurisdiction to consider school district’s motion to alter or amend judgment in favor of bookkeeper for school district in action under state Payment of Wages Act; motion, which argued that evidence did not support verdict, was based on same argument made in motion for judgment notwithstanding the verdict (JNOV), and JNOV motion did not result in alteration of judgment. Matthews v. Richland County School Dist. One (S.C.App. 2004) 357 S.C. 594, 594 S.E.2d 177. Judgment 297

Payment of Wages Act is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. Abraham v. Palmetto Unified School Dist. No. 1 (S.C.App. 2000) 343 S.C. 36, 538 S.E.2d 656, rehearing denied. Labor And Employment 2173(2)

Generally, factual disputes under the Payment of Wages Act are to be determined by a jury. Evans v. Taylor Made Sandwich Co. (S.C.App. 1999) 337 S.C. 95, 522 S.E.2d 350. Labor And Employment 2201

The legislature intended to impose individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the South Carolina Payment of Wages Act, Sections 41‑10‑10 et seq. Dumas v. InfoSafe Corp. (S.C.App. 1995) 320 S.C. 188, 463 S.E.2d 641. Corporations And Business Organizations 1064; Labor And Employment 2178

The South Carolina Payment of Wages Act, Sections 41‑10‑10 et seq., is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. Dumas v. InfoSafe Corp. (S.C.App. 1995) 320 S.C. 188, 463 S.E.2d 641.

In an employee’s successful action under the Whistleblower statute (Section 8‑27‑20), sick and annual leave comprised an element of the employee’s reinstatement award, so that the State Budget and Control Board had authority to hear her appeal. Belton v. State (S.C. 1994) 313 S.C. 549, 443 S.E.2d 554, rehearing denied.

The elected manager of a local labor union properly brought an action for wages against the parent national labor union where the manager alleged that he should have been considered an employee of the union by virtue of the union’s constitution and past practice of treating local managers as employees, but did not allege that the union refused to hire him on a retaliatory ground; the National Labor Relations Act preempts claims based on retaliation, but does not preempt consideration of employment status. Nichols v. Amalgamated Clothing and Textile Workers Union, AFL‑CIO, CLC (S.C. 1991) 305 S.C. 323, 408 S.E.2d 237, certiorari denied 112 S.Ct. 873, 502 U.S. 1032, 116 L.Ed.2d 778.

Section 41‑10‑10 et seq. does not apply to independent contractors. The statute governs payment of employee wages whether earned “on a time, task, piece or commission basis,” but does not embrace the earnings of independent contractors. Thus, a court erred in holding, as a matter of law, that Section 41‑10‑10 applied to a sales representative who was characterized in his employment contract as an independent contractor; it was for the jury to determine whether, under all the evidence, the sales representative was an employee so as to fall within the provisions of Section 41‑10‑10 et seq. Adamson v. Marianne Fabrics, Inc. (S.C. 1990) 301 S.C. 204, 391 S.E.2d 249.

Under former Section 41‑11‑110(2) definition of wages includes monthly payments by employer to employee for meeting production quota as well as bonuses paid employee for having best monthly performance. Linder v. Paramount Acceptance Corp. (S.C.App. 1987) 291 S.C. 539, 354 S.E.2d 567.

Physician was not at‑will employee of health care cooperative, and thus she could not bring wrongful discharge claim under South Carolina law for asserting her rights under Payment of Wages Act; physician’s contract with cooperative included notice provision that was required to be invoked at least 120 days prior to end of one‑year term, and it listed termination‑triggering events including material breach, unprofessional conduct, and financial exigency. Keeshan v. Eau Claire Cooperative Health Centers, Inc. (C.A.4 (S.C.) 2010) 394 Fed.Appx. 987, 2010 WL 3556172, Unreported. Health 294

District court did not lose subject matter jurisdiction when it allowed a former employee to amend his complaint to replace a claim under South Carolina’s Payment of Post‑Termination Claims to Sales Representatives Act (PPTCSRA) with a claim under the South Carolina Payment of Wages Act and a claim for treble damages; the amount in controversy requirement was met at all times due to the simultaneous removal of the original claim and its replacement with the latter, and in any event, the initial claim under the PPTCSRA was made in good faith and the district court had the discretion to retain any residual claims. Wall v. Fruehauf Trailer Services, Inc. (C.A.4 (S.C.) 2005) 123 Fed.Appx. 572, 2005 WL 428781, Unreported. Federal Courts 2514; Federal Courts 2527; Federal Courts 2531(2)

Determination that good cause existed to allow former employee to amend his complaint to replace a claim under South Carolina’s Payment of Post‑Termination Claims to Sales Representatives Act (PPTCSRA) with a claim under the South Carolina Payment of Wages Act and a claim for treble damages was a proper exercise of discretion; the employee moved to file a second amended complaint immediately after his counsel learned that a minor portion of his sales activities involved selling trailers to independent owners/operators, an activity that was not covered under the PPTCSRA, and the employer did not suffer any prejudice from the amendment. Wall v. Fruehauf Trailer Services, Inc. (C.A.4 (S.C.) 2005) 123 Fed.Appx. 572, 2005 WL 428781, Unreported. Federal Civil Procedure 841; Federal Civil Procedure 843

2. Wages

Strip‑club dancer’s tips received from customers constituted “wages,” defined under South Carolina Payment of Wages Act (SCPWA) as all amounts at which labor rendered was recompensed, and thus, dancer sufficiently stated class action claim against employer for violating SCPWA by unlawful deductions from wages without written notice of amount and terms of deductions. Degidio v. Crazy Horse Saloon and Restaurant, Inc., 2016, 190 F.Supp.3d 499. Labor and Employment 2190

ERISA did not completely preempt terminated employee’s removed cause of action for violation of South Carolina Payment of Wages Act alleging that defendants wrongfully terminated his employment contract and therefore were liable for three times the amount they owed him as unpaid wages plus costs and attorney fees; claim depended wholly on employee’s allegation that defendants lacked a good faith belief that their given reason for terminating him, his submission of erroneous expense report, was legitimate. Long v. Boston Scientific Corp., 2008, 665 F.Supp.2d 541. Labor And Employment 2177; Removal Of Cases 25(1); States 18.51

Genuine issues of material fact, as to whether former executive’s alleged equity interest was excluded from statutory definition of wages and whether executive was entitled to additional bonus, precluded summary judgment on claim under South Carolina Payment of Wages Act. Osborn v. University Medical Associates of Medical University of South Carolina, 2003, 278 F.Supp.2d 720. Federal Civil Procedure 2497.1

Trial court’s final order in breach of employment contract action by employee and employer complied with procedural requirements, where order expressly addressed the existence of a valid employment contract, the terms of the contract, breach of the contract, mitigation, employee’s damages, and the applicability of the Payment of Wages Act, and trial court also specifically found no bona fide dispute as to the wages owed and that employee did not waive his claims. Mathis v. Brown & Brown of South Carolina, Inc. (S.C. 2010) 389 S.C. 299, 698 S.E.2d 773, rehearing denied, on remand 2010 WL 6268238. Labor and Employment 872

Payment of Wages Act did not apply to prospective wages, and therefore trial court erred in awarding damages for such wages in breach of employment contract action brought by employee against employer; plain language of the Act supported this interpretation as the past tense of the word “rendered” in Act suggested wages for services provided in the past, and the word “recompensed” in the Act too suggested that payment was intended to be for labor already completed. Mathis v. Brown & Brown of South Carolina, Inc. (S.C. 2010) 389 S.C. 299, 698 S.E.2d 773, rehearing denied, on remand 2010 WL 6268238. Labor and Employment 2202(1)

Payment of Wages Act did not apply to prospective wages, and therefore trial court erred in awarding damages for such wages in breach of employment contract action brought by employee against employer; plain language of the Act supported this interpretation as the past tense of the word “rendered” in Act suggested wages for services provided in the past, and the word “recompensed” in the Act too suggested that payment was intended to be for labor already completed. Mathis v. Brown & Brown of South Carolina, Inc. (S.C. 2010) 389 S.C. 299, 698 S.E.2d 773, rehearing denied, on remand 2010 WL 6268238. Labor and Employment 2202(1)

