

Philadelphia's Tough New Anti-Wage Theft Law Effective July 1

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Effective on July 1, 2016, the City of Philadelphia's Wage Theft Law imposes higher penalties for violations than currently are imposed by the state's anti-wage theft law, provides for a private right of action for alleged violations, and creates the position of Wage Theft Coordinator within the City's Managing Director's Office.

While wage theft (typically refers to the intentional non-payment or underpayment of earned wages) is already subject to penalty under Pennsylvania's Wage Payment and Collection Law (43 P.S. § 260.1 *et seq.*), Philadelphia's new ordinance increases employers' compliance obligations and potential penalties for violations.

Former Philadelphia Mayor Michael Nutter signed into law the City's first anti-wage theft ordinance ("Wage Theft Law") on December 1, 2015.

Overview

The Wage Theft Law defines "wage theft" as any violation of the Pennsylvania Wage Payment and Collection Law or the Pennsylvania Minimum Wage Act where work has been performed in Philadelphia "or the employment contract underlying the violation is made in Philadelphia." In essence, wage theft includes any instance of wages, or a portion thereof, being earned but not paid to the earning employee.

Individuals or "authorized organizations," such as labor unions, may bring claims pursuant to the ordinance by filing a complaint with the Wage Theft Coordinator. Any such complaint must be filed within three years from the date the wage theft allegedly occurred. The employer named in such a complaint must file an answer, after which a factual investigation is conducted.

Relief under the ordinance is available where the amount of unpaid wages claimed falls between \$100 and \$10,000, while claims for amounts falling outside of this range must be made under the state Wage Payment and Collection Law or the Pennsylvania Minimum Wage Act.

A written adjudication, including "written findings of fact and conclusions of law," is to be provided by the Wage Theft Coordinator within 60 days from the date the answer is received, or within 110 days from receipt of the complaint, whichever is earlier. Where wages are determined to be owed, an order will be entered instructing that payment be made. Any final decision of the Wage Theft Coordinator may be appealed within 30 days of the decision by either the complainant or respondent to a court of competent jurisdiction.

Significantly, the Wage Theft Law provides for a private right of action that does not require a complaint to be filed administratively first. Rather, an action brought pursuant to the ordinance may be filed in court at any time within the applicable statute of limitations.

Potential Penalties

In addition to the earned wages claimed, administrative penalties may be assessed against an employer for each violation. Where an employer has been ordered to pay wages, each week wages remain unpaid constitutes a separate violation for which penalties may be imposed. The ordinance further provides that the City of Philadelphia "may deny, suspend or revoke any license or permit issued or pending" where the party seeking licensure, such as an employer, has been found liable for a violation of the Wage Theft Law, the Pennsylvania Wage Payment and Collection Law, or the Pennsylvania Minimum Wage Act.

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The Wage Theft Law also includes an anti-retaliation provision and a posting requirement, and provides explicitly for joint and several liability amongst two or more named respondents.

Implications for Philadelphia Employers

The Wage Theft Law adds significantly to the obligations already imposed under Pennsylvania state law. Employers in Philadelphia should be mindful of the host of new obligations associated with compliance and penalties and review and revise their policies and practices to ensure they are compliant with the new law.

If you have any questions, please contact the Jackson Lewis attorney with whom you regularly work.

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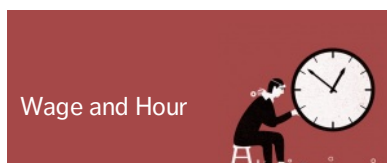
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