

## CHAPTER 448

## GENERAL LABOR REGULATIONS

## PART I TERMS AND CONDITIONS OF EMPLOYMENT (ss. 448.01-448.105)

## PART II LABOR POOL ACT (ss. 448.20-448.25)

## PART I

## TERMS AND CONDITIONS OF EMPLOYMENT

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**448.01 Ten hours of labor a legal day's work; extra pay.—**

(1) Ten hours of labor shall be a legal day's work, and when any person employed to perform manual labor of any kind by the day, week, month or year renders 10 hours of labor, he shall be considered to have performed a legal day's work, unless a written contract has been signed by the person so employed and the employer, requiring a less or greater number of hours of labor to be performed daily.

(2) Unless such written contract has been made, the person employed shall be entitled to extra pay for all work performed by the requirement of his employer in excess of 10 hours' labor daily.

**History.**—ss. 1, 2, 3, ch. 1988, 1874; RS 2117, 2118; GS 2641, 2642; RGS 4016, 4017; CGL 5939, 5940.

**448.03 Threat of discharge to compel employee to trade with any particular firm or person; penalty.—**

Any person or persons, firm, joint stock company, association or corporation organized, chartered or incorporated by and under the laws of this state, either as owner or lessee, having persons in their service as employees, who shall discharge any employee or threaten to discharge any employee in their service for trading or dealing, or for not trading or dealing as a customer or patron with any particular merchant or other person or class of

persons in any business calling, or shall notify any employee either by general or special notice, directly or indirectly, secretly or openly given, not to trade or deal as a customer or patron with any particular merchant or person or class of persons in any business or calling, under penalty of being discharged from the service of such person, firm, joint stock company, corporation or association shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 5015, 1901; GS 3233; RGS 5066; CGL 7168; s. 374, ch. 71-136.

**448.04 Penalty for officer or agent violating s.**

**448.03.**—Any person acting as an officer or agent of any firm, joint stock company, association or corporation of the kind and character as described in s. 448.03 or for any one of them, who makes or executes any notice, order or threat of the kind therein mentioned and forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 2, ch. 5015, 1901; GS 3234; RGS 5067; CGL 7169; s. 375, ch. 71-136.

**448.045 Wrongful combinations against workers.**

If two or more persons shall agree, conspire, combine or confederate together for the purpose of preventing any person from procuring work in any firm or corporation, or to cause the discharge of any person from work in such firm or corporation; or if any person shall verbally or by written or printed communication, threaten any injury to life, property or business of any person for the purpose of procuring the discharge of any workman in any firm or corporation, or to prevent any person from procuring work in such firm or corporation, such persons so combining shall be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 4144, 1893; GS 3515; RGS 5401; CGL 7542; s. 983, ch. 71-136.

**Note.**—Former s. 833.02.

**448.05 Seats to be furnished for employees in stores; penalty.—**

If any merchant, storekeeper, employer of male or female clerks, salesmen, cash boys or cash girls, or other assistants, in mercantile or other business pursuits, requiring such employees to stand or walk during their active duties, neglect to furnish at his own cost or expense suitable chairs, stools or sliding seats attached to the counters or walls, for the use of such employees when not engaged in their active work, and not required to be on their feet in the proper performance of their several duties; or refuse to permit their said employees to make reasonable use of said seats during business hours, for purposes of necessary rest, and when such use will not interfere with humane or rea-

sonable requirements of their employment, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 4762, 1899; GS 3235; RGS 5068; CGL 7170; s. 376, ch. 71-136.

**448.07 Wage rate discrimination based on sex prohibited.**—

(1) **DEFINITIONS.**—As used in this section, unless the context or subject matter clearly requires otherwise, the following terms shall have the meanings as defined in this section:

(a) "Employee" means any individual employed by an employer, including individuals employed by the state or any of its political subdivisions or instrumentalities of subdivisions.

(b) "Employer" means any person who employs two or more employees.

(c) "Wages" means and includes all compensation paid by an employer or his agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash.

(d) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on time spent in the performance of such services, on the number of operations accomplished, or on the quality produced or handled.

(e) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required to be paid an employee pursuant to subsection (3).

(2) **DISCRIMINATION ON BASIS OF SEX PROHIBITED.**—

(a) No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except when such payment is made pursuant to:

1. A seniority system;
2. A merit system;
3. A system which measures earnings by quantity or quality of production; or
4. A differential based on any reasonable factor other than sex when exercised in good faith.

(b) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of the provisions of this section.

(3) **CIVIL ACTION FOR UNPAID WAGES.**—Any employer or person who violates the provisions of this section is liable to the employee for the amount of the difference between the amount the employee was paid and the amount he should have been paid under this section. Nothing in this section allows a claimant to recover more than an amount equal to his unpaid wages while so employed for 1 year prior to the filing of his claim. An action to recover such liability may be maintained in any court of competent jurisdiction by the aggrieved employee within 6 months after termination of employment. The court in such action may award to the prevailing party costs of the action and a reasonable attorney's fee.

(4) Nothing in this section or in s. 725.07, relating to discrimination based on sex in providing equal pay for equal services performed, is applicable to any employer, labor organization or member thereof, or employee whose employer is subject to the federal Fair Labor Standards Act of 1938, as amended.

**History.**—ss. 1, 2, 3, 4, ch. 69-5; s. 1, ch. 84-345.

**448.075 Employment discrimination on basis of sickle-cell trait prohibited.**—No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private entity shall deny or refuse employment to any person or discharge any person from employment solely because such person has the sickle-cell trait.

**History.**—s. 3, ch. 78-35.

**448.076 Mandatory screening or testing for sickle-cell trait prohibited.**—No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private entity shall require screening or testing for the sickle-cell trait as a condition for employment, for admission into any state educational institution or state-chartered private educational institution, or for becoming eligible for adoption if otherwise eligible for adoption under the laws of this state.

**History.**—s. 4, ch. 78-35.

**Note.**—Also published at ss. 63.043 and 228.201.

**448.08 Attorney's fees for successful litigants in actions for unpaid wages.**—The court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorney's fee.

**History.**—s. 1, ch. 78-327.

**448.09 Unauthorized aliens; employment prohibited.**—

(1) It shall be unlawful for any person knowingly to employ, hire, recruit, or refer, either for himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.

(2) The first violation of subsection (1) shall be a non-criminal violation as defined in s. 775.08(3) and, upon conviction, shall be punishable as provided in s. 775.082(5) by a civil fine of not more than \$500, regardless of the number of aliens with respect to whom the violation occurred.

(3) Any person who has been previously convicted for a violation of subsection (1) and who thereafter violates subsection (1), shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any such subsequent violation of this section shall constitute a separate offense with respect to each unauthorized alien.

**History.**—ss. 1, 2, 3, ch. 77-250; s. 193, ch. 79-400; s. 82, ch. 91-224.

**448.101 Definitions.**—As used in ss. 448.101-448.105, the term:

(1) "Appropriate governmental agency" means any agency of government charged with the enforcement of laws, rules, or regulations governing an activity, policy, or practice of an employer.

(2) "Employee" means a person who performs services for and under the control and direction of an employer for wages or other remuneration. The term does not include an independent contractor.

(3) "Employer" means any private individual, firm, partnership, institution, corporation, or association that employs ten or more persons.

(4) "Law, rule, or regulation" includes any statute or ordinance or any rule or regulation adopted pursuant to any federal, state, or local statute or ordinance applicable to the employer and pertaining to the business.

(5) "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.

(6) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee or who has managerial authority to take corrective action regarding the violation of law, rule, or regulation of which the employee complains.

**History.**—s. 4, ch. 91-285.

**448.102 Prohibitions.**—An employer may not take any retaliatory personnel action against an employee because the employee has:

(1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice.

(2) 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.

(3) 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.

**History.**—s. 5, ch. 91-285.

**448.103 Employee's remedy; relief.**—

(1)(a) An employee who has been the object of a retaliatory personnel action in violation of this act may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4 years after the personnel action was taken, whichever is earlier.

(b) Any civil action authorized under this section may be brought in the county in which the alleged retaliatory personnel action occurred, in which the complainant resides, or in which the employer has its principal place of business.

(c) An employee may not recover in any action brought pursuant to this subsection if he failed to notify the employer about the illegal activity, policy, or practice as required by s. 448.102(1) or if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by this act.

(2) In any action brought pursuant to subsection (1), the court may order relief as follows:

(a) An injunction restraining continued violation of this act.

(b) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position.

(c) Reinstatement of full fringe benefits and seniority rights.

(d) Compensation for lost wages, benefits, and other remuneration.

(e) Any other compensatory damages allowable at law.

**History.**—s. 6, ch. 91-285.

**Note.**—As enacted, "subsection (1) of section 2"; this erroneous reference originated in Amendment 1 to C.S. for S.B. 74, as passed by the Senate, which bill became ch. 91-285. See 1991 House Journal, p. 1591.

**448.104 Attorney's fees and costs.**—A court may award reasonable attorney's fees, court costs, and expenses to the prevailing party.

**History.**—s. 7, ch. 91-285.

**448.105 Existing rights.**—This act does not diminish the rights, privileges, or remedies of an employee or employer under any other law or rule or under any collective bargaining agreement or employment contract.

