

Double recovery provision did not apply in minimum wage action brought by employee against small motel owners; provision applied only to violations of timeliness and form of wage requirements, not to underpayment of wages. *Lanphear v. Tognelli* (1991) 157 Vt. 560, 601 A.2d 1384.

### § 348. Retaliation prohibited

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

- (1) the employee lodged a complaint of a violation of this subchapter;
- (2) the employee has cooperated with the Commissioner in an investigation of a violation of this subchapter; or
- (3) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

#### Historical Citation

Added 2013, No. 15, § 8.

## SUBCHAPTER 3. MINIMUM WAGES

#### ANNOTATIONS

Cited. Cited in *United Paperworkers Local 340 v. Specialty Paperboard, Inc.*, 999 F.2d 51 (2d Cir. 1993).

### § 381. Declaration of policy

It is the declared public policy of the State of Vermont that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.

#### HISTORY

Source. 1957, No. 303, § 1.

### § 382. Coverage

Employers employing two employees or more are covered by this subchapter.

## HISTORY

Source. 1957, No. 303, § 2.

### § 383. Definitions

Terms used in this subchapter have the following meanings, unless a different meaning is clearly apparent from the language or context:

- (1) "Commissioner," the Commissioner of Labor or designee;
- (2) "Employee," any individual employed or permitted to work by an employer except:
  - (A) any individual employed in agriculture;
  - (B) any individual employed in domestic service in or about a private home;
  - (C) any individual employed by the United States;
  - (D) any individual employed in the activities of a public supported nonprofit organization, except laundry employees, nurses' aides, or practical nurses;
  - (E) any individual employed in a bona fide executive, administrative, or professional capacity;
  - (F) any individual making home deliveries of newspapers or advertising;
  - (G) taxi-cab drivers;
  - (H) outside salespersons; and
  - (I) students working during all or any part of the school year or regular vacation periods.
- (3) "Occupation," an industry, trade, or business or branch thereof or class of work in which workers are gainfully employed.
- (4) [Repealed.]

#### Historical Citation

Amended 1959, No. 109, eff. April 14, 1959; 1967, No. 177, § 1, eff. April 17, 1967; 1977, No. 244 (Adj. Sess.), § 7, eff. May 1, 1978; 1985, No. 80, § 2; 1993, No. 227 (Adj. Sess.), § 34; 2001, No. 47, § 1; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006.

## HISTORY

Source. 1957, No. 303, § 3.

**Amendments—2005 (Adj. Sess.).** Subdiv. (1): Substituted "Commissioner of Labor" for "commissioner of labor and industry".

—2001. Subdiv. (1): Deleted "his" preceding "designee".

Subdiv. (3): Substituted "in" for "therein" following "class of work" and made a minor change in punctuation.

Subdiv. (4): Deleted.

—1993 (Adj. Sess.). Subdiv. (2)(C): Deleted "or by the state" following "United States".

Subdiv. (2)(F): Substituted "any individual" for "persons" preceding "making".

—1985. Subdiv. (2)(F): Amended generally.

Subdiv. (2)(H): Substituted "salespersons, and" for "salesmen".

Subdiv. (2)(I): Deleted "and" following "periods".

Subdiv. (2)(J): Deleted.

—1977 (Adj. Sess.). Subdiv. (1): Substituted "labor and industry or his designee" for "industrial relations" following "commissioner of".

Subdiv. (2)(C): Deleted "or any political subdivision thereof" following "state".

Subdiv. (2)(I): Added "and" following "periods".

Subdiv. (2)(J): Amended generally.

—1967. Subdiv. (2)(D): Deleted "or those subject to the federal fair labor standards act of 1938 as amended" following "practical nurses".

—1959. Subdiv. (2)(I): Substituted "working during all or any part of the school year or regular vacation periods" for "attending school and working part time" following "students".

### § 384. Employment; wages

(a) An employer shall not employ any employee at a rate of less than \$9.15. Beginning on January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning on January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning on January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50, and beginning on January 1, 2019 and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller; but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest \$0.01. An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the minimum wage. As used in this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service. If the minimum wage rate established by the U.S. government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the U.S. government.

