

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 411 Evidentiary Standards for Actions Arising During an Emergency

**SPONSOR(S):** Melo

**TIED BILLS:** IDEN./SIM. BILLS: SB 542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	14 Y, 2 N	Brascomb	Jones
2) Pandemics & Public Emergencies Committee	18 Y, 0 N	Smith	Williamson
3) Judiciary Committee			

### SUMMARY ANALYSIS

An employee may have a civil cause of action against his or her employer for claims related to workers' compensation, retaliatory personnel actions, state minimum wage, labor pool violations, and devices used in payment for labor. An employee may also have a civil cause of action against his or her employer to recover lost wages, salary, employment benefits, or other compensation. In each instance, the employee must prove the existence of an employee-employer relationship before the employer can be held liable. Further, the Department of Financial Services may impose civil penalties against an employer for violating unclaimed wages laws.

HB 411 specifies that an engaged individual may not use the following actions of a business as evidence against the business in any of the above-specified civil causes of action if the business takes such actions during a public health emergency or other declared state of emergency:

- Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.
- Directly providing benefits related to an engaged individual's health and safety, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.
- Providing training or information related to an engaged individual's health and safety.
- Taking any action, including action required or suggested by any federal, state, or local law, ordinance, order, or directive intended to protect public health and safety.

Thus, the bill keeps any of the aforementioned actions from being considered as evidence that there is an employer-employee relationship between a business and a plaintiff in specified civil actions. Specifically, the bill applies to certain civil actions relating to workers' compensation, retaliatory personnel actions, state minimum wage, labor pool violations, devices used in payment for labor, and unclaimed wages. The bill also applies to civil actions to recover lost wages, salary, employment benefits, or other compensation.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

An employee may have a civil cause of action against his or her employer for claims related to workers' compensation (in specified instances), retaliatory personnel actions, state minimum wage, labor pool violations, and devices used in payment for labor. An employee may also have a civil cause of action against his or her employer to recover lost wages, salary, employment benefits, or other compensation. In each instance, the employee has the burden to prove the existence of the employee-employer relationship before the employer can be held liable. Further, the Department of Financial Services may impose civil penalties against an employer for violating unclaimed wages laws.

#### Workers' Compensation

Each employer and employee is bound by Florida's Workers' Compensation Law.<sup>1</sup> The employer must pay compensation or furnish benefits required by the Workers' Compensation Law if his or her employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.<sup>2</sup> The injury and any resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the accidental compensable injury must be the major contributing cause of any resulting injuries.<sup>3</sup>

Normally, an employee may not sue an employer for claims arising under the Workers' Compensation Law, as such claims are handled through an administrative process instead of through the court system.<sup>4</sup> However, an employee has a civil cause of action against his or her employer if the employer:

- Failed to carry sufficient workers' compensation coverage;
- Deliberately intended to injure the employee; or
- Engaged in conduct that he or she knew was virtually certain to result in the employee's injury or death in certain situations.<sup>5</sup>

#### Retaliatory Personnel Actions

An employer may not take any retaliatory personnel action<sup>6</sup> against an employee because the employee has:

- Disclosed or threatened to disclose, to any appropriate governmental agency, under oath, in writing, any activity, policy, or practice of the employer that violates a law, rule, or regulation;
- Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer; or
- Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.<sup>7</sup>

An employee who is the object of a retaliatory personnel action has a civil cause of action against his or her employer for the following relief:

- An injunction restraining a continued violation;
- The employee's reinstatement to the same position held before the retaliatory personnel action or to an equivalent position;

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<sup>1</sup> Ss. 440.03 and 440.10, F.S.

<sup>2</sup> S. 440.09(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> See ch. 440, F.S.; *Deen v. Quantum Resources, Inc.*, 750 So. 2d 616 (Fla. 1999).

<sup>5</sup> S. 440.11, F.S.

<sup>6</sup> "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment. S. 448.101(5), F.S.

<sup>7</sup> S. 448.102, F.S.

