

Employers Beware: NJ Adopts Comprehensive Wage Theft Law

By Kevin J. O'Connor and Shannon Azzaro

Employers in New York have, for years, dealt with a comprehensive wage theft law. Across the Hudson, New Jersey has now adopted what looks to be the most comprehensive wage theft law in the entire country. Employers are well advised to act quickly to ensure their pay practices are defensible to eliminate or reduce risk. Human resources professionals and managers should be trained on the anti-retaliation provisions of this new law to avoid missteps.

Under New Jersey's Wage Theft Act (the "Act"), the Legislature has now permitted treble damages and criminal penalties for non-payment of wages to New Jersey employees. Additionally, the new law allows for a legal presumption of retaliation for any adverse employment action that occurs for months after an employee complains about their wages. The presumption is rebuttable, but to do so the employer must come forward with clear and convincing evidence. The law further extends the statute of limitations to six years and allows for reinstatement of employees.

Treble Damages and a New Six Year Statute of Limitations

The Act allows for an employee who prevails in an action against an employer for unpaid wages to recover the wages owed plus liquidated damages in an additional amount equal to up to 200 percent, plus reasonable costs and attorneys' fees.

Moreover, the Act extends the statute of limitations from two years to six years (three years beyond that which is permitted under the Fair Labor Standards Act).

Anti-Retaliation Protections in the Act

The Act serves to give a cause of action to an employee who is discharged or otherwise subjected to an "adverse employment action" in retaliation for making a wage theft claim. Employers are required to offer reinstatement of an aggrieved employee or take other action needed to remediate the retaliation. Significantly, the Act allows for a rebuttable presumption that the adverse employment action is tied to a complaint about wages where the event occurs within ninety days of the employee filing a complaint with the New Jersey Department of Labor and Workforce Development or bringing a claim or action for violation of wage

payment laws. The presumption can only be rebutted by clear and convincing evidence that the adverse action was taken for other non-retaliatory reasons. In essence, employees who make complaints about their wages are relatively insulated from termination.

Criminal Penalties

The Act contains expansive provisions criminalizing the failure to pay wages. Employers who knowingly fail to pay an employee the full amount of wages agreed to or required by law, or who retaliate against an employee for making an internal or external complaint, participating in a proceeding relating to wage payment laws, or because the employee has informed another employee about wage and hour rights under state law, violate the Act. The penalties could range as follows:

- *First Violation* – the employer is guilty of a disorderly persons offense and faces a fine of \$500 to \$1000, imprisonment of 10 to 100 days, or both;
- *Second Violation* – the employer is guilty of a disorderly persons offense and faces a fine of \$1000 to \$2000, imprisonment of 10 to 100 days, or both; and
- *Third and Subsequent Violations* – the employer is guilty of a crime of the fourth degree and faces a fine of \$2,000 to \$10,000 imprisonment of up to 18 months, or both.

Under the Act, an employer's failure to pay compensation as agreed within thirty days of the date due is a disorderly persons offense and carries a \$500 fine and 20 percent penalty. Subsequent offenses carry penalties of \$1000 plus 20 percent of wages owed. Effective November 1, 2019, employers who have been convicted of violating the law on two or more occasions are guilty of the crime of a "pattern of wage nonpayment" which is a third-degree offense.

It's a whole new era in New Jersey for employers. Employers must be ready for an increase in wage and hour claims, and be cautious whenever disciplining employees to be sure those employees have not made any recent complaints of wage and hour violations. Employers would be well advised to carefully audit and review their compensation, timekeeping, and wage and hour classification policies and procedures to ensure compliance with the myriad laws and regulations that can trip up even the most cautious employer.

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