3. Personal liability

Member of health care group was not personally liable to physician for unpaid wages pursuant to the Payment of Wages Act, where member was not an officer or agent of the group, member was not involved in the operation of the group, and member had no knowledge of or contact with physician. Allen v. Pinnacle Healthcare Systems, LLC (S.C.App. 2011) 394 S.C. 268, 715 S.E.2d 362. Labor and Employment 2178

Members of health care group that maintained the records and books of the group were personally liable to physician for unpaid wages under the Payment of Wages Act, where, although members had transferred their ownership interests, they maintained all records of group, including payroll records. Allen v. Pinnacle Healthcare Systems, LLC (S.C.App. 2011) 394 S.C. 268, 715 S.E.2d 362. Labor and Employment 2178

3.1. Damages

Following determination that forfeiture provision in employment contract between shareholder‑cardiologists and cardiology practice was enforceable, shareholders were not entitled to recover damages under the Wage Payment Act, since shareholders forfeited their rights to any amounts that would have been due under the terms of their employment contract by competing with cardiology practice. Baugh v. Columbia Heart Clinic, P.A. (S.C.App. 2013) 402 S.C. 1, 738 S.E.2d 480, rehearing denied, certiorari denied, on remand 2015 WL 1887834. Contracts 318; Health 294; Labor and Employment 2178

4. Preservation of issues

Health care group failed to preserve for appellate review its assertion trial court abused its discretion in awarding attorney’s fees to physician in Payment of Wages Act action, where argument was raised for the first time in motion to reconsider, and issue was not included in statement of issues on appeal. Allen v. Pinnacle Healthcare Systems, LLC (S.C.App. 2011) 394 S.C. 268, 715 S.E.2d 362. Appeal and Error 238(1); Appeal and Error 1079

Health care group failed to preserve for appellate review its assertion that physician was not an employee for purposes of Payment of Wages Act, where group cited no law for this assertion. Allen v. Pinnacle Healthcare Systems, LLC (S.C.App. 2011) 394 S.C. 268, 715 S.E.2d 362. Appeal and Error 1079

5. Class actions

Members of proposed class were readily identifiable, as required for class certification of action by foreign workers who were admitted to United States under the federal H‑2B visa program, alleging that employer violated the South Carolina Payment of Wages Act (SCPWA) and breached contracts, since class could be ascertained by examining employer’s payroll records and petitions to United States Citizenship and Immigration Services (USCIS). Moodie v. Kiawah Island Inn Co., LLC, 2015, 309 F.R.D. 370. Federal Civil Procedure 184.5

Numerosity requirement for class certification was met, in action by foreign workers who were admitted to United States under the federal H‑2B visa program, alleging that employer violated the South Carolina Payment of Wages Act (SCPWA) and breached contracts; class consisted of between 215 and 584 members, and joinder of all members of the class was impractical, given that they were temporary foreign workers who permanently resided in a foreign country, lacked financial resources, lacked familiarity with the United States court system and their rights, and were unlikely to seek vindication of their rights. Moodie v. Kiawah Island Inn Co., LLC, 2015, 309 F.R.D. 370. Federal Civil Procedure 184.5

Commonality requirement for class certification was met, in action by foreign workers who were admitted to United States under the federal H‑2B visa program, alleging that employer violated the South Carolina Payment of Wages Act (SCPWA) and breached contracts; questions of whether pre‑employment visa and transportation costs were de facto deductions from wages that should have been disclosed, whether amounts deducted from wages for housing and transportation costs were excessive, and whether employer was required to pay the supplemental prevailing wage mandated by Department of Labor (DOL) were central to the validity of each one of the claims. Moodie v. Kiawah Island Inn Co., LLC, 2015, 309 F.R.D. 370. Federal Civil Procedure 184.5

Typicality requirement for class certification was met, in action by foreign workers who were admitted to United States under the federal H‑2B visa program, alleging that employer violated the South Carolina Payment of Wages Act (SCPWA) and breached contracts; each named plaintiff testified that they paid pre‑employment transportation and visa costs not reimbursed by employer, that employer deducted housing and transportation costs from their wages in allegedly excessive amounts, and that they were not informed of the deductions at the time of hire as required by the SCPWA, and thus their claims arose from the same course of conduct that gave rise to the claims of the other class members and were based on the same legal theories. Moodie v. Kiawah Island Inn Co., LLC, 2015, 309 F.R.D. 370. Federal Civil Procedure 184.5

Named plaintiffs were adequate representatives, as required for class certification of action by foreign workers who were admitted to United States under the federal H‑2B visa program, alleging that employer violated the South Carolina Payment of Wages Act (SCPWA) and breached contracts, even though named plaintiffs did not work for employer in the same years as some of the proposed class members; there were no apparent conflicts of interest between named plaintiffs and proposed class members, and claims did not differ in any meaningful way from year to year. Moodie v. Kiawah Island Inn Co., LLC, 2015, 309 F.R.D. 370. Federal Civil Procedure 184.5

Predominance requirement for class certification was met, in action by foreign workers who were admitted to United States under the federal H‑2B visa program, alleging that employer violated the South Carolina Payment of Wages Act (SCPWA) and breached contracts; claims raised common questions as to liability, including whether contractual wage in employment contracts was the H‑2B prevailing wage, whether pre‑employment visa and transportation costs were de facto deductions from wages that should have been disclosed under SCPWA, and whether amounts employer deducted from wages for housing and transportation were excessive, and there were no issues specific to individual plaintiffs or individual members of the class. Moodie v. Kiawah Island Inn Co., LLC, 2015, 309 F.R.D. 370. Federal Civil Procedure 184.5

Superiority requirement for class certification was met, in action by foreign workers who were admitted to United States under the federal H‑2B visa program, alleging that employer violated the South Carolina Payment of Wages Act (SCPWA) and breached contracts; proposed class members were residents of foreign country, likely to have limited financial resources, unfamiliar with United States court system, and had relatively small claims, such that it was unlikely that individual class members would bring separate actions to vindicate their claims. Moodie v. Kiawah Island Inn Co., LLC, 2015, 309 F.R.D. 370. Federal Civil Procedure 184.5

6. Res judicata

Issue of whether employer’s contractually‑implemented procedure for reserving and/or charging back employee commissions violated Payment of Wages Act was res judicata as to second action brought by employees against employer; memorandum of understanding in first action stated that all claims had been satisfied regarding commission reserves alleged to be due to employees. Zinn v. CFI Sales & Marketing, Ltd (S.C.App. 2015) 415 S.C. 93, 780 S.E.2d 611. Judgment 567

7. Arbitration

Nonsignatory employer was not entitled to compel arbitration as alleged third‑party beneficiary to arbitration agreement between worker and employer’s parent company, in worker’s action for violations of Fair Labor Standards Act (FLSA) and South Carolina Payment of Wages Act (SCPWA) against employer; arbitration agreement did not include any reference to affiliates of employer’s parent company, and arbitration agreement did not expressly identify worker as third‑party beneficiary. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Alternative Dispute Resolution 182(1)

Worker did not rely on arbitration agreement with employer’s parent company to assert his Fair Labor Standards Act (FLSA) and South Carolina Payment of Wages Act (SCPWA) claims against nonsignatory employer, and thus employer was not entitled to equitable estoppel to compel arbitration, although arbitration agreement provided efficient and cost‑effective method for resolving disputes; worker’s alleged benefits of simply being party to arbitration agreement were insufficient to justify applying doctrine of equitable estoppel to compel arbitration, and it was not clear that worker even had benefit of ability to force employer to arbitrate since employer did not appear on arbitration agreement. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Alternative Dispute Resolution 182(1)

**SECTION 41‑10‑20.** Applicability of chapter.

This chapter applies to all employers in South Carolina except that Section 41‑10‑30 does not apply to:

(1) employers of domestic labor in private homes.

(2) employers employing fewer than five employees at all times during the preceding twelve months.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986.

CROSS REFERENCES

Inapplicability of this section with respect to certain employers, see Section 41‑10‑20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 32, Coverage.

Treatises and Practice Aids

Employment Coordinator Compensation Section 14:28, South Carolina.