(b) Notwithstanding subsection (a) of this section, an employer shall not pay an employee less than one and one-half times the regular wage rate for any work done by the employee in excess of 40 hours during a workweek. However, this subsection shall not apply to:

(1) Employees of any retail or service establishment. A "retail or service establishment" means an establishment 75 percent of whose annual volume of sales of goods or services, or of both, is not for resale and is recognized as retail sales or services in the particular industry.

(2) Employees of an establishment which is an amusement or recreational establishment, if:

(A) it does not operate for more than seven months in any calendar year; or

(B) during the preceding calendar year its average receipts for any six months of that year were not more than one-third of its average receipts for the other six months of the year.

(3) Employees of an establishment which is a hotel, motel, or restaurant.

(4) Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residences, and residential care homes as those terms are defined in Title 18, provided:

(A) the employer pays the employee on a biweekly basis; and

(B) the employer files an election to be governed by this section with the Commissioner; and

(C) the employee receives not less than one and one-half times the regular wage rate for any work done by the employee:

(i) in excess of eight hours for any workday; or

(ii) in excess of 80 hours for any biweekly period.

(5) Those employees of a business engaged in the transportation of persons or property to whom the overtime provisions of the federal Fair Labor Standards Act do not apply, but shall apply to all other employees of such businesses.

(6) Those employees of a political subdivision of this State.

(7) State employees who are covered by the federal Fair Labor Standards Act.

(c) However, an employer may deduct from the rates required in subsections (a) and (b) of this section the amounts for board, lodging, apparel, rent, or utilities paid or furnished or other items or services or such other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities as determined by the wage order made under this subchapter.

(d) For the purposes of earned sick time, an employer shall comply with the provisions required under subchapter 4B of this chapter.

#### Historical Citation

Amended 1959, No. 32, eff. Sept. 1, 1959; 1965, No. 35, § 1, eff. Oct. 1, 1965; 1967, No. 177, § 2, eff. April 17, 1967; 1969, No. 67, §§ 1, 2, eff. April 17, 1969; 1969, No. 190 (Adj. Sess.); 1971,

No. 203 (Adj. Sess.); 1973, No. 265 (Adj. Sess.), eff. April 16, 1974; 1977, No. 244 (Adj. Sess.), § 8, eff. May 1, 1978; 1985, No. 80, § 1; 1987, No. 181 (Adj. Sess.); 1989, No. 131 (Adj. Sess.), § 1, eff. March 29, 1990; 1993, No. 227 (Adj. Sess.), §§ 33, 35; 1995, No. 150 (Adj. Sess.), § 1, eff. Jan. 1, 1997; 1997, No. 4, § 1; 1999, No. 21, § 1, eff. May 13, 1999; 1999, No. 119 (Adj. Sess.), § 7, eff. May 18, 2000; 2003, No. 67, § 25a; 2005, No. 82, § 1; 2007, No. 78, § 1; 2009, No. 54, § 31; eff. June 1, 2009; 2013, No. 176 (Adj. Sess.), § 1, eff. Jan. 1, 2015; 2015, No. 69 (Adj. Sess.), § 3, eff. Jan. 1, 2017.

#### HISTORY

**Source.** 1957, No. 303, § 4.

**References in text.** The Federal Fair Labor Standards Act, referred to in subdivs. (b)(5) and (7), is codified as 29 U.S.C. § 201 et seq.

**Revision note**—In the first sentence of subsec. (b), inserted “of this section” following “subsection (a)” to conform reference to V.S.A. style.

In the introductory clause of subdiv. (b)(4), substituted “residential” for “community” preceding “care homes” to conform reference to chapter 45 of Title 18, as amended by 1985, No. 151 (Adj. Sess.).

**Amendments**—2015 (Adj. Sess.). Subsec. (d): Added.

—2013 (Adj. Sess.). Subsec. (a): Substituted “any employee” for “an employee” following “An employer shall not employ”, “\$9.15. Beginning January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50,” for “\$7.25,” following “at a rate of less than”, “2019” for “2007” following “January 1,” “one-half the minimum wage” for “\$3.65 an hour, and beginning January 1, 2008, and on each January 1 thereafter, this basic tip wage rate shall be increased at the same percentage rate as the minimum wage rate” at the end of the fourth sentence, “As used in” for “For the purposes of” at the beginning of the fifth sentence.

