A First of Its Kind: Manhattan D.A.'s "Worker Protection Unit" Raises Many Questions for Employers

Insights
2.28.23

Manhattan District Attorney Alvin Bragg Jr. recently announced a new prosecutorial branch tasked with investigating and prosecuting wage theft and other forms of worker harassment and exploitation throughout the borough. The Worker Protection Unit, announced on February 16, will serve as part of a broader effort from the D.A.'s office to hold corporations accountable for workplace wrongdoing. It will pursue criminal charges against corporations – and potentially individuals – who engage in wage theft and disregard worker safety. In addition, D.A. Bragg announced the first-ever Stolen Wage Fund for Manhattan victims of wage theft, which will be funded through the D.A.'s Criminal Justice Investment Initiative and operated in partnership with the New York State Department of Labor. These developments raise many questions for NYC-based employers – what do you need to know?

Worker Protection Unit

According to Cornell University's Worker Institute, wage theft in New York accounts for almost $1 billion in lost wages each year, affecting thousands of workers. While the D.A. previously focused on wage theft in the construction and real estate development industries, the Worker Protection Unit's will expand on the offices efforts and focus on other industries such as hotels, fast food and restaurants, and healthcare facilities.

In its press release, the D.A.'s office said that the new Unit will not only prosecute individuals and corporations that steal wages, but will take it a step further to recover stolen wages and subsequently debar guilty corporations from city contracts. The D.A.'s office will also set up a hotline for employees to report wage theft or dangerous work conditions directly.

Stolen Wage Fund

Additionally, in conjunction with the new Worker Protection Unit, the D.A. announced the Stolen Wage Fund. This Fund will partner with the State Department of Labor to help victims of wage theft who come forward after a criminal case has concluded and case-related restitution has already been distributed. Additionally, the Fund will assist employees of companies that declare bankruptcy or otherwise cannot repay stolen wages.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

The D.A.'s office will invest $100,000 initially to create the first Stolen Wage Fund for Manhattan victims of wage theft, which can increase to $500,000 after the completion of a pilot period.

The Department of Labor will vet individual claims and then calculate stolen wages. The claims are subject to a few of requirements:

1. Claims must be for work performed in Manhattan; and
2. Claims must be filed within one year of a criminal conviction for theft and filed under penalty of perjury.

After one year, the D.A.'s Office will assess the Fund's success and will provide additional funding as it sees fit.

Grand Larceny Statute Amendments

Going perhaps a step further than the D.A.'s Office, New York Assemblymember Catalina Cruz and State Senator Neil Breslin recently introduced a bill that would amend New York's Grand Larceny statutes to include wage theft. This would allow prosecutors to increase felony charges brought for wage theft allegations. D.A. Bragg has voiced his support for the New York Legislature to pass this bill during the current legislative session.

What This Means for Employers

The announcement from the D.A.'s office will raise alarm bells for Manhattan employers – but leaves them with more questions than answers. First and foremost, there is no guidance yet on what "wage theft" resulting in criminal prosecution means. Will any wage and hour violation result in criminal prosecution, even technical or accidental violations? Or will there be a higher standard, such as an employer acting purposefully, willfully, or recklessly? And what types of laws result in "wage theft" issues? Will it be any violation of the Fair Labor Standards Act or New York Labor Law? What about local New York City laws, like the Fair Workweek laws that apply to fast food and retail employers?

Additionally, it's unclear how the D.A. will choose to prosecute individuals. What will be the standard for individuals, and what types of individuals will the D.A. bring charges against? Will the D.A. go after high-level executives? Or more line-level supervisors? Will managers have to worry that complaints from employees about pay and overtime issues could result in criminal prosecution?

And will the D.A. expand coverage to independent contractors and gig workers? And how often will a worker have to work within Manhattan in order to come under the D.A.'s jurisdiction?

This development could also affect workplace investigations by human resources representatives into wage and hour issues, as these investigations could result in criminal liability – for both the company and for individuals being questioned. Moreover, companies may have to alter how they

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

company and for individuals being questioned. Moreover, companies may have to alter how they respond to inquiries from employment agencies if they face potential criminal exposure and these agencies share information with the Manhattan D.A.

Lastly, it is easy to imagine that other New York City District Attorneys will follow the lead of the Manhattan D.A. so as not to be one-upped.

Conclusion

We'll continue to monitor the progress of the newly introduced bill and any updates from the D.A.'s Office on the progress of the Worker Protection Unit and Stolen Wage Fund. Make sure you are subscribed to Fisher Phillips Insight System to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our New York City office.

Related People

Seth D. Kaufman
Partner
212.899.9975
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Henry Thomson-Smith
Associate
212.899.9977
Email

Service Focus

Wage and Hour

Related Offices

New York

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.