

KNOWLEDGE IS POWER: HERE'S HOW PHILADELPHIA BUSINESSES CAN COMPLY WITH THE CITY'S NEW EMPLOYMENT PROTECTIONS

Insights
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Philadelphia employers now face more investigations and stiffer punishment under a new law the mayor approved last week. The POWER Act, signed on May 27 and taking effect immediately, adds sweeping worker protections concerning wages, paid sick leave, and retaliation for workplace complaints. It also enhances the Philadelphia Department of Labor's enforcement powers while increasing penalties and damages against employers who violate the city's worker protection laws. Here are five key provisions employers should review plus a four-step action plan for compliance.

The Bigger Picture

In the last decade, Philadelphia has granted more workplace protections to workers and heightened compliance requirements for employers, including [wage requirements](#), mandatory [paid sick leave](#), a "[fair workweek](#)" law, and a [domestic worker bill of rights](#). In 2020, the city created its own Department of Labor (DOL) and vested it with investigatory and enforcement powers. Now with the latest legislation, called [the POWER Act](#), the city aims to make its DOL an active and impactful workplace regulator.

Key Provisions

1. Expanded "Wage Theft" Powers

The new law expands the Philadelphia DOL's authority to investigate complaints of wage theft, which includes violations of state and federal wage laws. It empowers a Wage Theft Coordinator to investigate claims and issue

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orders for employers to pay back wages and penalties. Notably, if an employer fails to produce required records, the law creates a presumption that the employer violated the law, absent clear and convincing evidence to the contrary.

2. Expanded Domestic Worker Protections

The law enhances the city's 2020 Domestic Worker Bill of Rights, which requires breaks and authorizes paid time off to domestic workers. Philadelphia law also mandates that employers record major domestic employment terms in a written contract describing, for example, job duties, pay rates, work schedule, leave, and rest periods.

- Under the new law, employers also must execute the employment contracts no later than the first day of work, codify any changes, and provide several weeks' advance written notice of termination to avoid owing severance.
- Employers must also provide domestic workers written notice of their rights.
- The law also expands employer requirements regarding work hours, meal breaks, and paid and unpaid leave.
- Like the new wage theft protections, domestic worker recordkeeping violations raise a presumption that the employer violated the law.

3. Enhanced Paid Sick Leave Protections And Penalties

Some Philadelphia workers have been entitled to accrue paid sick leave under local law since the COVID-19 pandemic. Once in effect, the POWER Act authorizes civil penalties of up to \$2,000 per violation for covered employers who violate the city's sick leave rules, as well as liquidated damages payable to employees. Employers will now need to keep detailed, up-to-date records of employees' sick time or face civil penalties.

4. Enhanced Retaliation Protections

The law prohibits employers from taking any adverse action against a worker for engaging in protected activity, such as inquiring about their rights, opposing or complaining about an alleged violation, filing a lawsuit, or participating in an investigation. The new law presumes an employer has retaliated if the employer takes an adverse action against a worker – or a close relative – within 90 days of any protected

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activity. The city's DOL is authorized to investigate and fast-track retaliation complaints.

5. Expanded City And Private Enforcement and Shaming Powers

The law gives more power to the city's DOL to investigate suspected violations of these worker protection rules. It authorizes the DOL to demand documents and testimony and to directly handle alleged violations. In doing so, the DOL can now assess liquidated damages in an amount equal to the monetary damages it finds to be due. It can also issue a civil penalty of \$2,000 for each violation.

- The City Solicitor's Office can file a lawsuit seeking these damages, as well as other appropriate relief. Notably, the city may bring an action on behalf of one employee, but it is also authorized to expand its allegations to a larger group of workers.
- The law also adds a significant "shaming" mechanism by authorizing the department to list certain "bad actors" on a website and in a City Council report, if they have three or more violations or failed to comply with any remedies or deadlines for a violation. Any employers who qualify for the "bad actor list" can have their commercial activity license or other licenses revoked by the city's Department of Licenses and Inspections.
- The law also gives employees, or an entity representing the employees, the right to file a private lawsuit. The statute of limitations for a private lawsuit is three years.

4 Top Employer Action Items

Employers with workers in Philadelphia should consider taking the following four action steps in order to keep up with the new law.

1. Keep Accurate Records

The POWER Act presumes employers violate the law when they fail to keep records. Therefore, you should keep detailed, accurate, and up-to-date records of employees' wages, hours, leave accruals, and other conditions of employment required under the act. This also minimizes the uncertainty of computing back wages owed to employees. For employers of domestic workers, avoiding civil penalties and severance pay now requires you to reduce all conditions

of employment to writing and to provide advanced written notice of termination.

2. Provide Written Notice To Employees Of Their Rights

Employers must provide written notice to employees of their rights under the new act and existing Philadelphia employment laws. Violations of these notice requirements may result in civil penalties and toll the statute of limitations for any administrative or civil proceedings. Therefore, you should check the city's website for existing notice posters and consult with experienced labor and employment attorneys to provide the appropriate notice to employees.

3. Notify And Train Your Onsite Managers

The best defense to complaints and investigations is often proactive training and prevention at the ground level. Your on-site managers are critical to your compliance strategy, so they should be trained on the law's requirements and should know who to contact with questions.

4. Have A Plan In Place For A City DOL Investigation

Philadelphia employers should expect an increase in the number of investigations as well as a more aggressive approach. Investigations can move quickly, and employers will have a short time to respond to the DOL's requests. You can be proactive by designating a team in advance to handle investigations and interact with the DOL.

Conclusion

We will continue to monitor developments under these new sweeping enforcement powers, so 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 about whether your policies comply with workplace and other applicable laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Philadelphia office](#).