



# New Colorado Law Will Soon Criminalize Wage Violations

Insights

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Under a new law signed by Governor Jared Polis yesterday, Colorado employers will soon face potential criminal charges for failure to pay wages. Once the new law takes effect on January 1, 2020, you will need to ramp up your wage and hour compliance efforts or risk facing criminal penalties. How exactly can Colorado employers avoid becoming felons?

## Background And Summary Of New Law

Under current Colorado law, an employer may be found guilty of “wage theft” if it willfully refuses to pay a wage claim or falsely denies the amount or validity of a wage claim. House Bill 1267, which passed the House on April 10 and the Senate on April 24, redefines wage theft as “criminal theft.”

This means that potential wage theft will soon be reviewed and subject to the same penalties set forth in Colorado’s criminal theft statute. Under the new law, an employer that willfully refuses to pay wages, or falsely denies the amount of a wage claim, commits petty theft, which is a misdemeanor. However, if the wage amount is over \$2,000, the employer may be found liable for a felony theft offense.

## Particulars Of New Law

There are several details about the new law with which you should familiarize yourself in order to best understand its impact.

## Definitions Of Employee And Employer

The bill defines an “employee” as any person performing labor or services for the benefit of an employer. The relevant factors in determining employee status include the degree of control the employer may or does exercise over the person.

The bill defines “employer” using the same definition as the Fair Labor Standards Act, specifically including foreign labor contractors and migratory field labor contractors or crew leaders in the definition.

## Fines Boosted

According to Colorado’s Legislative Council, the current fine penalty for these wage offenses is \$300 for failure to pay wages, and \$500 for failure to pay the minimum wage. However, the fine penalty for theft ranges from \$50 all the way up to \$1 million, depending on the circumstance of the crime and the value stolen.

## Exemption Removed

The bill removes the existing exemption from criminal penalties applicable to an employer that is unable to pay wages due to Chapter 7 bankruptcy or other court action resulting in the employer having limited control over its assets. In other words, employers will no longer be able to escape liability by claiming certain financial conditions interfere with their ability to pay their workforce.

## What Are Your Next Steps?

As noted above, the effective date of the new law is January 1, 2020 – but you shouldn't be fooled into thinking that you can put off preparing for the changes. Colorado employers should use the rest of the year to review your pay practices and be mindful of new categories of exposure under Colorado wage law.

To avoid criminal exposure and appropriately prepare for any and all compliance requirements, you should contact counsel in the near future to discuss the new requirements of the law, particularly because of the potential media exposure that could result from criminal charges.

If you have any questions, please contact your Fisher Phillips attorney or any attorney in the firm's Denver office.

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