

OUR INSIGHTS

Indiana Wage Law Amendments Become Effective on July 1, 2015

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Two significant changes to Indiana's wage laws will become effective on Wednesday, July 1, 2015. First, liquidated damages will no longer be mandatory when an employer violates Indiana's Wage Payment or Wage Claims statutes. Instead, a court must find that the employer was not acting in good faith to award liquidated damages. Second, as long as all other requirements of the Indiana Wage Assignment Statute are met, Indiana employers now will be expressly allowed to make wage deductions for: (a) the sale of goods or food sold to an employee; (b) the purchase price of uniforms and equipment; (c) reimbursements for education or employee skills training; and (d) payroll or vacation pay advances.

House Enrolled Act 1469, which was signed by Governor Mike Pence following the 2015 legislative session, effectuates these changes by amending Indiana Code sections 22-2-5-2 and 22-2-6-2.

Liquidated Damages (I.C. 22-2-5-2)

Currently, employers in Indiana are subject to a mandatory penalty of 10 percent per day for each day the amount of wages due to an employee goes unpaid, up to an amount equal to double the amount of unpaid wages. This law has meant that an employer that did not pay all wages that were owed could be subject to a lawsuit for treble damages for the unpaid amount, even if the employer and the employee had a good faith dispute as to whether anything actually was owed. Moreover, even if the employer paid all the wages owed, but paid them 20 or more days late, the employee still could pursue a lawsuit solely for liquidated damages in an amount equal to twice the amount of the late paid wages. In that situation, the courts have had no discretion, but instead have been required to award the liquidated damages.

As a result of the amendment, liquidated damages no longer are mandatory. The statute now states that if a court finds that an employer "was not acting in good faith" when it failed to comply with the state's Wage Payment or Wage Claims statutes, the court shall order the employer to pay the employee as liquidated damages an amount equal to two times the amount of wages due to the employee.

The amended wording of the statute also appears to prevent an employee from bringing a claim solely for liquidated damages as a result of a late payment of wages. Specifically, the revised statute says that an employee can bring a claim in court to recover the amount of the unpaid wages. Assuming that a claim to

recover the unpaid wages now is a prerequisite to a claim for liquidated damages, there should be no basis for a liquidated damages claim when there are no unpaid wages to be recovered. The wording of the statute also seems to make it the employee's burden to prove that the employer was not acting in good faith, as opposed to making "good faith" an affirmative defense for which the employer would have the burden of proof.

Although this amendment offers welcome relief to employers, the statute still provides for the recovery of a reasonable attorneys' fee and court costs by a successful plaintiff. Attorneys' fees often are a driving force resulting in the filing of wage-related lawsuits, so the amended law will by no means eliminate this type of litigation. In addition, the phrase "acting in good faith" is not defined in the statute, so its meaning likely will be a subject of debate among the plaintiffs' bar and the defense bar.

Wage Deductions (I.C. 22-2-6-2)

House Enrolled Act 1469 also amends Indiana's Wage Assignment Statute. Among other things, this statute requires that an assignment by an employee to deduct certain amounts from his or her wages must be in writing, signed by the employee, agreed to by the employer in writing, and by its terms revocable at any time by the employee upon written notice to the employer. In addition, the statute enumerates the specific reasons for which a wage assignment may be made.

Employers have often used the statute's provisions allowing a deduction to be made for repayment of a loan by an employer to an employee to cover a variety of situations, such as for the costs of uniforms or tuition reimbursement. Now, however, the statute contains a specific provision allowing for an assignment to be made for the purchase of uniforms and equipment necessary to fulfill the duties of employment, as long as the total amount of wages assigned does not exceed the lesser of \$2,500 per year or five percent of the employee's disposable weekly earnings. The amended statute also allows a wage assignment to be made for reimbursement for education or employee skills training, unless the education or training benefits were provided in whole or in part through a federal, state, or local economic development incentive program.

Although the Wage Assignment Statute currently allows for the purchase price of merchandise sold by the employer to the employee to be deducted from an employee's wages, the language has been expanded to also include goods or food sold by the employer to the employee for the employee's benefit, use, or consumption.

A wage assignment to repay a payroll or vacation pay advance also is now expressly allowed under the statute. Finally, the amended statute caps the interest rate that may be charged on amounts loaned or advanced to employees that are subject to wage assignments. The cap is the bank prime loan interest rate or any successor rate plus 4 percent. Based on a prime rate of 3.25 percent, that would make the maximum interest rate 7.25 percent.

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