Employment Coordinator Compensation Section 36:28, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

NOTES OF DECISIONS

In general 1

1. In general

The test for determining whether an employer‑employee relationship exists, established in Felts v. Richland County is not determinative of employer status in the context of the Payment of Wages Act; the Act, by its very title, is concerned specifically with the payment of wages and is directed to the entity responsible for such payment. Williams v. South Carolina Dept. of Corrections (S.C. 2007) 372 S.C. 255, 641 S.E.2d 885, rehearing denied. Labor And Employment 2178

Sponsor of prison industry program was not responsible for paying wages of inmates who participated in the program, and thus inmates could not maintain Payment of Wages Act claim against sponsor; the Act was directed to the entity responsible for payment of wages. Williams v. South Carolina Dept. of Corrections (S.C. 2007) 372 S.C. 255, 641 S.E.2d 885, rehearing denied. Labor And Employment 2178; Prisons 172

Sections 41‑10‑10 through 41‑10‑110 are not restricted to employers subject to federal minimum wage law. Bennett v. Lambroukos (S.C.App. 1991) 303 S.C. 481, 401 S.E.2d 428. Labor And Employment 2178

**SECTION 41‑10‑30.** Notification to employees of wages and hours agreed upon; recordkeeping requirements; requirement of itemized statement of gross pay and deductions for each pay period.

(A) Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work. Any changes in these terms must be made in writing at least seven calendar days before they become effective. This section does not apply to wage increases.

(B) Every employer shall keep records of names and addresses of all employees and of wages paid each payday and deductions made for three years.

(C) Every employer shall furnish each employee with an itemized statement showing his gross pay and the deductions made from his wages for each pay period.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986; 1990 Act No. 463, Section 2, eff May 7, 1990.

Effect of Amendment

The 1990 amendment, in subsection (A), added “normal” before “hours and wages”, and added at the end “This section does not apply to wage increases.”, and added “for three years” at the end of subsection (B).

CROSS REFERENCES

Assessment of penalties for violations of the provisions of this section, see Section 41‑10‑80.

Provisions prohibiting deductions from wages in absence of written notice and requiring that wages be paid at the time and place designated, see Section 41‑10‑40.

LIBRARY REFERENCES

51B C.J.S., Labor Relations Section 1182.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 48, Wages and Commissions.

S.C. Jur. Damages Section 66, Employment Contracts.

S.C. Jur. Labor Relations Section 33, Requirements.

S.C. Jur. Labor Relations Section 34, Penalties.

S.C. Jur. Master and Servant Section 42, General Constraints.

S.C. Jur. Master and Servant Section 49, Medium of Compensation.

S.C. Jur. Master and Servant Section 50, Notice Required.

S.C. Jur. Master and Servant Section 51, Itemized Statement.

S.C. Jur. Master and Servant Section 54, Violations of the Act.

Treatises and Practice Aids

Employment Coordinator Compensation Section 29:134, South Carolina; Periodic Wages.

Employment Coordinator Compensation Section 37:165, Records.

Employment Coordinator Compensation Section 37:166, Notices.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

Attorney General’s Opinions

Where the withholding of an employee’s wages is accomplished by Section 20‑7‑1315 (E) (3), there is no requirement that the third alternative of notice be given. 1986 Op Atty Gen, No. 86‑109, p 328.

NOTES OF DECISIONS

In general 1

1. In general

South Carolina Wages Act requires employers to notify their employees of the time and place of payment, and then uses that “time and place” designation to establish when and where wages must be paid. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 2180

Exotic dancer’s tips received from customers constituted “wages” within the meaning of the South Carolina Payment of Wages Act (SCPWA), and thus, dancer stated a plausible claim for relief on basis of club owner’s unlawful deductions from wages for owner’s business expenses without providing advance notice of such amounts and lawful reason for such conduct. Gardner v. Country Club, Inc., 2016, 190 F.Supp.3d 504. Labor and Employment 2190

Former temporary worker could not maintain cause of action for back wages under South Carolina’s Payment of Wages Act, based on delay in paying her some overtime pay when it was due, where temporary employment agency, which was responsible for paying worker’s wages during relevant period, paid her all disputed wages following investigation. Williams v. Grimes Aerospace Co., 1997, 988 F.Supp. 925. Labor And Employment 2182

South Carolina’s Payment of Wages Act, requiring prompt payment of all wages due upon employee’s termination, seeks to protect employees from unjustified retention of wages by employer. Williams v. Grimes Aerospace Co., 1997, 988 F.Supp. 925. Labor And Employment 2173(2)

Short delay in payment of wages does not violate South Carolina’s Payment of Wages Act. Williams v. Grimes Aerospace Co., 1997, 988 F.Supp. 925. Labor And Employment 2180

Employer’s compliance with notice provision of Payment of Wages Act did not show full compliance with the Act, as employer still withheld wages due to employee; employer could not comply with the Act, while breaching the contract, simply by providing seven days notice of the breach. Mathis v. Brown & Brown of South Carolina, Inc. (S.C. 2010) 389 S.C. 299, 698 S.E.2d 773, rehearing denied, on remand 2010 WL 6268238. Labor and Employment 2178

The purpose of the Payment of Wages Act is to protect employees from the unjustified and willful retention of wages by the employer. Mathis v. Brown & Brown of South Carolina, Inc. (S.C. 2010) 389 S.C. 299, 698 S.E.2d 773, rehearing denied, on remand 2010 WL 6268238. Labor and Employment 2173(2)

Employer’s estimated payment schedule for issuance of incentive compensation to employees participating in employer’s incentive sales plan did not provide a certain time and place for payment, in violation of the Payment of Wages Act; the compensation payment plan set “target dates” for payment, employer frequently made payments after such target dates, employer made incentive compensation payments contingent upon an employee’s status as an active employee at the time of issuance of incentive payment checks, and employer admitted that there was no purpose for the payment plan. Ross v. Ligand Pharmaceuticals, Inc. (S.C.App. 2006) 371 S.C. 464, 639 S.E.2d 460. Labor And Employment 193

Employee was not estopped from asserting that employer violated the Payment of Wages Act by failing to pay employee earned sales commissions, even if employee consented to terms of an agreement setting forth employer’s policy that incentive compensation would not be paid to employees who no longer worked for employer at time incentive compensation payments were issued, where the Payment of Wages Act rendered the agreement void and unenforceable due to fact that the agreement violated the Act’s provisions requiring employers to provide a time and place of payment of wages. Ross v. Ligand Pharmaceuticals, Inc. (S.C.App. 2006) 371 S.C. 464, 639 S.E.2d 460. Estoppel 78(2); Labor And Employment 177

Sales representative’s written employment contract was orally amended to include commissions for all products sold within his exclusive territory, regardless of whether the products were pre‑engineered, and thus he was due $58,465.64 in unpaid commissions that accrued during the period of the contract, and subsequent to termination, as per the contract’s residual notice provision, where employer paid sales representative commissions for all orders he solicited, and employer discussed the matter with sales representative and approved of him selling engineered products. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Principal And Agent 81(4)

Whether employer violated the Payment of Wages Act in calculating employees’ wages for making sandwiches on a per package rate, rather than a per sandwich rate, in deducting from employees’ paychecks for alleged laziness, in cutting wages without notice, and in failing to timely pay wages to separated employees, presented questions for jury. Evans v. Taylor Made Sandwich Co. (S.C.App. 1999) 337 S.C. 95, 522 S.E.2d 350. Labor And Employment 2201

In an action by a dishwasher to recover unpaid wages, the circuit court erred in allowing a deduction for breakage where the dishwasher was not notified at the time and place of hiring of a deduction for breakage, and the only evidence of a written notice of deduction was contained in a contract which the circuit court found was not the agreement of the parties. Bennett v. Lambroukos (S.C.App. 1991) 303 S.C. 481, 401 S.E.2d 428. Labor And Employment 2187

**SECTION 41‑10‑40.** Medium of payment; deposit of wages to employee’s credit; prohibition against deductions in absence of written notice; time and place of payment.

(A) Every employer in the State shall pay all wages due in lawful United States money or by negotiable warrant or check bearing even date with the payday.

(B) An employer may deposit all wages due to the employee’s credit at a financial institution which is doing business in the State and is insured by an agency of the federal government. When an employee’s wages are paid by deposit at a financial institution, he must be furnished a statement of earnings and withholdings. Any wage deposit plan adopted by an employer shall entitle each employee to at least one withdrawal for each deposit, free of any service charge.

(C) An employer shall not withhold or divert any portion of an employee’s wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41‑10‑30.