—2009. Substituted “Employment; wages” for “Prohibition of employment” in the section heading.

Subsec. (a): Inserted “of” following “rate” preceding “less than \$7.25” near the beginning, and added “but in no event shall the minimum wage be decreased” at the end of the first sentence.

Subdiv. (b)(7): Substituted “employees who are” for “employees, who shall be”.

Subsec. (c): Made minor punctuation changes.

—2007. Subsec. (a): Deleted “\$7.00 an hour and, beginning January 1, 2006, at a rate less than” following “less than” in the first sentence; added “and beginning January 1, 2008, and on each January 1 thereafter, this basic tip wage rate shall be increased at the same percentage rate as the minimum wage rate” at the end of the second sentence; and substituted “\$120.00” for “\$30.00” preceding “per month” in the third sentence.

—2005. Subsec. (a): Amended generally.

—2003. Subsec. (a): Amended generally.

—1999 (Adj. Sess.). Subsec. (a): Deleted “at a rate less than \$5.25 an hour, and after September 30, 1999” following “an employee” and added “and after December 31, 2000, at a rate less than \$6.25 an hour” at the end of the first sentence.

—1999. Subsec. (a): Deleted “\$5.00 an hour and after June 30, 1997, at a rate less than \$5.15 an hour and after September 30, 1997, at a rate less than” preceding “\$5.25 an hour” and inserted “and after September 30, 1999, at a rate less than \$5.75 an hour” thereafter at the end of the first sentence.

—1997. Subsec. (a): Amended generally.

—1995 (Adj. Sess.). Subsec. (a): Amended generally.

—1993 (Adj. Sess.). Subsec. (a): Rewrote the first sentence and substituted “if” for “beginning July 1, 1989” preceding “if the minimum” in the second sentence.

Subsec. (b): Added subdiv. (7).

—1989 (Adj. Sess.). Subsec. (a): Substituted “April 1, 1990” for “July 1, 1990” following “\$3.75 an hour; after” in the first sentence.

—1987 (Adj. Sess.). Subsec. (a): Deleted “and” following “\$3.55 an hour” and added “after July 1, 1989 at a rate less than \$3.75 an hour; after July 1, 1990 at a rate less than \$3.85 per hour; and after July 1, 1991 at a rate less than \$3.95 an hour” following “\$3.65 an hour” in the first sentence and rewrote the second sentence.

—1985. Subsec. (a): Amended generally.

—1977 (Adj. Sess.). Subsec. (a): Amended generally.

Subdiv. (b)(4): Amended generally.

Subdiv. (b)(6): Amended generally.

Subsec. (c): Inserted “of this section” following “subsections (a) and (b)” and “rent or utilities paid or furnished” following “apparel”.

Subsec. (d): Deleted.

—1973 (Adj. Sess.). Subsec. (a): Added the second sentence.

—1971 (Adj. Sess.). Subsec. (a): Amended generally.

—1969 (Adj. Sess.). Subsec. (d): Inserted “of this title” following “sections 383(D) and 384(b)(4)” and “nursing home or other institution primarily engaged in the care of the sick, the aged, the mentally ill or mentally defective” following “hospital”.

—1969. Subsec. (a): Substituted “\$1.60” for “\$1.40” preceding “an hour” and added the second sentence.

Subsec. (b): Substituted “40” for “48” preceding “hours” in the first sentence.

—1967. Section amended generally.

—1965. Substituted “\$1.25” for “\$1.00” preceding “per hour”.

—1959. Substituted “\$1.00” for “seventy-five cents” preceding “per hour”.

**Minimum wage order; adoption of rules.** 1997, No. 4, § 2, provided: “The Commissioner of Labor and Industry shall adopt rules to be effective July 1, 1997, to amend the minimum wage order affecting the hotel, motel, tourist place and restaurant industry by making the tip credit rate 45 percent of the state minimum wage rate, thereby establishing the state basic wage rate as \$2.83 after June 30, 1997, and \$2.89 after September 30, 1997”.

**Repeal.** 1997, No. 4, § 2 (Rule Change; Minimum Wage Order; Tip Credit Rate), is repealed effective January 1, 2004 pursuant to 2003, No. 67, § 25b.

