CHAPTER 34-14
WAGE COLLECTION

34-14-01. Definition.

Whenever used in this chapter, "employer" includes every person, firm, partnership, association, corporation, limited liability company, receiver or other officer of a court of the state, and any agent or officer of any kind of the above-mentioned classes and subject to the provisions hereof, employing any person in this state.

34-14-02. Agreed payday - Direct deposit - Stored value card.

Every employer shall pay all wages due to employees at least once each calendar month on regular agreed paydays designated in advance by the employer. Wages must be paid in lawful money of the United States; with checks, as that item is used in chapter 41-03, drawn on banks or credit unions convenient to the place of employment; with direct deposit in the financial institution of the employee's choice; or, at the election of the employee when offered by the employer, by delivery to the employee of a stored value card that meets the requirements of this section. A stored value card that is used by an employer to pay wages must be issued by a federally insured bank or credit union. The value of the funds underlying a stored value card that is used by an employer to pay wages must be a deposit that is insured by the federal deposit insurance corporation or national credit union administration. Before paying wages by delivering a stored value card to an employee, an employer must have deposited with the issuer funds in an amount at least equal to the wages due from the employer to each employee whose wages are being paid through a stored value card and any account fees that are charged to the employer by the issuer.

34-14-03. Employees who are separated from payroll before paydays.

Whenever an employee is discharged or terminated from employment by an employer, separates from employment voluntarily, or is suspended from work as the result of an industrial dispute, the employee's unpaid wages or compensation becomes due and payable at the regular paydays established in advance by the employer for the periods worked by the employee. When an employer discharges or terminates an employee, the employer shall pay those wages to the employee by certified mail at an address designated by the employee or as otherwise agreed upon by both parties. If the employer fails to pay the wages within the stated time, the employee may charge and collect wages in the sum agreed upon in the contract of employment for each day the employer is in default until the employer has paid in full, without rendering any service therefor, except the employee shall cease to draw wages or salary thirty days after such default.

34-14-04. Unconditional payment of wages conceded to be due.

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages less whatever the employee owes the employer which the employee concedes to be due and shall pay such amount without condition within the time set by this chapter, provided that acceptance by the employee of any payment made hereunder does not constitute a release as to the balance of the claim.

34-14-04.1. Limitations on withholdings.

Except for those amounts that are required under state or federal law to be withheld from employee compensation or where a court has ordered the employer to withhold compensation, an employer only may withhold from the compensation due employees:

1. Advances paid to employees, other than undocumented cash.
2. A recurring deduction authorized in writing.
3. A nonrecurring deduction authorized in writing, when the source of the deduction is cited specifically.
4. A nonrecurring deduction for damage, breakage, shortage, or negligence must be authorized by the employee at the time of the deduction.

34-14-05. Enforcement.

It is the duty of the labor commissioner or the commissioner's deputy to ensure compliance with the provisions of this chapter, to investigate as to any violations of this chapter, and to institute or cause to be instituted actions for penalties and forfeitures provided hereunder. The commissioner or the commissioner's deputy may hold hearings on the merits of any claim and shall cooperate with any employee in the enforcement of a claim against the employee's employer in any case whenever, in the commissioner's opinion, the claim is valid. The commissioner may consider any offsets, deductions, or counterclaims asserted by an employer during the commissioner's investigation and determination of the validity, enforceability, and amount of any claim for wages. An employer must disclose the basis for and the amount of any claimed offset, deduction, or counterclaim to the commissioner within the time the commissioner directs. The commissioner and the commissioner's authorized representatives have the right to enter places of employment for the purpose of inspecting records and seeing that all provisions of this chapter are complied with.

34-14-06. Personnel.

The labor commissioner and the commissioner's deputy may employ such clerical and other assistants as may be necessary to carry out the purposes of this chapter, and shall fix the compensation of such employees and may also, to carry out such purposes, incur reasonable traveling expenses for the commissioner and the commissioner's deputy and assistants.

34-14-07. Penalties.

Any employer who willfully refuses to pay the wages due and payable when demanded as in this chapter, or who falsely denies the amount thereof, or that the same is due with intent to secure for the employer or any other person any discount upon such indebtedness, or with intent to annoy, harass, or oppress, or hinder, or delay, or defraud the person to whom such indebtedness is due, is guilty of an infraction. Any employee who falsifies the amount due the employee or who willfully attempts to defraud the employer is guilty of an infraction.

34-14-07.1. Retroactive payment not required.