(D) Every employer in the State shall pay all wages due at the time and place designated as required by subsection (A) of Section 41‑10‑30.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986.

CROSS REFERENCES

Assessment of penalties for violations of the provisions of this section, see Section 41‑10‑80.

LIBRARY REFERENCES

51B C.J.S., Labor Relations Sections 1176, 1179, 1182.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Master and Servant Section 49, Medium of Compensation.

S.C. Jur. Master and Servant Section 54, Violations of the Act.

Treatises and Practice Aids

Employment Coordinator Compensation Section 33:69, South Carolina; Direct Deposit.

Employment Coordinator Compensation Section 33:70, South Carolina; Place of Payment.

Employment Coordinator Compensation Section 34:90, South Carolina; Conditions Governing Most Assignments.

Employment Coordinator Compensation Section 29:134, South Carolina; Periodic Wages.

Employment Coordinator Compensation Section 32:185, South Carolina; Conditions Governing Most Deductions.

Employment Coordinator Compensation Section 37:166, Notices.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

Attorney General’s Opinions

Where the withholding of an employee’s wages is accomplished by Section 20‑7‑1315 (E) (3), there is no requirement that the third alternative of notice be given. 1986 Op Atty Gen, No. 86‑109, p 328.

NOTES OF DECISIONS

In general 1

1. In general

Exotic dancer’s tips received from customers constituted “wages” within the meaning of the South Carolina Payment of Wages Act (SCPWA), and thus, dancer stated a plausible claim for relief on basis of club owner’s unlawful deductions from wages for owner’s business expenses without providing advance notice of such amounts and lawful reason for such conduct. Gardner v. Country Club, Inc., 2016, 190 F.Supp.3d 504. Labor and Employment 2190

The South Carolina Payment of Wages Act (SCPWA) is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. Degidio v. Crazy Horse Saloon and Restaurant, Inc., 2016, 190 F.Supp.3d 499. Labor and Employment 2173(2)

Strip‑club dancer’s tips received from customers constituted “wages,” defined under South Carolina Payment of Wages Act (SCPWA) as all amounts at which labor rendered was recompensed, and thus, dancer sufficiently stated class action claim against employer for violating SCPWA by unlawful deductions from wages without written notice of amount and terms of deductions. Degidio v. Crazy Horse Saloon and Restaurant, Inc., 2016, 190 F.Supp.3d 499. Labor and Employment 2190

County did not unjustifiably retain firefighter’s pay for accrued benefit days, as would violate South Carolina Payment of Wages Act (SCPWA); county paid benefits days in the way mandated by ordinances. Visco v. Aiken County, S.C., 2013, 974 F.Supp.2d 908, motion to amend denied 2014 WL 346447. Labor and Employment 2180; Labor and Employment 2185

Former employee had no cause of action against former employer for wrongful termination in violation of public policy, although former employee alleged that former employer terminated her in retaliation for claiming commission payments to which she was entitled under Payment of Wages Act (Act), where there was no evidence that former employee filed a complaint with state Department of Labor as required by Act or indicated to former employer that she had filed or intended to file such a complaint. Barron v. Labor Finders of South Carolina (S.C. 2011) 393 S.C. 609, 713 S.E.2d 634. Labor And Employment 790

There was no bona fide dispute as to wages due to employee, and therefore employer violated Payment of Wages Act by reducing employee’s salary in contravention of employment contract; employer’s arguments that it reasonably believed that the agreed‑upon compensation was not owed employee due to his waiver by continuing to work after the pay change, and alleged violations of the non‑piracy provisions did not justify the decision to reduce employee’s guaranteed salary. Mathis v. Brown & Brown of South Carolina, Inc. (S.C. 2010) 389 S.C. 299, 698 S.E.2d 773, rehearing denied, on remand 2010 WL 6268238. Labor and Employment 2185

Employer’s failure to provide employee participating in incentive sales plan with the time that wages earned and due would be paid violated the Payment of Wages Act, which employee was not paid commission wages earned during his final term of employment due solely to the fact that he resigned before incentive payment checks were issued; employee was in good standing at time he made commission‑based sales, and there was nothing more employee was required to do to participate in or determine the amount due to him under the incentive plan. Ross v. Ligand Pharmaceuticals, Inc. (S.C.App. 2006) 371 S.C. 464, 639 S.E.2d 460. Labor And Employment 2182

Employer’s failure to pay incentive compensation to employee who participated in commission‑based sales plan was not based on a good faith dispute, but on an arbitrary and unreasonable payment policy, warranting an award of treble damages to employee under the Payment of Wages Act; employee was not paid commission wages earned during his final term of employment due solely to the fact that he resigned before incentive payment checks were issued, employee was in good standing at time he made commission‑based sales, there was nothing more employee was required to do to under the incentive plan, and employer’s payment policy failed to provide the place and time for payment of earned commissions. Ross v. Ligand Pharmaceuticals, Inc. (S.C.App. 2006) 371 S.C. 464, 639 S.E.2d 460. Labor And Employment 2203(2)

**SECTION 41‑10‑50.** Payment of wages due discharged employees.

When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty‑eight hours of the time of separation or the next regular payday which may not exceed thirty days.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986; 1990 Act No. 463, Section 3, eff May 7, 1990.

Effect of Amendment

The 1990 amendment substituted “When” for “Whenever” and deleted at the end “after written notice is given”.

CROSS REFERENCES

Assessment of penalties for violations of the provisions of this section, see Section 41‑10‑80.

LIBRARY REFERENCES

51B C.J.S., Labor Relations Sections 1177, 1178.

RESEARCH REFERENCES

ALR Library

35 ALR, Federal 2nd Series 323 , Satisfaction of Commonality Requirement in Erisa Class Actions.

18 ALR 5th 577 , Validity, Construction, and Effect of State Laws Requiring Payment of Wages on Discharge of Employee Immediately or Within Specified Period.

Encyclopedias

S.C. Jur. Labor Relations Section 32, Coverage.

S.C. Jur. Labor Relations Section 33, Requirements.

S.C. Jur. Master and Servant Section 52, Payment of Wages Due Discharged Employee.

S.C. Jur. Master and Servant Section 54, Violations of the Act.

Treatises and Practice Aids

Employment Coordinator Compensation Section 30:82, South Carolina; Wages Upon Termination.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

NOTES OF DECISIONS

In general 1

Breach of duty 2

Employee disloyalty 3

Employment contracts 3.1

Under former Section 41‑11‑170 4

1. In general

Former temporary worker could not maintain cause of action for back wages under South Carolina’s Payment of Wages Act, based on delay in paying her some overtime pay when it was due, where temporary employment agency, which was responsible for paying worker’s wages during relevant period, paid her all disputed wages following investigation. Williams v. Grimes Aerospace Co., 1997, 988 F.Supp. 925. Labor And Employment 2182

South Carolina’s Payment of Wages Act, requiring prompt payment of all wages due upon employee’s termination, seeks to protect employees from unjustified retention of wages by employer. Williams v. Grimes Aerospace Co., 1997, 988 F.Supp. 925. Labor And Employment 2173(2)

Short delay in payment of wages does not violate South Carolina’s Payment of Wages Act. Williams v. Grimes Aerospace Co., 1997, 988 F.Supp. 925. Labor And Employment 2180

Terminated sales representative’s claim against former employer for unpaid commissions was not subject to the Payment of Post‑Termination Claims to Sales Representatives Act, and thus sales representative could not recover attorney fees or punitive damages, as sales representative did not solicit wholesale orders within meaning of the Act, where items that employer manufactured were sold for use by the purchaser or were sold to manufacturers to be included in a complete piece of operational equipment. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Principal And Agent 89(3)

Payment of Wages Act does not prohibit an employer from asserting valid defenses or disputing payment in good faith. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 2203(1)

In an action under Sections 41‑10‑50 and 41‑10‑80(C), alleging that the plaintiff’s former employer owed additional compensation for overtime in accordance with federal regulations, the defendant employer was not entitled to summary judgment since material fact issues existed as to the parties’ understanding of the term “overtime” in the employment contract, as well as which overtime regulations applied to the contract. Duck v. Wallace Associates, Inc. (S.C.App. 1993) 313 S.C. 448, 438 S.E.2d 269.