**Effective date of enactment of subsection (d).** 2015, No. 69 (Adj. Sess.) § 8(a)(2) provides in part that the amendment to this subsection “shall take effect on January 1, 2017, except that an employer that has five or fewer employees who are employed for an average of no less than 30 hours per week shall not be subject to the provisions of 21 V.S.A. chapter 5, subchapter 4b until January 1, 2018.”

In addition, 2015, No. 69 (Adj. Sess.), § 8(b)(1)-(b)(2) provides:

“(b)(1) An employer may require for its existing employees on January 1, 2017 a waiting period of up to one year. The waiting period pursuant to this subsection shall begin on January 1, 2017 and shall end on or before December 31, 2017. During this waiting period, an employee shall accrue earned sick time pursuant to 21 V.S.A. § 482, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.

“(2) An employer that has five or fewer employees who are employed for an average of no less than 30 hours per week may require for its existing employees on January 1, 2018 a waiting period of up to one year. The waiting period pursuant to this subsection shall begin on January 1, 2018 and shall end on or before December 31, 2018. During this waiting period, an employee shall accrue earned sick time pursuant to 21 V.S.A. § 482, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.”

#### CROSS REFERENCES

Minimum wage rates established by United States, see 29 U.S.C. § 206.

#### ANNOTATIONS

**1. Construction with other law.** Sovereign immunity barred State employees' collective action for alleged violations of 29 U.S.C.S. § 207(a)(1) because the State did not waive it, as a reference to the Fair Labor Standards Act, 29 U.S.C.S. § 201 et seq., in 21 V.S.A. § 384(b)(7) was not an express waiver Vermont law required. *Coniff v. Vermont*, — F. Supp. 2d — (D. Vt. Sept. 30, 2013), aff'd, 807 F.3d 478 (2d Cir. 2015).

In a former employee's suit asserting overtime compensation claims under the Fair Labor Standards Act, 29 U.S.C.S. §§ 201-219, the court had supplemental jurisdiction pursuant to 28 U.S.C.S. § 1367(a) over the employee's claims under Vermont's Minimum Wage & Overtime Law, 21 V.S.A. § 384, because there was a common nucleus of operative fact between the claims, all of which involved overtime pay. *Connolly v. Smugglers' Notch Mgmt. Co.*, — F. Supp. 2d — (D. Vt. Nov. 5, 2009).

An employer is permitted to deduct from minimum wage an amount for lodging, utilities, and other items which are usual in a particular industry, as determined by wage order initiated by wage board. *Lanphear v. Tognelli* (1991) 157 Vt. 560, 601 A.2d 1384.

**2. Administrative wage order.** Court at trial for minimum wage violation erred in disregarding plain meaning of administrative wage order outlining permissible deduction from minimum wage and substituting opinion of department of labor and industry officials, where defendant motel owners advanced no reason for invalidity of wage order. *Lanphear v. Tognelli* (1991) 157 Vt. 560, 601 A.2d 1384.

Although department of labor and industry officials, in declining to enforce wage order in minimum wage dispute, may have had good reason to doubt wisdom of fixed, artificially low allowance for lodging provided by employer, proper remedy was modification of regulation, not ad hoc disregard of it. *Lanphear v. Tognelli* (1991) 157 Vt. 560, 601 A.2d 1384.

### § 385. Administration

The Commissioner and the Commissioner's authorized representatives have full power and authority for all the following:

(1) To enforce and administer the provisions of this chapter, including the power to conduct investigations and take any other action considered necessary or suitable for the administration of this chapter. In the discharge of duties under this chapter, the Commissioner may administer oaths, take depositions, certify to official acts, subpoena witnesses, and compel production of any documents and records necessary and material to the administration of this chapter.

(2) To enter and inspect any place of business or employment, question any employees, and investigate any records, facts, conditions, or matters that are deemed appropriate and that in any way appertain to or have a bearing upon the question of wages due under the provisions of this chapter.

(3) To require from any employer full and correct statements in writing of the wages paid to all employees employed by that employer necessary to investigate and enforce the provisions of this chapter.

