

ILLINOIS INCREASES PENALTIES FOR WAGE/HOUR VIOLATIONS

Insights

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On July 14, 2006, Illinois Governor Rod Blagojevich (D) signed legislation giving workers who allege they have not been paid their proper wages the right to pursue new penalties under the Illinois Minimum Wage Act. This law also grants the Illinois Department of Labor (IDOL) additional authority to investigate employers it suspects of violating Illinois wage and hour laws.

The Specifics

The law, which amends the Illinois Minimum Wage Act, strengthens Illinois' wage and hour laws in several ways. First, the law grants employees the right to collect a penalty of 2% of the amount they are underpaid per month for the length of the violation. This penalty applies to employers who 1) fail to pay overtime; 2) pay less than minimum wage; or 3) otherwise fail to pay employees the wages to which they are entitled. Prior to the passage of this provision, only the IDOL could pursue this penalty, which it seldom did.

In addition to this new penalty, if an employee's claim is successful, an employer must also pay the amount of the underpayment itself, as well as the employee's court costs and attorneys' fees. The IDOL may also assess a penalty of 20% of the total underpayment against employers for violations it finds to be "willful," "repeated," or done with "reckless disregard" for the law. Finally, if an employer fails to follow the IDOL's demand to pay wages due to an employee, the Department may also collect a penalty of 1% of the amount of the underpayment per day.

In addition to increasing the penalties for employers who violate Illinois wage and hour laws, this amendment also enhances the powers of the IDOL to enforce the law. Specifically, the IDOL may now subpoena witnesses and written records regarding any matter it is investigating. If an employer refuses to comply with an IDOL

subpoena, the Director of the IDOL may now commence proceedings to hold that employer in contempt of court.

Your Best Defense

Wage and hour suits have been increasing at a rapid rate over the past several years. In fact, these claims now outnumber discrimination lawsuits against employers. The passage of these amendments will only add fuel to the fire. Although a penalty of 2% may not initially seem significant, remember that the penalty begins to run the month after an employer fails to pay proper wages, not from the date that the IDOL finds an employer has violated the law.

Therefore, if an employer failed to pay its employees \$3,000.00 in overtime pay in January of 2004, for example, if the IDOL finds a violation in July of 2006, the employer will already owe an additional \$1,800.00 in penalties. In addition, the employer must also pay the amount of the underpayment itself, as well as the employees' court costs and attorneys' fees. Thus, an initial underpayment of \$3,000 may cost an employer a total of nearly \$10,000.00, and even more if the IDOL determines that the violation was willful.

What can you do to protect your company from these new penalties? In this case, the best strategy is to ensure that your pay procedures comply with all Illinois wage and hour laws. In particular, you should make sure that employees are paid on time, not permitted to work "off the clock," and that all employees who are classified as exempt actually meet the tests for exemption under Illinois law and the federal Fair Labor Standards Act.

If you are approached by an employee or an attorney who claims your company has failed to pay proper wages, seek legal counsel and address the situation immediately. Given that two of the Illinois Minimum Wage Act's penalties are assessed on a monthly basis, and that you may also have to pay an employee's court costs and attorneys' fees, waiting to address the issue will only result in increased penalties if the IDOL determines that the law has been violated.

Conclusion

These amendments to the Illinois Minimum Wage Act greatly increase the incentives for employees to sue their employers for unpaid wages. Accordingly, experts anticipate a substantial increase in the amount wage and hour litigation in Illinois. That means that it's more important than ever before to ensure that your company is in compliance with all applicable wage and hour laws.

This Labor Alert is intended to provide an overview of the more important aspects of this new law, not to provide legal advice for any specific factual situation. For more information contact any of the lawyers in our Chicago office at 312.346.8061.

