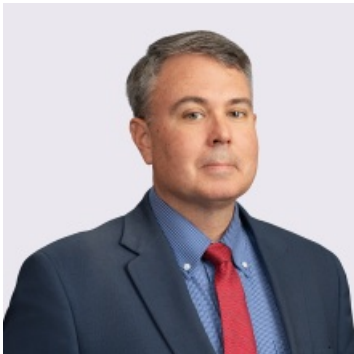


New Jersey Wage Theft Law Increases Employer Liability for Wage and Hour Violations

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Wage and Hour

New Jersey's Wage Theft Act (WTA) significantly enhances employer penalties under the state's wage and hour laws by adding liquidated damages and providing extra protections for employee retaliation claims. In addition, the WTA makes client-employers and labor contractors jointly and severally liable "for any violations of the provisions of State wage and hour laws," including those on retaliation. In fact, the WTA declares any waiver of its "joint and several liability" section "void and unenforceable."

Acting Governor Sheila Oliver signed the WTA into law on August 6, 2019. Except for certain provisions on criminal offenses, the WTA went into effect immediately.

The WTA revises the "State wage and hour laws," defined as those in 34:11-2, *et al.*, the New Jersey Wage and Hour Law (34:11-56a, *et al.*), and those concerning claims before the New Jersey State Department of Labor and Workforce Development (34:11-56.58). Revisions to the State Wage and Hour Laws provide:

- A rebuttable presumption against employers who fail to maintain records required by law or take adverse action(s) against employees who raise internal or external complaints;
- Increased jurisdictional limits for the New Jersey Department of Labor and Workforce Development's Wage Collection Section (WCS);
- Increased subject-matter jurisdiction for the WCS;
- Liquidated damages awards of up to 200 percent of wages owed against employers for violations of the State Wage and Hour Laws; and
- A six-year statute of limitations to raise claims (including for retaliation) under the State Wage and Hour Laws.

The WTA also provides factors for determining a rebuttable presumption of successor liability in claims before the WCS.

Wage and Hour Laws: Statute of Limitations, Retaliation, Penalties

The WTA extends the statute of limitations for actions under the State Wage and Hour Laws from two years to six years.

The WTA creates a rebuttable presumption of retaliation if the employer takes an adverse action against an employee within 90 days of any conduct protected under the State Wage and Hour Laws. The presumption may be overcome only by "clear and convincing evidence" that the employer took the alleged retaliatory action for permissible reasons.

Penalties for violations of the State Wage and Hour Laws are as follows:

- Fine of \$500 to \$1,000 for a first violation (or imprisonment of 10 to 90 days); and
- Fine of \$1,000 to \$2,000 for a second or subsequent violation (or imprisonment of

10 to 100 days).

Violators may be subject to both fines and imprisonment.

An employer that violates the State Wage and Hour Laws may be liable for liquidated damages in an amount up to 200 percent of the wages due to the employee (including wages lost as a result of retaliation). The New Jersey General Assembly, however, included a final amendment at passage that provides first-time offenders the opportunity to avoid liquidated damages entirely if the employer can demonstrate that the violation was “an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation[.]” To benefit from such protection, the employer must admit to a violation and pay the full amount owed within 30 days of notice of the violation.

In addition, the employer may be required to offer reinstatement to the employee.

Wage Collection Section Actions

Under the WTA, the WCS has the authority to investigate State Wage and Hour Laws claims of up to \$50,000. The previous cap was \$30,000.

The WTA provides that claimants may litigate retaliation claims before the WCS. Such hearings were previously limited to claims for wages. The WCS may impose an additional 200 percent of any award as liquidated damages, in addition to any costs and fees. An employer found liable for wages or damages must pay within 10 days of such determination. The same six-year statute of limitations for claims under the State Wage and Hour Laws also applies to claims before the WCS.

Additionally, under the WTA, it is a rebuttable presumption “that the employee worked for the employer for the period of time and for the amount of wages as alleged in the wage claim[.]” if the employer fails to provide sufficient records as required to be maintained under the State Wage and Hour Laws. The rebuttable presumption does not apply for records lost due to natural disasters.

The WTA also establishes a rebuttable presumption of successor liability in claims before WCS. While it is unclear whether it applies in the courts, the WTA provides that “an employer has established a successor entity” if the predecessor and alleged successor share at least two of the following:

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.

Indeed, equipment sales from one entity to another within the same geographic region may be factored into a decision of successor liability under New Jersey law.

Employee Notice; Labor Department Reports

The WTA requires employers to provide to each current and newly hired employee a notice of employee rights under the State Wage and Hour Laws. The notice also must explain how to file claims. The New Jersey Department of Labor and Workforce Development (NJDLWD) will prepare a model notice for use.

The WTA permits the NJDLWD to contract with community-based and legal organizations to distribute information on employee rights to day laborers, migrant laborers, temporary laborers, and other workers.

Violations will be made public on the NJDLWD's website. The WTA requires the NJDLWD to compile information on wage claims and collections. In addition to general statistics on the number of complaints, investigations, license suspensions, and so on, the NJDLWD website will display the following about violations of State Wage and Hour Laws or court judgments about such violations:

1. The name and address of the employer;
2. The nature of the claim;
3. The number of employees affected, together with the amount of wages owed; and
4. Any rulings regarding penalties, license suspensions, or revocations resulting from the claim.

Employer Action

The New Jersey Wage Theft Act likely will lead to increased litigation under state law. Currently, under the federal Fair Labor Standards Act, litigants benefit from a three-year statute of limitations for bring claims and the possibility of liquidated damages awards. The New Jersey law seeks to double the potential liability employers can face in wage and hour litigations.

Employers should ensure they are in compliance with the State Wage and Hour Laws and consider conducting a self-audit to identify any employees misclassified as exempt, non-exempt, individual contractors, and so on.

Jackson Lewis attorneys are available to answer inquiries regarding the new law and other legal developments.

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