

## **Alert** | Labor & Employment



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### **New Jersey Implements Steep Sanctions for Wage Payment Violations**

On Aug. 6, 2019, New Jersey Acting Gov. Sheila Oliver signed a new “wage theft” law that expands the fines, penalties, and damages to be imposed for violations of the state’s wage payment law for an extended six-year statute of limitations period. The law takes effect immediately.

#### **Civil and Criminal Penalties**

Under the new law, violators are required to pay the wages owed to the employee and liquidated damages equal to 200% of the wages owed. Liquidated damages are not required, however, for a first violation if the employer can show that (a) the violation was an inadvertent error made in good faith, (b) the employer had reasonable grounds for believing that the act was not a violation, and (c) the employer acknowledges the violation and pays the wages owed within 30 days of the notice of violation. In addition to the possible liquidated damages, there are also fines of \$500 and 20% of the owed wages for a first offense. Fines increase to \$1,000 and 20% of the owed wages for each subsequent offense. Additional administrative penalties up to \$250 for a first violation and \$500 for each subsequent violation can also be assessed by the New Jersey Department of Labor and Workforce Development.

On top of the employer’s civil fines, penalties, and damages, the law also provides for criminal penalties. Any corporate officer or employee responsible for the wage payment violation commits a disorderly persons offense. A first violation comes with a fine of \$500 to \$1,000 or jail time of 10 to 90 days, or both a fine and jail. For subsequent violations, the fines range from \$1,000 to \$2,000 and jail time ranges from

10 to 100 days, and a fine and jail time can both be imposed. And, employers who violate the bill three or more times are guilty of a new third-degree crime of “pattern of wage nonpayment.”

Employers are also subject to a wage payment audit as an alternative to, or in addition to, any of these other sanctions. If an audit reveals additional violations, the employer and corporate employees may be subject to additional fines, penalties, damages, and jail time, as well as additional audits. Ultimately, the New Jersey Department of Labor and Workforce Development may issue a stop work order or permanently revoke the employer’s operating licenses for repeated violations.

### **Additional Retaliation Protection**

The new law also addresses retaliation against an employee who files a wage payment complaint. The law will presume that retaliation has occurred if an adverse action is taken within 90 days of the filing of a wage complaint. Retaliation against an employee who files a wage payment complaint also subjects corporate employers to a disorderly persons offense and employer fines in the range of \$100 to \$1,000 plus payment of wages lost as a result of the retaliation and liquidated damages of 200% of the wages lost. In addition, if an employee is discharged in retaliation for filing a wage payment complaint, the employer is “required” to offer reinstatement, unless prohibited by law, along with all lost wages as a result of that discharge.

### **Expansive Application of New Law**

The law is not limited to failure to pay wages. It also includes failure to pay compensation and benefits, which include health benefits, pensions, medical treatment, disability benefits, and workers’ compensation. And, an employer’s failure to provide sufficient employee records in response to an employee’s wage claim results in a rebuttable presumption that the employee worked for the employer for the period of time asserted and for the amount of wages alleged in the employee’s claim.

The law imposes joint and several liability on both an employer and a labor contractor providing workers to the employer. This liability cannot be waived or contractually shifted from the employer to the labor contractor.

Violations and names of violating employers will be made public on a website, according to the law. Employers are also required to provide new hires and employees with a written copy of a statement of their rights under New Jersey’s wage-and-hour laws and an explanation of how to file a claim or take other action in the event of an alleged violation.

### **Takeaways for Employers**

Employers should ensure that all employee benefits, payroll, human resources, and accounting departments are updated as to this new law and the penalties it imposes (including possible individual criminal liability). Employers should also implement processes to monitor wage payments and quickly correct any inadvertent errors. Once notified of an error or complaint regarding employee wages, compensation or benefits, employers need to investigate promptly and coordinate with legal counsel to ensure compliance with the law.

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