(4) To recommend and determine the amount of deductions for board, lodging, or other items or services supplied by the employer or any other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities; provided, however, that in no case shall the total remuneration received by an employee, including wages, board, lodging, or other items or services supplied by the employer, including gratuities, be less than the minimum wage rate set forth in section 384 of this title. No deduction may be made for the care, cleaning, or maintenance of required apparel. No deduction for required apparel shall be made without the employee's express written authorization and the deduction shall not:

(A) reduce the total remuneration received by an employee below the hourly minimum wage;

(B) include any administrative fees or charges; or

(C) amend, nullify, or violate the terms and conditions of any collective bargaining agreement.

(5) To recommend a suitable scale of rates for learners, apprentices, and persons with disabilities, which may be less than the regular minimum wage rate for experienced workers without disabilities.

#### Historical Citation

Amended 2001, No. 47, § 2; 2005, No. 212 (Adj. Sess.), § 10, eff. May 29, 2006; 2007, No. 182 (Adj. Sess.), § 10, eff. June 2, 2008.

#### HISTORY

Source. 1957, No. 303, § 5.

Amendments—2007 (Adj. Sess.). Subdiv. (4): Amended generally.



—2005 (Adj. Sess.). Section amended generally.

—2001. Substituted “any” for “such” preceding “employer” and “that employer” for “him” following “employed by” in subdivision (3), amended generally former subdivision (4), deleted subdivision (4)(A) designation, and redesignated (4)(B) as (5).

#### ANNOTATIONS

**1. Deductions.** An employer is permitted to deduct from minimum wage an amount for lodging, utilities, and other items which are usual in a particular industry, as determined by wage order initiated by wage board. *Lanphear v. Tognelli* (1991) 157 Vt. 560, 601 A.2d 1384.

### § 386. Investigations

The Commissioner may, and on a petition of 50 or more residents of the State shall, make an investigation of any industry, business, occupation, or employment as set forth in section 385 of this title, to ascertain whether any violations of this subchapter have occurred.

#### HISTORY

Source. 1957, No. 303, § 6.

### §§ 387-389. Repealed. 1995, No. 188 (Adj. Sess.), § 4.

#### HISTORY

Former §§ 387-389. Former § 387, relating to the composition of the wage board, was derived from 1957, No. 303, § 7, and amended by 1963, No. 193, § 9; 1965, No. 35, § 2.

Former § 388, relating to the powers of the wage board, was derived from 1957, No. 303, § 8.

Former § 389, relating to the scope of assistance provided by the Commissioner to the wage board, was derived from 1957, No. 303, § 9.

### § 390. Repealed. 2001, No. 47, § 8.

#### HISTORY

Former § 390. Former § 390, relating to report was derived from 1957, No. 303, § 10.

### § 390a. Repealed. 2001, No. 47, § 3.

#### HISTORY

Former § 390a. Former § 390a, relating to investigation of student employment, was derived from 1967, No. 177, § 3, eff. April 17, 1967.

### § 391. Modification of wage orders

The Commissioner with the approval of the Governor may from time to time propose modifications of or additions to any regulations included in any minimum wage order which the Commissioner deems appropriate.

**Historical Citation**

Amended 2001, No. 47, § 4.

## HISTORY

**Source.** 1957, No. 303, § 11.

**Amendments—2001.** Section amended generally.

## ANNOTATIONS

**1. Modifications.** Modification to regulation reflecting 1959 increase of minimum wage to \$ 1.00 per hour could not be made by Commissioner without reconvening wage boards, since such modification could not have been included legally in original order within meaning of this section. 1958-60 Op. Atty. Gen. 121.

**§ 392. Court proceedings**

If any employer covered by a wage order has failed to comply with the wage order within 10 days after receiving notification of the violation, the Commissioner shall take court action to enforce the order.

**Historical Citation**

Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 2001, No. 47, § 5.

## HISTORY

**Source.** 1957, No. 303, § 12.

**Amendments—2001.** Amended section generally.

—1973 (Adj. Sess.). Substituted "Superior" for "county" preceding "court" in the second sentence.

**§ 393. Employers' records**

Every employer, subject to the provisions of this subchapter or of any regulation or order issued thereunder, shall keep a true and accurate record of the hours worked by each employee and of the wages paid to him or her and shall furnish to the Commissioner upon demand a sworn statement of the same. Such records shall be open to inspection by the Commissioner, his or her deputy, or any authorized agent of the Department at any reasonable time. Every employer subject to the provisions of this subchapter or of any regulation or order issued under the provisions thereof shall keep a copy of them posted in a conspicuous place in the area where employees are employed. The Commissioner shall furnish copies of such orders and regulations to employers without charge.