An employee was not entitled to treble damages, pursuant to Section 41‑10‑50, on his claims of failure to be paid military leave in 1982, 1983, 1984, and 1986 since the right to be paid military leave is an entitlement created by statute rather than a contractual right arising by agreement with his employer, and Section 41‑10‑50 applies only to “wages,” which are amounts at which labor rendered is recompensed. Matthews v. City of Greenwood (S.C.App. 1991) 305 S.C. 267, 407 S.E.2d 668. Labor And Employment 2181; Labor And Employment 2182

2. Breach of duty

Whether employer violated the Payment of Wages Act in calculating employees’ wages for making sandwiches on a per package rate, rather than a per sandwich rate, in deducting from employees’ paychecks for alleged laziness, in cutting wages without notice, and in failing to timely pay wages to separated employees, presented questions for jury. Evans v. Taylor Made Sandwich Co. (S.C.App. 1999) 337 S.C. 95, 522 S.E.2d 350. Labor And Employment 2201

The general rule is that an employee is not entitled to any compensation for services performed during the period he engaged in activities constituting a breach of his duty of loyalty, even though part of those services may have been properly performed. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 211

Even when an employee breaches the duty of loyalty during some periods of employment, he may still recover compensation for services properly rendered during periods in which no such breach occurred and for which compensation is apportioned in his employment agreement; “apportioned compensation” is that paid to an agent or employee that is allocated to certain periods of time or to the completion of specified items of work. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 211

Whether a disloyal agent’s or employee’s compensation is apportioned, as required for employee to be able to recover compensation for periods during which employee was not disloyal, usually is a question for the jury. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 211; Labor And Employment 265

Whether an agent or employee acted disloyally to employer during a particular apportioned period or task, such that employee forfeits his or her right to compensation for that period or that task, is a question for the jury in most cases. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 265

In deciding whether an agent or employee acted disloyally so as to forfeit his or her rights to compensation, the jury must focus upon the particular circumstances of the case; the goal is to avoid unjust enrichment of either party by examining factors such as nature of the employment relationship, the nature and extent of the employee’s services and the breach of duty, the loss or expense caused to the employer by the breach of duty, and the value to the employer of the services properly rendered by the employee. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 211

Solicitation of an employer’s customers likely will constitute a violation of the duty of loyalty in almost every case, while merely preparing and submitting forms to create a new corporation, for example, likely will be seen as permissible pretermination planning, for purposes of determining whether employee has forfeited his or her right to compensation. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 114(2)

For purposes of determining whether a disloyal employee has forfeited his right to payment of compensation, the trial judge should instruct the jury that, in identifying apportioned tasks or time periods in which an agent or employee acted disloyally, one period of disloyalty may taint succeeding tasks or time periods. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 266

Whether former employee forfeited all of his apportioned compensation during two‑month period prior to his termination from employer based on his allegedly disloyal acts in soliciting employer’s customers and signing annual registration form for competing company presented question for jury, in employee’s action to recover wages under the Payment of Wages Act. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 2201

3. Employee disloyalty

Under South Carolina law, whether agent or employee acted disloyally during particular apportioned period or task, such that employee forfeits right to compensation for that period or task, is question for jury in most cases; in deciding whether agent or employee acted disloyally, jury must focus upon particular circumstances of case. Osborn v. University Medical Associates of Medical University of South Carolina, 2003, 278 F.Supp.2d 720. Labor And Employment 265; Principal And Agent 89(9)

3.1. Employment contracts

Following determination that forfeiture provision in employment contract between shareholder‑cardiologists and cardiology practice was enforceable, shareholders were not entitled to recover damages under the Wage Payment Act, since shareholders forfeited their rights to any amounts that would have been due under the terms of their employment contract by competing with cardiology practice. Baugh v. Columbia Heart Clinic, P.A. (S.C.App. 2013) 402 S.C. 1, 738 S.E.2d 480, rehearing denied, certiorari denied, on remand 2015 WL 1887834. Contracts 318; Health 294; Labor and Employment 2178

4. Under former Section 41‑11‑170

Federal issue is interjected into case only by defendant employer’s counterclaim or setoff, in which it pleads entitlement under collective bargaining agreement to withhold wages at issue as reimbursement for vacation pay advanced to plaintiff employees, and case is therefore not subject to removal to federal court, where employees’ claim is brought pursuant to S.C. Code Section 41‑11‑170, and where, in order to recover, employees would be required to prove only that they worked during certain periods, that employer withheld wages for those periods, and what is correct measure of damages under state law. Cook v. Georgetown Steel Corp. (C.A.4 (S.C.) 1985) 770 F.2d 1272.

**SECTION 41‑10‑60.** Unconditional payment of wages conceded due.

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the amount without condition within the time set by this chapter. Acceptance by the employee of the payment does not constitute a release as to the balance of his claim.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 32, Coverage.

S.C. Jur. Master and Servant Section 53, Payment of Undisputed Wages.

Treatises and Practice Aids

Employment Coordinator Compensation Section 29:135, South Carolina; Wages Affected by a Dispute.

Employment Coordinator Compensation Section 37:166, Notices.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

NOTES OF DECISIONS

In general 1

1. In general

Former employee had no cause of action against former employer for wrongful termination in violation of public policy, although former employee alleged that former employer terminated her in retaliation for claiming commission payments to which she was entitled under Payment of Wages Act (Act), where there was no evidence that former employee filed a complaint with state Department of Labor as required by Act or indicated to former employer that she had filed or intended to file such a complaint. Barron v. Labor Finders of South Carolina (S.C. 2011) 393 S.C. 609, 713 S.E.2d 634. Labor And Employment 790

It was not a clear violation of public policy for employer to request employee to return monies paid to employee in allegedly unauthorized bonus, precluding at‑will employee’s claim for wrongful termination; even though Payment of Wages Act required employers to pay all wages when due, it also allowed employers to withhold disputed wages. Southern Glass & Plastics Co. v. Duke (S.C.App. 2005) 367 S.C. 421, 626 S.E.2d 19, rehearing denied. Labor And Employment 761

**SECTION 41‑10‑70.** Investigation of alleged violations; resolution of disputes.

Upon written complaint of any employee alleging a violation of this chapter, the Director of the Department of Labor, Licensing, and Regulation or his designee may institute an investigation of the alleged violation. If the Director of the Department of Labor, Licensing, and Regulation or his designee determines that a violation exists, he shall endeavor to resolve all issues by informal methods of mediation and conciliation.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986; 1990 Act No. 463, Section 4, eff May 7, 1990; 1993 Act No. 181 Section 977, eff February 1, 1994.

Editor’s Note

Pursuant to Section 41‑3‑610, effective February 1, 1994, wherever the term Commissioner of Labor appears or is used, it shall be deemed to mean the Director of the Department of Labor, Licensing, and Regulation or his designee.

Effect of Amendment

The 1990 amendment deleted the “(A)” at the beginning of the former first paragraph and deleted subsection (B) relating to the commissioner’s authority to decide disputes.

Library References

51B C.J.S., Labor Relations Sections 1217 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 35, Duties of the Commissioner of Labor.

S.C. Jur. Master and Servant Section 54, Violations of the Act.

Treatises and Practice Aids

Employment Coordinator Compensation Section 39:108, Wage Payment and Collection Rules.

Employment Coordinator Compensation Section 42:415, South Carolina; Investigation of Alleged Violations and Resolution of Disputes.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

**SECTION 41‑10‑80.** Violations and penalties; civil actions by employees; administrative review of civil penalties.

(A) Any employer who violates the provisions of Section 41‑10‑30 must be given a written warning by the Director of the Department of Labor, Licensing, and Regulation or his designee for the first offense and must be assessed a civil penalty of not more than one hundred dollars for each subsequent offense.

(B) Any employer who violates the provisions of Section 41‑10‑40 must be assessed a civil penalty of not more than one hundred dollars for each violation. Each failure to pay constitutes a separate offense.

(C) In case of any failure to pay wages due to an employee as required by Section 41‑10‑40 or 41‑10‑50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney’s fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due.

(D) The Director of the Department of Labor, Licensing, and Regulation or his designee shall promulgate regulations to establish a procedure for administrative review of any civil penalty assessed by the commissioner.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986; 1990 Act No. 463, Section 5, eff May 7, 1990; 1993 Act No. 181, Section 977, eff February 1, 1994.

