

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 State has imposed treble damages and criminal penalties for non-payment of wages to New Jersey employees. Additionally, the Act 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, a higher burden to clear than the standard "preponderance of the evidence" primarily used in civil lawsuits. Perhaps most critically, the Act extends the statute of limitations from two years to six years.

Treble Damages and a New Six Year Statute of Limitations

Under the Act, violating employers are subject to enhanced civil penalties. Of particular note is that the WTA now provides for treble damages: A violator must pay wages owed plus liquidated damages equal to 200% of the wages owed. In addition, the WTA imposes fines of \$500 and 20% of the owed wages for a first offense (which increase to \$1,000 and 20% of the owed wages for each subsequent offense), and administrative penalties ranging from \$250 for a first violation to \$500 for every subsequent violation. A first-time offender can avoid paying liquidated damages if it can be established that (1) it acted in good faith; (2) it had reasonable grounds for believing that the act was not a violation, *and* (3) it acknowledges the violation and pays the wages owed within 30 days of the notice of violation.

Employers found to have violated New Jersey's wage laws are also subject to criminal penalties under the WTA. A violating employer commits a disorderly person's offense, and, based on the number of violations, must pay fines ranging from \$500 to \$2,000 and/or serve jail time of 10 to 100 days.

Anti-Retaliation Protections in the Act

Under the Act, any employer that takes an adverse action against an employee within 90 days of the employee's filing a wage complaint will automatically face a presumption that the employer's action was retaliatory for having filed the complaint. This presumption "may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons." An employer who is found to have retaliated against an employee for filing a complaint commits a disorderly persons offense and, upon conviction, will be subject to a disorderly persons offense, fines in the range of \$100 to \$1,000, payment of the employee's lost wages, damages equal to 200% of the lost wages, and reasonable costs of the action to the employee. If the employee was discharged, the employer will be required to offer reinstatement unless prohibited by law.

Additional Changes: Records Inference and Public Disclosure

Under the new law, a factfinder may now infer that an employer that fails to



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present sufficient records in response to a wage claim has employed the complainant for the period of time alleged and for the claimed amount of wages. Without proper records, it is up to the employer to demonstrate “good cause” for the failure to provide such records—which still leaves open the defense of the underlying claim. The Act is noticeably silent on what “good cause” entails in this context, but does state that this rebuttable presumption shall not apply to any employer that can demonstrate it does not have sufficient employee records as a result of “a natural disaster.”

The Act provides that a public website maintained by the New Jersey Department of Labor and Workforce Development will list each wage claim in which an employer is found to be in violation of one or more state wage and hour laws in a final determination by the commissioner of Labor and Workforce Development or a court judgment. These listings will contain information including, but not limited to, the name and address of the employer, the nature of the claim, the number of affected employees, the amount of wages owed, and any penalties resulting from the wage claim.

The Act requires employers to provide all new employees with a written statement of their rights under New Jersey’s wage and hour laws and an explanation of how to file a claim in the event of a violation. As of the date of this LawFlash, no model template is in existence, but the Department of Labor and Workforce Development is expected to develop a model notice.

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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