

Management Alert



New Jersey Passes Landmark Anti-Wage Theft Law

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Seyfarth Synopsis: On August 6, 2019, Acting New Jersey Governor Sheila Oliver signed into law [A-2903/S-1790](#), described as an Act “concerning enforcement, penalties, and procedures for law regarding failure to pay wages.” The Act makes a number of critical changes to several New Jersey civil and criminal laws, adding a variety of increased employee protections and harsher penalties. These additions make New Jersey’s anti-wage theft law one of the strongest anti-wage theft protection laws in the [country](#).

The primary and immediate impact of the Act’s amendments to various wage-payment laws is the institution of increased penalties for failure to pay wages, up to and including criminal punishments. Below is a summary of the Act’s key provisions:

Liquidated Damages for Violation of Wage Payment Law

Among other changes, the Act primarily amends key provisions to the Wage Payment Law, the Equal Pay Act, and the Wage and Hour Law. With amendments to each of these laws, the Act provides that if an employer is found to owe wages to an employee that is due unpaid wages or wages lost due to the retaliatory action, the employee is allowed to recover the wages owed *plus* liquidated damages in an additional amount equal to 200 percent of the unpaid wages, plus reasonable costs of the action and attorney’s fees to the employee.

The Act does provide for a good faith defense. The payment of liquidated damages is not required for a first violation by an employer who demonstrates that the employer’s action was taken in good faith with reasonable grounds for believing that the action was not a violation, and the employer admits the violation and pays the amount owed within 30 days.

Increased Statute of Limitations

The Statute of Limitations for commencing an action to recover wages is significantly extended from two to **six** years

Expansion of “Employer” to Include Successor Entity

The Act also expands the definition of “employer” to encompass any successor entity or successor firm of the employer, meaning that a successor entity can also now be liable for the purported wage violations of its predecessor.

The Act provides that a rebuttable presumption that an employer has established a successor entity shall arise if the two share at least two of the following capacities or characteristics:

- (1) perform similar work within the same geographical area;
- (2) occupy the same premises;
- (3) have the same telephone or fax number;
- (4) have the same email address or Internet website;
- (5) employ substantially the same work force, administrative employees, or both;
- (6) utilize the same tools, facilities, or equipment;
- (7) employ or engage the services of any person or persons involved in the direction or control of the other; or
- (8) list substantially the same work experience.

Furthermore, with regard to a failure to pay employees pursuant to a contract, a client employer and a labor contractor providing workers to the client employer shall now be subject to joint and several liability and shall share civil legal responsibility for any violations of the provisions of the wage and hour laws, including provisions regarding retaliatory actions against employees for exercising their rights under the laws.

Employees to Be Given Statement of Rights

The Act also provides that current employees and each newly hired employee shall be provided a written copy of a statement of employee's rights under the stage wage and hour laws, which an explanation of how to file a claim or take an action pursuant to those laws. The Act also calls upon the Department of Labor and Workforce Development to promulgate a model statement of rights and make it available to the public on its website.

Penalties and Criminal Punishments

The Act also amends the violations provision of the Wage Payment Law. A violation will be found if the employer *knowingly* fails to pay the full amount of wages to an employee agreed to or required by law; OR the employer takes a retaliatory action against an employee by discharging or in any other manner discriminating against the employee, because the employee either:

- made a complaint to his/her employer, to the commissioner, or to an authorized representative, that the employer has not paid the employee the full amount of wages due, OR
- testified or is about to testify in any proceeding relating to the wage-payment laws, OR
- because the employee has informed any employee of the employer about rights under State laws regarding wages and hours worked.

Fines and punishments will be imposed as follows:

For First Violation: the employer shall be guilty of a disorderly persons offense and shall be punished by a fine of \$500 to \$1,000, or by imprisonment for 10-90 days, or by both the fine and imprisonment.

For Second Violation: the employer shall be guilty of a disorderly persons offense and shall be punished by a fine of \$1,000 to \$2,000, or by imprisonment of 10 to 100 days, or by both the fine and imprisonment.

For Third or subsequent Violation: the employer shall be guilty of a crime of the fourth degree, and be punished by a fine of \$2,000 to \$10,000 or by imprisonment of up to 18 months, or by both the fine and imprisonment.

Each week in which an violation of the Wage Payment Act occurs shall constitute a separate and distinct offense.

Anti-Retaliation Provisions

The Act also carves out an additional remedy in the case of an adverse action such as discharge or other discriminatory action taken against an employee in violation of the Wage Payment Law, the Wage and Hour Law, or a contract to pay employees. Employers shall be required to offer reinstatement to the discharged employee and take other actions as needed to correct the retaliatory action. In addition, an employer taking an adverse action against an employee within **ninety** days of the employee filing a complaint with the Department of Labor and Workforce Development, or a claim or action being brought for a violation of the wage payment laws, shall raise a rebuttable presumption that the employer's action was taken in retaliation against the employee. The presumption may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons.

Crime of Violation Of Contract to Pay Employees

The Act further amends the New Jersey Code of Criminal Justice to provide that it will constitute a disorderly persons offense if an employer agreed with an employee to pay wages, compensation or benefits and fails to pay wages when due or fails to pay compensation as required by law within **thirty** days due. The Act further imposes a fine of \$500, plus a penalty equal to 20% of the wages owed for the first offense. Penalties for subsequent violations will be assessed at \$1,000 plus a penalty of 20 percent of wages owed. Employers who have been convicted of violating the law on two or more occasions are guilty of the crime of "pattern of wage nonpayment" which is a crime in the third degree.

Effective Date

The majority of the Law's provisions take place immediately, except for the addition of the crime of pattern of non-payment of wages, which will take effect on the first day of the third month following enactment, which is November 1, 2019.

Conclusion

These are drastic changes to New Jersey wage and hour law, to which all employers with operations in New Jersey should be mindful of going forward. Given the increased penalties, when coupled with the largely expanded statute of limitations period for wage and hour violations, a spike in wage and hour lawsuits in New Jersey may very well be forthcoming. As such, a renewed review of pay, timekeeping, and classification practices and policies for employers with operations in New Jersey is well advised.

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