Editor’s Note

Pursuant to Section 41‑3‑610, effective February 1, 1994, wherever the term Commissioner of Labor appears or is used, it shall be deemed to mean the Director of the Department of Labor, Licensing, and Regulation or his designee.

Effect of Amendment

The 1990 amendment, in (C), added the provision requiring commencement of action within three years, and deleted (E), relating to criminal penalty for failing to pay wages within ten days after demand.

The 1993 amendment, substituted “Director of the Department of Labor, Licensing, and Regulation or his designee” for “Commissioner of Labor”.

CROSS REFERENCES

Actions to be brought against employers who have not paid penalties assessed under this section within 60 days, see Section 41‑10‑90.

Procedures for hearing payment of wages administrative appeals, see S.C. Code of Regulations R. 71‑6000.

LIBRARY REFERENCES

51B C.J.S., Labor Relations Sections 1256 et seq.

RESEARCH REFERENCES

ALR Library

18 ALR 5th 577 , Validity, Construction, and Effect of State Laws Requiring Payment of Wages on Discharge of Employee Immediately or Within Specified Period.

174 ALR 1051 , Effect of National Labor Relations Act to Exclude State Action.

Encyclopedias

23 Am. Jur. Trials 187, National Labor Relations Board Representation Case Proceedings.

84 Am. Jur. Trials 367, Using Taxation of Costs to Collect Some Litigation Expenses and Maximize Client Recovery.

S.C. Jur. Action Section 10, Particular Actions at Law or in Equity.

S.C. Jur. Appeal and Error Section 130, Post‑Trial Matters.

S.C. Jur. Attorney Fees Section 48, Wages and Commissions.

S.C. Jur. Damages Section 66, Employment Contracts.

S.C. Jur. Labor Relations Section 22, Regulations.

S.C. Jur. Labor Relations Section 32, Coverage.

S.C. Jur. Labor Relations Section 34, Penalties.

S.C. Jur. Labor Relations Section 35, Duties of the Commissioner of Labor.

S.C. Jur. Master and Servant Section 54, Violations of the Act.

Forms

South Carolina Litigation Forms and Analysis Section 39:8 , Attorney’s Fees.

Treatises and Practice Aids

Employment Coordinator Compensation Section 42:78, South Carolina; Penalties and Civil Actions for Wage Violations.

Employment Coordinator Compensation Section 39:108, Wage Payment and Collection Rules.

Employment Coordinator Compensation Section 42:412, South Carolina; Employee’s Suit for Triple Wages, Costs, and Attorney’s Fees.

Employment Coordinator Compensation Section 42:413, South Carolina; Time Limit for Filing Suit.

Employment Coordinator Compensation Section 42:416, South Carolina; Civil Penalties for Time of Payment, Form of Payment, and Deduction Violations.

Employment Coordinator Compensation Section 42:644, South Carolina; Civil Penalties for Various Violations.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

LAW REVIEW AND JOURNAL COMMENTARIES

Futch v. McAllister Towing, Inc.: Transformation of the Punitory Effect of a Breach of the Employee Duty of Loyalty? 51 S.C. L. Rev. 927 (Summer 2000).

NOTES OF DECISIONS

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1. In general

South Carolina Wages Act requires employers to notify their employees of the time and place of payment, and then uses that “time and place” designation to establish when and where wages must be paid. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 2180

The South Carolina Wages Act was designed to protect employees from the unjustified and wilful retention of wages by the employer. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 2173(2)

ERISA preempted application of the South Carolina Payment of Wages Act in action brought by employee against employer to recover excessive deductions from wages for insurance premiums; claim was tantamount to an action for return of contributions made under the terms of employee benefit plan and for restitution of overpayments, and thus necessarily related to the employment benefit plan. Jackson v. Wal‑Mart Stores, Inc. (C.A.4 (S.C.) 2001) 24 Fed.Appx. 132, 2001 WL 1530359, Unreported. Labor And Employment 2177; States 18.46

Application of South Carolina statute allowing unpaid employee to recover triple wages was permissive, rather than mandatory, in case where there was bona fide dispute over wages due. Thoroughbred Industries, Inc. v. Warren (C.A.4 (S.C.) 2001) 14 Fed.Appx. 248, 2001 WL 855876, Unreported. Labor And Employment 2203(1)

Under the Payment of Wages Act, the relevant date for determining whether the employer reasonably withheld wages is the time at which the wages were withheld. Goodwyn v. Shadowstone Media, Inc. (S.C.App. 2014) 408 S.C. 93, 757 S.E.2d 560. Labor and Employment 2178

Propriety of treble damages under the Wage Payment Act turns not on whether an employer is successful in defending against a suit for nonpayment of wages, but whether there existed a bona fide dispute concerning payment of the wages. O’Neal v. Intermedical Hosp. of South Carolina (S.C.App. 2003) 355 S.C. 499, 585 S.E.2d 526, rehearing denied. Labor And Employment 2203(1)

Terminated sales representative’s claim against former employer for unpaid commissions was not subject to the Payment of Post‑Termination Claims to Sales Representatives Act, and thus sales representative could not recover attorney fees or punitive damages, as sales representative did not solicit wholesale orders within meaning of the Act, where items that employer manufactured were sold for use by the purchaser or were sold to manufacturers to be included in a complete piece of operational equipment. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Principal And Agent 89(3)

Sales representative’s written employment contract was orally amended to include commissions for all products sold within his exclusive territory, regardless of whether the products were pre‑engineered, and thus he was due $58,465.64 in unpaid commissions that accrued during the period of the contract, and subsequent to termination, as per the contract’s residual notice provision, where employer paid sales representative commissions for all orders he solicited, and employer discussed the matter with sales representative and approved of him selling engineered products. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Principal And Agent 81(4)

Finding that employees were terminated in retaliation for filing wage complaints under the Payment of Wages Act with the Department of Labor, rather than for absenteeism as claimed by employer, and that termination violated public policy, was supported by evidence that one of the employees was fired only one hour after Department’s investigation, other employee was fired the very next time she came to work after Department’s investigation, employer knew of excessive absenteeism weeks in advance yet failed to take action until Department investigated, other employees who did not sign complaint and had equal or worse absenteeism and were not fired, and employer repeatedly warned employees that he would fire them for complaining. Evans v. Taylor Made Sandwich Co. (S.C.App. 1999) 337 S.C. 95, 522 S.E.2d 350. Labor And Employment 863(2)

In an action under Sections 41‑10‑50 and 41‑10‑80(C), alleging that the plaintiff’s former employer owed additional compensation for overtime in accordance with federal regulations, the defendant employer was not entitled to summary judgment since material fact issues existed as to the parties’ understanding of the term “overtime” in the employment contract, as well as which overtime regulations applied to the contract. Duck v. Wallace Associates, Inc. (S.C.App. 1993) 313 S.C. 448, 438 S.E.2d 269.

An employee was estopped from seeking damages for his employer’s unilateral change in employment terms where the employee was provided with a car for his personal and official use when hired in 1974, the employer instituted a new policy which prohibited the personal use of city vehicles in 1980, the employee protested this new policy, but complied with it and continued to work until 1987. Matthews v. City of Greenwood (S.C.App. 1991) 305 S.C. 267, 407 S.E.2d 668.

An employee was not estopped from asserting breach of contract in an action alleging the breach of an employment contract and the failure to pay past due wages where, over 2 years after the employee began working under a written contract, the employer unilaterally altered the employee’s salary and the employee objected to this change while continuing to work for 4 months; in order to establish estoppel, the employer must show that the employee engaged in concealment or misrepresentation, which this employer cannot show since the employee had objected to the wage change. Estes v. Roper Temporary Services, Inc. (S.C.App. 1991) 304 S.C. 120, 403 S.E.2d 157, certiorari denied.

An employee’s statutory cause of action under former Section 41‑11‑170, providing that actions “shall be commenced within 60 days from the date of the separation,” was time barred where the employee terminated her employment in November of 1985 and did not file this action until January 18, 1988; although the Payment of Wages Act (Sections 41‑10‑10 et seq.) became effective on April 21, 1986, the employee’s action was already time barred and thus could not be revived. Estes v. Roper Temporary Services, Inc. (S.C.App. 1991) 304 S.C. 120, 403 S.E.2d 157, certiorari denied.

