September 11, 2019

Major Changes to New Jersey's Wage and Hour Law Pose Greater Risks for Employers

On August 6, New Jersey enacted sweeping amendments to its wage and hour laws to create more significant consequences for employers that fail to pay employees properly or retaliate against employees who complain about improper payment of wages. For the most part, these amendments are effective immediately.

The New Jersey Wage Payment Law (NJWPL) and the New Jersey Wage and Hour Law (NJWHL) were amended in several significant ways:

- Employers that fail to pay employees' full wages or take a retaliatory action against those who complain (whether to the employer, a union representative, or the Department of Labor (DOL)) about their failure to pay all wages owed "shall be" guilty of a disorderly persons offense and may face criminal sanctions.
- A first offense carries monetary penalties of $500 to $1,000 (up from $100), imprisonment for 10 to 90 days, or both. Subsequent violations carry monetary penalties of $1,000 to $2,000, imprisonment for 10 to 100 days, or both. Separate offenses occur for each week in which there is a violation. In addition, employers will be assessed a 20% penalty of wages owed for any offenses. The DOL will use any fines and penalties collected for "enforcement and administration costs" of the wage and hour division.
- The amendments also make it a third-degree crime of "pattern of wage nonpayment" if an employer has been convicted of a wage and hour law violation on two or more occasions. The pattern of wage nonpayment carries a $15,000 penalty and may subject the employer to other criminal sanctions (including proceedings to dissolve the corporation, forfeit its charter, revoke any franchises, or revoke the certificate to conduct business in New Jersey) or impose a sentence of imprisonment for three to five years. For first and second offenses, there is a presumption against imprisonment. However, this presumption does not apply if the pattern of wage nonpayment provision is triggered.
- In a civil action (whether brought by an employee or the DOL, on an individual or collective basis), employers may be liable for liquidated damages up to 200% of the wages owed, in addition to the previous remedies of unpaid wages and attorneys' fees and costs. In effect, there are now treble damages for violations of these wage and hour laws. Employers may assert a good faith defense against the imposition of liquidated damages for a first violation if they can demonstrate that their failure to pay the wages was inadvertent and in good faith, they had "reasonable grounds" to believe they were not violating the law, and they acknowledge the violation and pay wages owed within 30 days of a notice of the violation.
- The statute of limitations under the NJWHL has been expanded from two years to six years for claims for unpaid wages (including overtime and other compensation) or unlawful discharge or retaliation.
- There will be a rebuttable presumption that an employer knowingly retaliated against an employee in violation of the NJWPL or NJWHL if an employer takes any adverse action against an employee within 90 days of an employee's complaint.
- Employers must provide current employees and all new hires with a notice of rights under the state's wage and hour laws that includes an explanation of how to file a claim or take action to vindicate their rights.

The amendments are effective immediately, except the crime of pattern of wage nonpayment provisions, which become effective November 1.

With the extension of the two-year statute of limitations to six years and the ability of employees to recover liquidated damages, attorneys' fees, and costs, employers must be even more diligent to ensure that they are paying their employees properly and on time, and that their records are in order. Employers should consider a review or audit of their pay practices in order to ensure compliance with the new amendments and be sure to distribute the new applicable notices.

Would you like to receive our *Employment and Labor Quarterly Update?* Sign up here.

Authors



Francine Esposito

Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com