- Reinstatement of the employee's full fringe benefits and seniority rights;
- Compensation for lost wages, benefits, and other remuneration; and
- Any other compensatory damages allowable at law.<sup>8</sup>

### State Minimum Wage

Florida's Constitution requires an employer to pay his or her employees a minimum wage.<sup>9</sup> An employee not paid the minimum wage may bring a civil action against his or her employer to recover the full amount of back wages unlawfully withheld, plus the same amount as liquidated damages.<sup>10</sup> An employee bringing such an action may also be entitled to legal or equitable relief, including employment reinstatement or injunctive relief.<sup>11</sup>

### Labor Pool Violations

No labor pool<sup>12</sup> may:

- Charge a day laborer:<sup>13</sup>
  - For safety equipment, clothing, accessories, or any other items required by the nature of the work;
  - More than a reasonable amount to transport a worker to or from the designated worksite; or
  - For directly or indirectly cashing a worker's check.<sup>14</sup>
- Request or require that any day laborer sign any document waiving statutory protections.<sup>15</sup>
- Charge more than the actual cost of providing lunch, if the labor pool provides lunch at the worksite.<sup>16</sup>
- Restrict a day laborer's right to accept a permanent position with a third-party user to whom the laborer is referred for temporary work.<sup>17</sup>

A labor pool must:

- If operating a labor hall, provide restroom facilities, drinking water, and sufficient seating for a worker waiting at the hall for a job assignment.<sup>18</sup>
- Select one of the following methods to pay a day laborer for work performed:
  - Cash;
  - Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discounts;
  - Payroll debit card; or
  - Electronic fund transfer.<sup>19</sup>
- Notify a day laborer of the payment method that the labor pool intends to use and the day laborer's options to elect a different payment method.<sup>20</sup>

<sup>8</sup> S. 448.103, F.S.

<sup>9</sup> Art. X, s. 24, Fla. Const. Effective September 30, 2021, the existing state minimum wage increased to \$10.00 per hour, and will increase each September 30 thereafter by \$1.00 per hour until the minimum wage reaches \$15.00 per hour on September 30, 2026. On September 30, 2027, and each subsequent September 30, the State Agency for Workforce Innovation must calculate an adjusted minimum wage rate in the manner specified in the State Constitution.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> "Labor pool" means a business entity that operates a labor hall by one or more of the following methods: contracting with third-party users to supply day laborers on a temporary basis; hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor; or fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business. S. 448.22(1), F.S.

<sup>13</sup> "Day labor" means temporary labor or employment that is occasional or irregular for which the worker is employed for not longer than the time period required to complete the temporary assignment for which the individual worker was hired, although an individual may be eligible for additional temporary assignments when available. S. 448.22(2), F.S.

<sup>14</sup> S. 448.24(1), F.S.

<sup>15</sup> S. 448.24(3), F.S.

<sup>16</sup> S. 448.24(4), F.S.

<sup>17</sup> S. 448.24(6), F.S.

<sup>18</sup> S. 448.24(5), F.S.

<sup>19</sup> S. 448.24(2), F.S.

<sup>20</sup> *Id.*

- If selecting to pay a day laborer by payroll debit card:
  - Offer the day laborer the option to elect payment by electronic fund transfer; and
  - Provide the day laborer with a list, including the address, of a nearby business that does not charge a fee to withdraw the debit card's contents.<sup>21</sup>
- Compensate day laborers at or above the minimum wage.<sup>22</sup>
- Comply with the requirements of ch. 440, F.S.<sup>23</sup>
- Insure any motor vehicle owned or operated by the labor pool and used for worker transportation.<sup>24</sup>
- Furnish each worker with a written itemized statement showing in detail each wage deduction.<sup>25</sup>
- Give each worker an annual earnings statement summary.<sup>26</sup>

A worker harmed by a labor pool violation may bring a civil action against the labor pool to recover actual and consequential damages, or \$1,000, whichever is greater, for each violation.<sup>27</sup>