1.5. Constitutional issues

Any entitlement poultry processing plant employees had to wages under South Carolina Wages Act, on claim that employer breached individual agreements, at time of hire, to pay them based on time on clock, stemmed from collective bargaining agreement (CBA) that governed terms and conditions of employment and required arbitration of grievances, and thus claim was preempted by LMRA; employees’ approach would undermine a fundamental goal of LMRA preemption by allowing CBA‑covered employees to circumvent their arbitration commitments. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 1243; Labor and Employment 1549(11); States 18.46

Poultry processing plant employees’ claim, that payment based on time spent on production line, as distinct from time on clock, violated South Carolina Wages Act, necessarily implicated interpretation of collective bargaining agreement (CBA), and thus claim was preempted by LMRA; CBA provided that it was the exclusive contract of employment, its terms were binding on employees as members of bargaining unit, it specified that payment was for hours worked, and employer had custom and practice of calculating hours worked based on production line time. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor And Employment 2222; States 18.46

2. At‑will employment

ERISA did not completely preempt terminated employee’s removed cause of action for violation of South Carolina Payment of Wages Act alleging that defendants wrongfully terminated his employment contract and therefore were liable for three times the amount they owed him as unpaid wages plus costs and attorney fees; claim depended wholly on employee’s allegation that defendants lacked a good faith belief that their given reason for terminating him, his submission of erroneous expense report, was legitimate. Long v. Boston Scientific Corp., 2008, 665 F.Supp.2d 541. Labor And Employment 2177; Removal Of Cases 25(1); States 18.51

At will employee’s claim for wrongful termination could not be maintained under public policy exception, even though employee was terminated subsequent to complaining of unpaid wages, because employee was not asked to violate the law, and her termination itself was not a violation of criminal law. Barron v. Labor Finders of South Carolina (S.C.App. 2009) 384 S.C. 21, 682 S.E.2d 271, rehearing denied, affirmed as modified 393 S.C. 609, 713 S.E.2d 634. Labor And Employment 789

South Carolina recognizes an exception to the employment at‑will doctrine where the retaliatory discharge of an at‑will employee constitutes violation of a clear mandate of public policy. Evans v. Taylor Made Sandwich Co. (S.C.App. 1999) 337 S.C. 95, 522 S.E.2d 350. Labor And Employment 771

Public policy exception to doctrine of employment at will clearly applies in cases where an employer requires an employee to violate the law, and to situations where the reason for the employee’s termination was itself a violation of criminal law. Evans v. Taylor Made Sandwich Co. (S.C.App. 1999) 337 S.C. 95, 522 S.E.2d 350. Labor And Employment 761; Labor And Employment 782

2.1. Employment contracts

Following determination that forfeiture provision in employment contract between shareholder‑cardiologists and cardiology practice was enforceable, shareholders were not entitled to recover damages under the Wage Payment Act, since shareholders forfeited their rights to any amounts that would have been due under the terms of their employment contract by competing with cardiology practice. Baugh v. Columbia Heart Clinic, P.A. (S.C.App. 2013) 402 S.C. 1, 738 S.E.2d 480, rehearing denied, certiorari denied, on remand 2015 WL 1887834. Contracts 318; Health 294; Labor and Employment 2178

3. Bona fide dispute

Application of South Carolina statute allowing unpaid employee to recover triple wages was permissive, rather than mandatory, in case where there was bona fide dispute over wages due. Thoroughbred Industries, Inc. v. Warren (C.A.4 (S.C.) 2001) 14 Fed.Appx. 248, 2001 WL 855876, Unreported. Labor And Employment 2203(1)

Bona fide dispute existed as to former employee’s entitlement to unpaid wages, precluding award of treble damages and attorney fees under the Payment of Wages Act; terms of hiring letter, which employee claimed to have not received, provided for payment on a commission basis rather than a salary, employer asserted it did not owe employee any commissions because it never collected on most of employee’s sales, and jury’s partial award of wages indicated it determined that employer properly withheld a portion of wages to which employee claimed she was entitled. Goodwyn v. Shadowstone Media, Inc. (S.C.App. 2014) 408 S.C. 93, 757 S.E.2d 560. Labor and Employment 2202(3); Labor and Employment 2204

The trial court must determine whether a bona fide dispute exists as to an employee’s entitlement to wages before awarding treble damages or attorney fees under Payment of Wages Act. Goodwyn v. Shadowstone Media, Inc. (S.C.App. 2014) 408 S.C. 93, 757 S.E.2d 560. Labor and Employment 2202(3)

Where employer did not dispute the number of time off hours former employee had accrued at the time she was terminated and the jury awarded employee damages equal to payment for only a portion of those hours, jury determined that employer properly withheld payment for the remaining portion of accrued hours, and to the extent the trial court found the jury’s verdict was equivalent to a finding that no bona fide dispute concerning payment of the wages existed, such finding was erroneous in connection with determining whether former employee was entitled to treble damages for employer’s failure to pay wages. O’Neal v. Intermedical Hosp. of South Carolina (S.C.App. 2003) 355 S.C. 499, 585 S.E.2d 526, rehearing denied. Labor And Employment 2203(1)

Former employee was not entitled to treble damages and attorney fees under the Payment of Wages Act in light of bona fide dispute as to whether employer owed any wages based on employee’s alleged disloyalty. Futch v. McAllister Towing of Georgetown, Inc. (S.C. 1999) 335 S.C. 598, 518 S.E.2d 591, rehearing denied. Labor And Employment 2203(1); Labor And Employment 2204

3.5. Retaliation

Under South Carolina law, fact that extended period of time would have elapsed before poultry processing plant employees would have been able to perform their normal job duties after work‑related injury was insufficient to justify their discharge, under statute prohibiting retaliation against employee for instituting workers’ compensation claim. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 809

Under South Carolina law, two poultry processing plant employees, who were fired after being treated by company doctor for work‑related injuries, “instituted” workers’ compensation proceedings prior to their discharge, as required to establish retaliation claim under statute, despite employer’s nonretaliatory reason for one termination, that employee left production line without permission, and its representation that the other termination was based on excessive breaks; employee demonstrated that he actually had received permission to leave line in order to visit nurse’s station, and excess‑breaks explanation lacked credence, given that company doctor had advised employee to take frequent breaks, and she was returning from nurse’s station when spotted outside of her work area. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 808

Under South Carolina law, employee may meet burden of showing termination was retaliation for instituting workers’ compensation claim either directly, by showing that discharge was significantly motivated by retaliation for her exercise of statutory rights, or indirectly, by showing that employer’s proffered explanation is unworthy of credence; if employer articulates a legitimate, nonretaliatory reason for termination, proximity in time between the work‑related injury and discharge is insufficient evidence to meet employee’s burden of proving causal connection. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 863(2)

Under South Carolina law, while the employer has the burden of proving its affirmative defenses to alleged termination in violation of statute prohibiting retaliation against employee for instituting workers’ compensation claim, the employer does not have the burden of establishing the affirmative defenses are causally related to the discharge; instead, the ultimate burden of persuading trier of fact that employer discharged employee in retaliation for exercising statutory rights remains at all times with employee. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 861

Under South Carolina law, the appropriate test of causation under statute prohibiting retaliation against employee’s for instituting workers’ compensation claim is the “determinative factor test,” which requires employee to establish that he would not have been discharged but for filing workers’ compensation claim. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 810

Under South Carolina law, former poultry processing plant employees’s showing that they would not have been fired under employer’s point‑system attendance policy but for plant nurse’s finding that their hand injuries were not work‑related was insufficient to demonstrate causation, as required to support employees’ claim that they were fired in violation of state statute prohibiting retaliation for instituting workers’ compensation claim; employees were terminated under established point system, and they did not show it was a mechanism for retaliation for any institution of workers’ compensation proceedings. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 810

Under South Carolina law, statute prohibiting retaliation based on employee’s institution of workers’ compensation claim does not require formal filing of a workers’ compensation claim by the employee. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 808