## HISTORY

**Source.** 1957, No. 303, § 13.

**§ 394. Penalties**

(a) Any employer, subject to this subchapter or any regulations or orders issued thereunder, or any of the employer's agents or the officer or agent of any corporation who pays or permits to be paid or agrees to pay to any employee engaged in any industry or occupation less than the applicable rate to which the employee is entitled under this subchapter, shall be fined not more than \$100.00 for each day the employee is paid less than the rate required under this subchapter.

(b) Any employer or any of the employer's agents or the officer or agent of any corporation who fails to keep the records required under this subchapter or refuses to permit the Commissioner to enter the place of business or who fails to furnish the records to the Commissioner upon demand shall be fined not more than \$100.00.

**Historical Citation**

Amended 2001, No. 47, § 6.

**HISTORY**

Source. 1957, No. 303, § 14.

Amendments—2001. Section amended generally.

**ANNOTATIONS**

Cited. Cited in *Lanphear v. Tognelli* (1991) 157 Vt. 560, 601 A.2d 1384.

**§ 395. Civil actions**

If any employee is paid by an employer less than the applicable wage rate to which the employee is entitled under this subchapter, the employee shall recover, in a civil action, twice the amount of the minimum wage less any amount actually paid by the employer, together with costs and reasonable attorney's fees, and any agreement between an employer and an employee to work for less than the wage rates is no defense to the action.

**Historical Citation**

Amended 2001, No. 47, § 7.

**HISTORY**

Source. 1957, No. 303, § 15.

Amendments—2001. Section amended generally.

**ANNOTATIONS**

Cited. Cited in *Lanphear v. Tognelli* (1991) 157 Vt. 560, 601 A.2d 1384; *United Paperworkers Local 340 v. Specialty Paperboard, Inc.*, 999 F.2d 51 (2d Cir. 1993).

**§ 396. Appeals from Commissioner's decisions**

(a) **Appeals to Superior Court wherein a civil action between the parties would be triable.** Any person aggrieved by any decision of the Commissioner may appeal to the Superior Court.

(b) **Procedure.** The court shall direct the record in the matter appealed from to be laid before it, hear the evidence, and make such order approving in whole or in part or setting aside in whole or in part the decision appealed from as justice may require, and may refer any matter or issue arising in the proceedings to the Commissioner for further consideration. However, in no case shall such an appeal operate as a supersedeas or stay unless the Commissioner or the court to which such appeal is taken shall so order.

(c) **Certifying record.** An order of court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.

(d) **Hearing.** The court may take evidence or may appoint a referee to take such evidence as it may direct and to report the same with findings of fact.

(e) **Costs.** In any proceedings under this subchapter, the court may make such award of costs as may seem equitable and just.

(f) **Appeal, Supreme Court.** Appeal from the decision of the Superior Court may be had to the Supreme Court.

**Historical Citation**

Amended 1971, No. 185 (Adj. Sess.), § 193, eff. March 29, 1972; 1973, No. 193 (Adj. Sess.), § 3; 1997, No. 161 (Adj. Sess.), § 17, eff. Jan. 1, 1998.

**HISTORY**

**Source.** 1957, No. 303, § 16.

**Revision note**—Substituted “Superior Court” for “in court of a county” as the catchline for subsec. (a) pursuant to 1973, No. 193 (Adj. Sess.), § 3. See note set out under § 71 of Title 4.

**Amendments**—1997 (Adj. Sess.). Subsec. (a): Deleted “within thirty days after the decision has been rendered” at the end of the second sentence.

Subsec. (d): Deleted “his” preceding “findings”.

—1973 (Adj. Sess.). Substituted “Superior” for “county” preceding “court” in the text of subsecs. (a) and (f).

—1971 (Adj. Sess.). Subsec. (f): Deleted “as provided in chapter 103 of Title 12” following “Supreme Court” at the end of the text.

**§ 397. Retaliation prohibited**

(a) An employer shall not discharge or in any other manner retaliate against an employee because: