
New Jersey's Recent Wage Theft Law May Be a Trap for the Unwary Employer

By Vanessa M. Kelly / Aug 19, 2019

On August 6, 2019, New Jersey amended its Wage and Hour Laws to strengthen its Wage Theft Law substantially expanding civil and criminal penalties for the nonpayment of wages and acts of retaliation. Of concern to employers and management groups, including the New Jersey Business and Industry Association, the new law may penalize and impose criminal sanctions for inadvertent mistakes, and greatly expands liability for joint and successor employers. The new law also expands the statute of limitations from two to six years for administrative claims, imposes liquidated damages, and includes a presumption of "retaliation" upon employers who take an adverse employment action against an employee who files a complaint of wage violations in close proximity to the adverse event. The law went into effect immediately, except for a provision of the law that creates the new crime of "Pattern of Wage Nonpayment," which will be effective on November 1, 2019.

The key components of the new law are:

- Employers must provide written notice to current employees and all new hires of the employee's rights under New Jersey's wage and hour laws. This requirement is in addition to the mandatory wage and hour posters employers must display in the workplace.
- The statute of limitations for filing unpaid minimum wage and unpaid overtime pay is now six years for all claims, including those initiated by the Commissioner of Labor in the Wage Collection Section.
- The Labor Commissioner has expanded jurisdiction and may now handle claims for unpaid wages up to \$50,000 (up from \$30,000), may impose liquidated damages and adjudicate retaliation claims. The Commissioner also has expanded audit rights.
- Liquidated damages of 200% of wages owed are now authorized and may only be avoided for first time violators by showing: the mistake was inadvertent and in good faith; a reasonable ground for believing the act or omission was not a violation; an employer acknowledgment of violation; and payment of all amounts due within 30 days.
- Employers who fail to maintain adequate records face a rebuttable presumption that the employee's claims are true unless the employer can show "good cause" for its failure to present records or there was a natural disaster responsible for record destruction.
- There is also a rebuttable presumption of retaliation if the employer takes an adverse employment action against an employee within 90 days of that employee filing an external or internal complaint about unpaid wages. This presumption may be overcome upon a showing of "clear and convincing" evidence of a legitimate reason for the adverse action unrelated to the complaint.
- Retaliation is a "disorderly persons offense" and the penalties include both civil and criminal remedies:
 - First violation – fine between \$500 and \$1,000 and/or imprisonment between 10 and 90 days.
 - Second and subsequent violations – fine of \$1,000 to \$2,000 and/or imprisonment between 10 and 100 days.
 - Reinstatement or other corrective action ordered.
 - Payment of all wages due because of the wrongful action.
 - Payment of liquidated damages of not more than 200% of wages owed.
 - In administrative actions, the Commissioner may assess penalties for retaliatory actions of up to \$250 for a first violation and up to \$500 for subsequent violations.
- The new law expands civil and criminal penalties for wage violations and expands individual liability.
 - Failure to pay wages, compensation or benefits may be a disorderly persons offense
 - "Compensation and Benefits" include health, pensions, medical treatment, disability, and workers' compensation benefits.
 - A finding of a disorderly persons offense will impose liability upon the employer to pay the employee the wages owed, 200% of that amount as liquidated damages, and reasonable costs. Employers may also be fined \$500 and assessed a penalty of 20% of wages for a first offense, and for subsequent offenses, a fine of \$1,000 per offense and 20% penalty.
 - Officers of a corporation and those that manage the corporation will be deemed "employers" under the new law and may be held criminally and civilly liable.
- The law creates a new crime -- Pattern of Wage Nonpayment, a crime of the third degree which takes effect on November 1, 2019. Employers who have been convicted of wage and hour violations on two or more occasions may be found to exhibit a "pattern of wage nonpayment."
- The law expands joint and successor liability holding staffing companies and their clients liable for wage and hour laws as well as certain criminal violations. Successor liability is easier to establish under the new law as well.

In the face of this expansive legislation, employers may wish to review their pay and recordkeeping practices and ensure they are providing written notices and have all required employee rights posters displayed in the workplace. Additionally, they may want to implement practices to promptly correct any payroll errors and provide for oversight and review of personnel decisions that are "adverse actions."

Please contact Vanessa Kelly or the Clark Hill attorney that you work with if you have questions about compliance with the new law or have any other legal needs.