**History.**—s. 8, ch. 91-285.

## PART II

### LABOR POOL ACT

448.20 Short title.

448.21 Legislative intent.

448.22 Definitions.

448.23 Exclusions.

448.24 Duties and rights.

448.25 Remedies; damages; costs.

**448.20 Short title.**—This part may be cited as the "Labor Pool Act."

**History.**—s. 1, ch. 95-332.

**448.21 Legislative intent.**—The Legislature finds that this part is necessary to provide for the health, safety, and well-being of day laborers throughout the state and to establish uniform standards of conduct and practice for labor pools in the state, and this part shall be carried out in accordance with this purpose.

**History.**—s. 1, ch. 95-332.

**448.22 Definitions.**—For the purposes of this part:

(1) "Labor pool" means a business entity that operates a labor hall by one or more of the following methods:

(a) Contracting with third-party users to supply day laborers to them on a temporary basis.

(b) Hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor.

(c) Fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business.

(2) "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.

(3) "Labor hall" means a central location maintained by a labor pool where day laborers assemble and are dispatched to work for a third-party user.

(4) "Business entity" means any individual, corporation, business partnership, firm, institution, or association.

(5) "Third-party user" means a business entity that uses the services of a day laborer provided by a labor pool.

**History.**—s. 1, ch. 95-332.

**448.23 Exclusions.**—Except as specified in s. 448.22(1)(c), this part does not apply to:

(1) Business entities duly registered as farm labor contractors pursuant to part III of chapter 450;

(2) Employee leasing companies, as defined in s. 468.520;

(3) Temporary help services engaged in supplying solely white collar employees, secretarial employees, clerical employees, or skilled laborers;

(4) Labor union hiring halls; or

(5) Labor bureau or employment offices operated by a business entity for the sole purpose of employing an individual for its own use.

**History.**—s. 1, ch. 95-332.

**448.24 Duties and rights.**—

(1) No labor pool shall charge a day laborer:

(a) For safety equipment, clothing, accessories, or any other items required by the nature of the work either by law, custom, or as a requirement of the third-party user;

1. This subsection shall not preclude the labor pool from charging the day laborer the market value of items temporarily provided to the worker by the labor pool, in the event that the worker willfully fails to return such items to the labor pool;

2. For items other than those referenced in this paragraph, which the labor pool makes available for purchase, the day laborer shall be charged no more than the actual cost of the item to the labor pool, or market value, whichever is less;

(b) More than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed the prevailing rate for public transportation in the geographic area; or

(c) For directly or indirectly cashing a worker's check.

(2) A labor pool shall:

(a) Compensate day laborers for work performed in the form of cash, or commonly accepted negotiable

instruments that are payable in cash, on demand at a financial institution, and without discount.

(b) Compensate day laborers at or above the minimum wage, in conformance with the provision of s. 448.01. In no event shall any deductions, other than those permitted by federal or state law, bring the worker's pay below minimum wage for the hours worked.

(c) Comply with all requirements of chapter 440.

(d) Comply with all requirements of chapter 442.

(e) Insure any motor vehicle owned or operated by the labor hall and used for the transportation of workers pursuant to Florida Statutes.

(f) At the time of each payment of wages, furnish each worker a written itemized statement showing in detail each deduction made from such wages.

(g) Provide each worker with an annual earnings summary within a reasonable period of time after the end of the preceding calendar year, but no later than February 1.

(3) No labor pool shall request or require that any day laborer sign any document waiving the protections of this part.

(4) No labor pool shall charge more than the actual cost of providing lunch, if lunch is provided at the worksite by the labor pool. In no case shall the purchase of lunch be a condition of employment.

(5) A labor pool that operates a labor hall must provide facilities for a worker waiting at the labor hall for a job assignment that include:

(a) Restroom facilities.

(b) Drinking water.

(c) Sufficient seating.

(6) No labor pool shall restrict the right of a day laborer to accept a permanent position with a third-party user to whom the laborer is referred for temporary work, or to restrict the right of such a third-party user to offer such employment to an employee of the labor pool. However, nothing shall restrict the labor pool from receiving a reasonable placement fee from the third-party user.

**History.**—s. 1, ch. 95-332.

**448.25 Remedies; damages; costs.**—

(1) Any worker aggrieved by a violation of s. 448.24 shall have the right to bring a civil action in a court of competent jurisdiction against the labor pool responsible for such violation. In any action commenced pursuant to this part, the worker shall be entitled to recover actual and consequential damages, or \$1,000, whichever is greater, for each violation of this part, and costs.

(2) The remedies provided by this part are not exclusive and shall not preclude the worker from pursuing any other remedy at law or equity which the worker may have.

**History.**—s. 1, ch. 95-332.