

Wage Wars – Philadelphia's Wage Theft Ordinance Goes Into Effect

Insights

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On July 1, 2016, the City of Philadelphia's new Wage Theft Ordinance went into effect. In substance, the Ordinance provides employees who fall within the scope of the Ordinance another means for seeking to recover unpaid wages (*i.e.*, "wage theft" under the Ordinance), it creates the position of wage theft coordinator in Philadelphia, and it imposes new compliance obligations on employers who are subject to the Ordinance. Under the Ordinance, "wage theft" encompasses a violation of any federal or state law "regulating the payment of wages . . . where the work is performed in Philadelphia or the employment contract underlying the violation is made in Philadelphia."

Where an employee has been the alleged victim of "wage theft" in an amount between \$100.00 and \$10,000.00 he or she may file a complaint with the wage theft coordinator. After a complaint is filed and served on an employer, the employer is obligated to file an answer with the wage theft coordinator within thirty (30) days. The answer, in part, must "include all available records of the hours worked by the complaining employee or employees, the amounts paid to those employees, and any credits or deductions that may have been lawfully taken." Within either sixty (60) days of an answer being filed or one hundred twenty (120) days of a wage theft complaint being filed, the wage theft coordinator is obligated to "issue a written adjudication of the" wage theft complaint which must "include findings of fact and conclusions of law." If the wage theft coordinator concludes an employer violated the Ordinance, an order will be entered requiring the employer to pay the wages.

Outside and in addition to the process for filing a complaint with the wage theft coordinator, an employee or authorized agent, which is defined in the Ordinance to include labor organizations, may file a lawsuit "in any court of competent jurisdiction" seeking to recover wages that are allegedly owed under the Ordinance. A party is not required to first exhaust their potential remedies with the wage theft coordinator before filing a lawsuit. Of particular importance, if an employer is found to have violated the Ordinance, in addition to the unpaid wages, the court is required to award "costs, reasonable attorney's fees, and [statutory] penalties" of up to \$2,300 for each violation of the

reasonable attorney fees, and [statutory] penalties – of up to \$2,000 for each violation of the Ordinance where no “good faith contest of the wages owed exists.” The statute of limitations for filing either a complaint with the wage theft coordinator or a lawsuit, pursuant to Ordinance, is three years. Similar to other wage and anti-discrimination statutes, an employer is prohibited from retaliating against an employee who files a complaint with the wage theft coordinator or a lawsuit seeking to recover unpaid wages.

Finally, the Ordinance requires employers in Philadelphia to provide employees with notice of their rights under the Ordinance. In part, an employer may comply with the notice obligation by “displaying” this poster “in a conspicuous and accessible place” in the workplace. If five percent or more an employer’s workforce first language is something other than English, the poster must appear in this language as well. In addition to the poster, employee handbooks must include information explaining to employees their rights under the Ordinance.

For employers in Philadelphia, the Ordinance imposes new and, to a large extent, burdensome statutory obligations. Employers subject to the Ordinance should immediately review their handbooks to ensure they are complying with the notice obligation under the Ordinance and post the notice issued by the city in their workplace. This includes determining, based on the number of employees whose first language is not English, whether the notice must be in any languages other than English.

In addition to the notice obligations, employers must be prepared to deal with a new wave of wage related lawsuits and respond to complaints filed with the wage theft coordinator. An employer who is found to have violated the Ordinance faces stiff statutory penalties and the potential for a fee award in the employee’s favor. Simply put, employers in Philadelphia should do everything in their power to limit their exposure to a claim under the Ordinance including carefully analyzing their pay practices to ensure they are compliant with federal and state wage laws. A contrary decision could and likely will be costly for employers in Philadelphia.