Under South Carolina law, former poultry processing plant employees’ receipt of injury treatment from nurse’s office, requests to visit company doctor, and submission of documents showing they had sought medical care for injuries, was insufficient to show that they “instituted” of workers’ compensation proceedings, as required to support claim that they were terminated in retaliation for those actions in violation of state statute; former employees did not allege that employer had agreed to pay for medical care or had received a bill for medical care from independent health care provider, and there was no indication that employees provided the documentation in order to seek reimbursement for medical bills. Barton v. House of Raeford Farms, Inc. (C.A.4 (S.C.) 2014) 745 F.3d 95, certiorari denied 135 S.Ct. 160, 190 L.Ed.2d 49. Labor and Employment 808

4. Penalties

Award of treble damages and attorney’s fees under the South Carolina Payment of Wages Act was not an abuse of discretion, even absent any specific finding of bad faith or willfulness; district court specifically addressed the question of whether a good faith dispute existed over the payment of the plaintiff employee’s wages and determined that, based on all of the evidence presented, no dispute existed. Wall v. Fruehauf Trailer Services, Inc. (C.A.4 (S.C.) 2005) 123 Fed.Appx. 572, 2005 WL 428781, Unreported. Labor And Employment 2202(3); Labor And Employment 2204

Determination that good cause existed to allow former employee to amend his complaint to replace a claim under South Carolina’s Payment of Post‑Termination Claims to Sales Representatives Act (PPTCSRA) with a claim under the South Carolina Payment of Wages Act and a claim for treble damages was a proper exercise of discretion; the employee moved to file a second amended complaint immediately after his counsel learned that a minor portion of his sales activities involved selling trailers to independent owners/operators, an activity that was not covered under the PPTCSRA, and the employer did not suffer any prejudice from the amendment. Wall v. Fruehauf Trailer Services, Inc. (C.A.4 (S.C.) 2005) 123 Fed.Appx. 572, 2005 WL 428781, Unreported. Federal Civil Procedure 841; Federal Civil Procedure 843

5. Treble damages

An award of treble damages and attorney’s fees under Payment of Wages Act is appropriate only when there is no good faith wage dispute because an employer should not be penalized for failure to pay wages upon assertion of a valid defense to payment. Goodwyn v. Shadowstone Media, Inc. (S.C.App. 2014) 408 S.C. 93, 757 S.E.2d 560. Labor and Employment 2202(3); Labor and Employment 2204

A finding that an employee is entitled to recover unpaid wages is not equivalent to a finding that there existed no bona fide dispute as to the employee’s entitlement to those wages, as would provide a basis for awarding the employee treble damages under the Payment of Wages Act. Temple v. Tec‑Fab, Inc. (S.C. 2009) 381 S.C. 597, 675 S.E.2d 414, rehearing denied. Labor And Employment 2202(3)

Refusal to award former employee attorney fees and treble damages under South Carolina’s Wage Payment Act in connection with his new work bonus claim was not abuse of discretion, where bona fide dispute existed at time employer refused bonus payments and jury awarded former employee less than 15% of his bonus claim and no expenses. Davis v. MPW Indus. Services, Inc. (C.A.4 (S.C.) 2013) 535 Fed.Appx. 220, 2013 WL 3803466. Labor and Employment 2164

5.5. Attorney fees

Trial court was required to articulate bases for its award of attorney fees and trebled damages to prevailing former employee in wage dispute. Zinn v. CFI Sales & Marketing, Ltd (S.C.App. 2015) 415 S.C. 93, 780 S.E.2d 611. Costs 208

6. Discretion of court

Wage Payment Act provides the trial court the discretion to award treble damages, attorney fees, and costs. Baugh v. Columbia Heart Clinic, P.A. (S.C.App. 2013) 402 S.C. 1, 738 S.E.2d 480, rehearing denied, certiorari denied, on remand 2015 WL 1887834. Labor and Employment 2202(3); Labor and Employment 2204

6.5. Directed verdict

In response to employer’s motion for directed verdict in action for wage violations and breach of contract, former employees failed to provide sufficiently specific details regarding timeshare sales for which they did not receive compensation; former employees failed to provide names of purchasers and corresponding account numbers. Zinn v. CFI Sales & Marketing, Ltd (S.C.App. 2015) 415 S.C. 93, 780 S.E.2d 611. Labor and Employment 265; Labor and Employment 2201

7. Review

When reviewing an award of treble damages under the Payment of Wages Act, the Court of Appeals can take its own view of the facts. Goodwyn v. Shadowstone Media, Inc. (S.C.App. 2014) 408 S.C. 93, 757 S.E.2d 560. Appeal and Error 1004(11)

8. Res judicata

Issue of whether employer’s contractually‑implemented procedure for reserving and/or charging back employee commissions violated Payment of Wages Act was res judicata as to second action brought by employees against employer; memorandum of understanding in first action stated that all claims had been satisfied regarding commission reserves alleged to be due to employees. Zinn v. CFI Sales & Marketing, Ltd (S.C.App. 2015) 415 S.C. 93, 780 S.E.2d 611. Judgment 567

**SECTION 41‑10‑90.** Actions for collection of penalties; deposit of amounts collected.

In each case where a civil penalty assessed under subsection (A) or (B) of Section 41‑10‑80 is not paid within sixty days the Director of the Department of Labor, Licensing, and Regulation or his designee shall bring an action against the assessed employer for collection of the penalty. Any amounts collected must be turned over to the State Treasurer for deposit in the general fund of the State.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986; 1993 Act No. 181, Section 977, eff February 1, 1994.

Editor’s Note

Pursuant to Section 41‑3‑610, effective February 1, 1994, wherever the term Commissioner of Labor appears or is used, it shall be deemed to mean the Director of the Department of Labor, Licensing, and Regulation or his designee.

Effect of Amendment

The 1993 amendment substituted “Director of the Department of Labor, Licensing, and Regulation or his designee” for “Commissioner of Labor”.

Library References

51B C.J.S., Labor Relations Sections 1290‑1299.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 35, Duties of the Commissioner of Labor.

S.C. Jur. Master and Servant Section 54, Violations of the Act.

Treatises and Practice Aids

Employment Coordinator Compensation Section 42:417, South Carolina; Labor Commissioner’s Suit to Collect Civil Penalties.

Guide to Employment Law and Regulation 2d Section 61:10, Payment of Wages.

NOTES OF DECISIONS

In general 1

1. In general

The legislature intended to impose individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the South Carolina Payment of Wages Act, Sections 41‑10‑10 et seq. Dumas v. InfoSafe Corp. (S.C.App. 1995) 320 S.C. 188, 463 S.E.2d 641. Corporations And Business Organizations 1064; Labor And Employment 2178

The South Carolina Payment of Wages Act, Sections 41‑10‑10 et seq., is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. Dumas v. InfoSafe Corp. (S.C.App. 1995) 320 S.C. 188, 463 S.E.2d 641.

**SECTION 41‑10‑100.** Prohibition against private agreements which contravene chapter.

No provision of this chapter may be contravened or set aside by a private agreement.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Compensation Section 39:108, Wage Payment and Collection Rules.

Employment Coordinator Compensation Section 42:414, South Carolina; Null Effect of Agreement Altering Payment Rights.

**SECTION 41‑10‑110.** Right of Commissioner of Labor to enter and to conduct investigation.

The Director of the Department of Labor, Licensing, and Regulation or his designee, his inspectors, agents, or designees, upon proper presentation of credentials to the owner, manager, or agent of the employer, may enter at reasonable times and have the right to question either publicly or privately any employer, owner, manager, or agent and the employees of the employer and inspect, investigate, reproduce, or photograph time records or payroll records for the purpose of determining that the provisions of this chapter are complied with.

HISTORY: 1986 Act No. 380, Section 1, eff April 21, 1986; 1993 Act No. 181, Section 977, eff February 1, 1994.

Editor’s Note

Pursuant to Section 41‑3‑610, effective February 1, 1994, wherever the term Commissioner of Labor appears or is used, it shall be deemed to mean the Director of the Department of Labor, Licensing, and Regulation or his designee.

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Library References

51B C.J.S., Labor Relations Sections 1217‑1221.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 19, Powers.

S.C. Jur. Labor Relations Section 32, Coverage.

S.C. Jur. Labor Relations Section 33, Requirements.

S.C. Jur. Labor Relations Section 35, Duties of the Commissioner of Labor.

S.C. Jur. Master and Servant Section 54, Violations of the Act.

Treatises and Practice Aids

Employment Coordinator Compensation Section 39:108, Wage Payment and Collection Rules.