When the commissioner reviews a potential employment relationship involving an independent contractor who has a valid identification number issued under section 34-05-01.4 and determines that the party described as an independent contractor is an employee for purposes of wages, rather than an independent contractor, the commissioner may not require the party determined to be the employer to pay wages, in addition to those required by the contract, for that employee, or any interest, penalty, or delinquency fee with respect to those wages, retroactive to the date the relationship with the employee began, unless, however, the commissioner determines that the employer willfully and intentionally entered the relationship with the purpose of avoiding the payment of wages. The commissioner may require the payment of wages for that employee as of the date the order declaring an employment relationship becomes final.

34-14-08. Assignment of wage claims to labor commissioner for recovery by civil action.

The labor commissioner or the commissioner's deputy has the power and authority to take assignments of wage claims and claims for relief for penalties provided by section 34-14-09, without being bound by any of the technical rules with reference to the validity of such assignments; and has the power and authority to prosecute actions for the collection of such claims on behalf of persons who, in the judgment of the commissioner or the commissioner's deputy, are entitled to the services of the commissioner or the commissioner's deputy and who, in the commissioner's judgment, have claims which are valid and enforceable in the courts. The commissioner or the commissioner's deputy has the power to join various claimants in one preferred claim or lien and in case of suit to join them in one claim for relief.

34-14-09. Employees' remedies - Limitation on wages collectible.

An employee may file a claim for wages due under this chapter or under chapter 34-06 with the department not later than two years from the date the wages are due. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. Whenever the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.

34-14-09.1. Interest on unpaid wages - Amount of recovery - Exception.

In addition to the employee's right to recover unpaid wages as provided in this chapter, every employee is entitled to recover from the employee's employer:

1. Interest on the unpaid wages from the date the wages are due until payment is made in full at the rate as established by section 47-14-09; and
2. An amount equal to:
   a. Double the employee's unpaid wages, if, within one year preceding the date such wages are due, the employer has, on separate occasions, been subject to, and found liable for, two previous wage claims under the provisions of this chapter; or
   b. Treble the employee's unpaid wages, if, within one year preceding the date such wages are due, the employer has, on separate occasions, been subject to, and found liable for, three or more previous wage claims under the provisions of this chapter.

The provisions of this section do not apply to wage claims arising under the Railway Labor Act [Pub. L. 69-257; 44 Stat. 577; 45 U.S.C. 151 et seq.] or to wage claims arising under contested application of collective bargaining agreements.

34-14-09.2. Limitations on accrued paid time off - Investigation

1. If an employee separates from employment voluntarily, a private employer may withhold payment for accrued paid time off if:
   a. At the time of hiring, the employer provided the employee written notice of the limitation on payment of accrued paid time off;
   b. The employee has been employed by the employer for less than one year; and
   c. The employee gave the employer less than five days' written or verbal notice.
2. If an employee separates from employment, a private employer may withhold payment for paid time off if:
   a. The paid time off was awarded by the employer but not yet earned by the employee; and
   b. Before awarding the paid time off, the employer provided the employee written notice of the limitation on payment of awarded paid time off.
3. As provided under section 34-14-05, an employee may report a violation under this section. If a report of violation is made within thirty days of the alleged violation, the labor commissioner shall investigate the merits of the claim. If a report is made more than thirty days following the alleged violation, the commissioner may investigate the merits of the claim.

34-14-10. Rules and regulations.

The labor commissioner is authorized to issue such rules and regulations as necessary for the purpose of carrying out the provisions of this chapter.

34-14-11. Reciprocal agreements for collection of wages.

The labor commissioner may enter into reciprocal agreements with the department of labor or corresponding agency of any other state, nation, or country or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency, for the collection in the other state, nation, or country of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and human rights.

34-14-12. Actions in other states, nations, or countries for collection of claims - Assignments for collection.

The department of labor and human rights may, to the extent provided for by any reciprocal agreement entered into pursuant to section 34-14-11, or by the laws of any other state, nation, or country, maintain actions in the courts of the other state, nation, or country for the collection of such claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the department of labor or agency of the other state, nation, or country for collection to the extent that the same may be permitted or provided for by the laws of the state, nation, or country or by reciprocal agreement.

34-14-13. Claims assigned by other states, nations, or countries - Actions - Collection.

The department of labor and human rights may, upon the written request of the department of labor or other corresponding agency of any other state, nation, or country or of any person, board, officer, or commission of the state, nation, or country authorized to act for and on behalf of the department of labor or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state, nation, or country in the same manner and to the same extent that the actions by the department of labor and human rights are authorized when arising in this state; provided, however, that the actions may be commenced and maintained only in those cases where the other state, nation, or country by appropriate legislation or by reciprocal agreement extends a like comity to cases arising in this state.