

STATE OF TENNESSEE
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May 8, 2012

Opinion No. 12-50

Department of Labor/Wage Regulations

QUESTIONS

1. Are there any conditions under which an employer is exempted from its statutory obligation under Tenn. Code Ann. § 50-2-103(a) to pay all wages or compensation of employees in private employments?
2. What are the statutory obligations of the Commissioner of the Department of Labor and Workforce Development to enforce the requirements of Tenn. Code Ann. § 50-2-103(a)?
3. Does a decision by the Commissioner not to enforce the requirement of Tenn. Code Ann. § 50-2-103(a) constitute the grant of an “exemption” to an employer from the provisions of the statute?

OPINIONS

1. No.
2. Tenn. Code Ann. § 50-2-103(i) grants the Commissioner of the Department of Labor and Workforce Development the sole authority and discretion to proceed on behalf of the Department against an employer who has failed to comply with Tenn. Code Ann. § 50-3-103.
3. No.

ANALYSIS

Tenn. Code Ann. § 50-2-103 sets forth various requirements governing the payment of wages and compensation to employees in private employments and grants the Tennessee Department of Labor and Workforce Development the authority to enforce these requirements. The interpretation of these Tennessee statutes addressing wage regulations is governed by the well established rule of statutory construction that, when the language of a statute is clear and unambiguous, the statute’s plain meaning will be applied without adopting any forced interpretation that would unduly restrict or broaden the statute’s scope. *Brundage v. Cumberland County*, 357 S.W.3d 361, 364-65 (Tenn. 2011).

Tenn. Code Ann. § 50-2-103(a) provides that “[a]ll wages or compensation of employees in private employments shall be due and payable” and then specifies the time periods in which employers must make such payments. Tenn. Code Ann. § 50-2-103(g), which governs payments to an employee who leaves or is discharged from employment, plainly provides that “[n]o employer shall, by any means, secure an exemption from this subsection (g).” Tennessee Code Annotated § 50-2-103(i) provides in pertinent part:

A violation of this section is a Class B misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Further, every employer, partnership, or corporation willfully violating this section is subject to a civil penalty of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) at the discretion of the commissioner or the commissioner’s designated representative. Each and every infraction constitutes a separate and distinct offense. If the commissioner, or the commissioner’s designated representative, determines that the violation was unintentional, there shall be a warning, in lieu of a penalty, on the first offense. On second or subsequent violations, the civil penalty is applicable and may be assessed at the discretion of the commissioner or the commissioner’s representative. It shall be at the sole discretion of the commissioner to elect to proceed either civilly or criminally upon any violation of this part; however, the employer shall not be charged both civilly and criminally for the same violation.

As the statute clearly states, Tenn. Code Ann. § 50-2-103(i) vests the Commissioner of the Department with the sole authority and discretion to proceed against an employer who has failed to comply with Tenn. Code Ann. § 50-2-103. Accordingly, it is the responsibility of the Commissioner or the Commissioner’s representative to make a determination, in light of available evidence, whether a violation of Tenn. Code Ann. § 50-2-103 has occurred and whether it should be pursued civilly or criminally. However, the action or non-action of the Department in the legitimate exercise of its enforcement duties cannot constitute the securing of an exemption to the employer in violation of subsection (g). No language in Tenn. Code Ann. § 50-2-103(i) can be read to permit the Department or Commissioner to expressly grant an employer an exemption for such a violation, although the Commissioner may, in his or her discretion, elect not to proceed on behalf of the Department civilly or criminally against an employer. Tenn. Code Ann. § 50-2-103(i). Accordingly, the Commissioner’s failure to act does not in and of itself foreclose other possible legal actions against the employer, including the employee pursuing any available civil action against the employer for the violation of any employment agreement or any applicable law, including Tenn. Code Ann. § 50-2-103.

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