### Devices Issued in Payment for Labor

Any order, check, draft, note, memorandum, payroll debit card, or other acknowledgement of indebtedness for wages due must be negotiable and payable in cash, on demand, without discount, at some established place of business in Florida.<sup>28</sup> The business's name and address must appear on the instrument or in the payroll debit card issuing materials. At the time of its issuance, and for at least 30 days thereafter, the maker or drawer must have sufficient funds or credit, arrangement, or understanding with the drawee for its payment.<sup>29</sup>

Any person issuing a coupon, punch-out, ticket, token, or other device in lieu of cash as payment for labor is:

- Liable for the full face value thereof in current legal tender on or after the 30<sup>th</sup> day after the date of issuance;
- Liable for payment in legal tender, notwithstanding any contrary stipulation or provision, which may be therein contained; and
- Subject to suit brought thereon in any court of competent jurisdiction, upon failure to comply with the requirements immediately above, wherein the legal holder's recovery must include the full face value of the device, with legal interest from the date of demand.<sup>30</sup>

Further, no employer may terminate an employee's employment solely for refusing to authorize the direct deposit of wages.<sup>31</sup> An employee may bring a civil action for equitable relief against any employer violating this provision.<sup>32</sup>

### Unclaimed Wages

Unpaid wages owing in the ordinary course of the holder's business that have not been claimed by the owner for more than one year after becoming payable are presumed unclaimed.<sup>33</sup> Every holder of unclaimed wages must report the unclaimed wages to the Department of Financial Services ("DFS") by May 1 of each year and must simultaneously pay to DFS all unclaimed wages required to be reported.<sup>34</sup> Employers violating these requirements face DFS-imposed penalties.<sup>35</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> S. 448.25, F.S.

<sup>28</sup> S. 532.01, F.S.

<sup>29</sup> *Id.*

<sup>30</sup> S. 532.02, F.S.

<sup>31</sup> S. 532.04(2), F.S.

<sup>32</sup> S. 532.04(3), F.S.

<sup>33</sup> S. 717.115, F.S.

<sup>34</sup> Ss. 717.117 and 717.119, F.S.

<sup>35</sup> *Id.*; Ch. 69G-20, F.A.C.

## Effect of Proposed Changes

HB 411 creates s. 448.111, F.S., specifying that an engaged individual<sup>36</sup> may not use the following actions of a business as evidence against the business in specified civil causes of action if the business takes such actions during a public health emergency<sup>37</sup> or other declared state of emergency:<sup>38</sup>

- Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.
- Directly providing benefits related to an engaged individual's health and safety, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.
- Providing training or information related to an engaged individual's health and safety.
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Thus, the bill keeps any of the aforementioned actions from being considered as evidence that there is an employer-employee relationship between a business and a plaintiff in specified civil actions. Specifically, the bill applies to certain civil actions relating to workers' compensation, retaliatory personnel actions, state minimum wage, labor pool violations, devices used in payment for labor, and unclaimed wages. The bill also applies to civil actions to recover lost wages, salary, employment benefits, or other compensation.

The bill provides an effective date of July 1, 2022.

### B. SECTION DIRECTORY:

**Section 1:** Creates s. 448.111, F.S., relating to evidentiary standards for actions of a business during an emergency.

**Section 2:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>36</sup> The bill defines "engaged individual" to mean an individual who provides a good or service to a business or on behalf of a business who is remunerated for the good or service regardless of the individual's classification as an employee or independent contractor.

<sup>37</sup> The State Health Officer is responsible for declaring a public health emergency. S. 381.00315(1), F.S.

<sup>38</sup> The Governor may declare a state of emergency under the emergency powers delegated to him in s. 252.36, F.S.

The bill protects a business taking specified action from being deemed a plaintiff's employer based solely on evidence of such action, allowing the business to prioritize the health and safety of persons with whom it has dealings in any capacity without the risk of incurring civil liability for specified employment-related claims. This may have an indeterminate positive impact on the private sector.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.