

New Jersey Employers Beware: NJ Wage Theft Law Greatly Expands Potential Employer Liability for Wage and Hour Violations

The New Jersey Wage Theft Act (WTA) recently became law. The statute amended the state's wage and hour laws and considerably increased the remedies, damages and liabilities for New Jersey employers.

The new WTA took effect immediately and is likely to have a drastic impact on employers operating in New Jersey as it increases the potential liability of employers who fail to properly pay employees.

Below are the key changes:

Limitations Period: The statute of limitations for claims under New Jersey's wage and hour laws increased from two (2) to six (6) years, including claims alleging retaliation under the WTA.

Liquidated Damages and Attorneys' Fees: Prior to the new WTA, liquidated damages were not available under New Jersey law for wage and hour claims. Now, an employer who fails to pay wages to an employee and is found liable must pay the full amount of wages due and liquidated damages equal to 200% of the wages due, costs and attorneys' fees.

Employer's Defense: The WTA provides a defense for first-time offenders to avoid liquidated damages entirely if the employer can demonstrate that the act or omission was an inadvertent error made in good faith and the employer had reasonable grounds for believing that the act or omission was not a violation. However, to benefit from this protection, an employer must admit to a violation and pay the full amount owed within 30 days of notice of the violation.

Enhanced Penalties: When the New Jersey Commissioner of Labor and Workforce Development finds that an employer has violated the WTA, fines are imposed of \$500 to \$1,000 and 20% of the wages owed for an employer's first offense. For any subsequent offenses, the employer will be fined \$1,000 to \$2,000 per offense and a 20% penalty. Violators may also be subject to imprisonment.

Notice Requirement: Employers must provide all employees with a new written notice advising them of their rights under New Jersey's wage and hour laws. The Department of Labor and Workforce Development will prepare a model notice for employers to use.

Retaliation: The WTA expanded the definition of retaliation to include a presumption of retaliation for any adverse action against a complaining employee within 90 days of an employee filing a complaint with the Commissioner of Labor in the Wage Collection Section or in civil court. This presumption may be rebutted only by clear and convincing

evidence that the action was taken for other permissible reasons.

Records Inference: An employer that fails to provide employee wage and hour records required by law will face a rebuttable presumption that an employee's allegations of legal violations of the wage law are true.

Public Disclosure: The New Jersey DOL will now maintain a public website listing each wage claim in which an employer is found to be in violation by the Department or has a court judgment for a wage violation.

Joint and Successor Liabilities: In addition to corporate and individual liability, the WTA also imposes liability for joint or successor employers. Employers and labor contractors are subject to joint and several liability for violations of state wage and hour laws, as well as potential criminal violations.

The WTA will likely increase civil litigation under New Jersey state law. The new wage law now permits individuals to bring collective actions on behalf of "similarly situated" employees. Even though a single employee may not have suffered substantial damages, there is a tremendous incentive for the plaintiff's bar to file lawsuits on a collective basis because even small liabilities on an individual basis can result in major liabilities when employee legal claims are collectively litigated. This is especially true considering the amendments provide for liquidated damages, expand the liability period to six years and permit the award of attorney's fees.

Employers should take immediate action to reduce risk and exposure by reviewing wage and hour practices, record keeping procedures and handbooks to ensure they are in compliance. Please contact Bond, Schoeneck & King's New Jersey-admitted attorneys if you have any questions or would like additional information regarding the new law and other legal developments.



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