

Client Alert **Employment & Labor**

New Jersey and New York Further Strengthen Wage and Hour Laws to Protect Employees

Part 1 - NJ Developments

On August 6, 2019, New Jersey substantially amended its wage and hour laws in several critical respects by, among other provisions, expanding the statute of limitations, increasing damages and criminal penalties, strengthening anti-retaliation provisions and, overall, making it easier and more lucrative for employees to prevail on wage and hour claims. The new “Wage Theft” Law is effective immediately, except for one provision identified below. Here is a summary of the key provisions:

- **The Statute of Limitations Expands from 2 to 6 years** – The amendment triples the amount of time available to file claims for unpaid minimum wage and overtime payments, thereby tripling the potential damages available to employees. New Jersey now joins New York in implementing a 6-year statute of limitations for such claims. In contrast, the statute of limitations under federal law remains at 2 years or 3 years, depending on whether a willful violation was committed.
- **Liquidated Damages** – The amendment provides that, in addition to having to pay earned, unpaid wages, employers also will be liable for liquidated damages of up to 200% of the wages owed. Previously, liquidated damages were not available under New Jersey law. A limited “good faith” defense will be available to first-time violators under certain circumstances.
- **Anti-Retaliation** – The amendment expands the anti-retaliation provisions by making it a disorderly persons offense to take retaliatory action by discharging or otherwise discriminating against an employee for making a complaint, instituting an action, or informing other employees about their rights concerning wages and hours of work.

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There is a rebuttable presumption of retaliation for adverse actions taken within 90 days of an employee filing a complaint with the Department of Labor or a court action. Liquidated damages are available for claims of retaliation.

- **Fines and Penalties** – It is now a disorderly persons offense for an employer to (i) knowingly fail to pay wages, compensation or benefits when due, (ii) take retaliatory action, or (iii) fail to pay agreed-upon wages within 30 days of the date when payment is due. An employer who commits any such offense must pay wages due plus 200% of that amount in liquidated damages, reasonable costs and attorneys’ fees, a fine of \$500 for a first offense (which increases for subsequent offenses) and, under certain circumstances, an additional penalty of 20% of wages due and/or imprisonment. The amendment provides for a broad definition of “employer” to include officers of a corporation and “any agents having the management of that corporation.”
- **Creation of a New Crime** – The amendment creates a new crime of “pattern of wage nonpayment” for a person convicted of violating certain provisions of the Criminal Justice Code and/or wage and hour laws on two or more occasions. Though this is classified as a “3rd – degree” crime, there is no presumption of non-imprisonment. This provision will become effective three months from the August 6 enactment date.
- **Joint and Successor Liabilities** – The amendment expands the circumstances under which organizations may now be held liable as joint or successor employers.
- **Failure to Maintain Records** – The amendment provides that employers who fail to produce required records are subject to a rebuttable presumption that allegations by the employee concerning the time period the employee was employed and the wages that are due are true.
- **Employer Notice Requirement** – The amendment imposes a new written notice obligation on employers. NJ employers will be required to distribute both to current employees and new hires a form the NJ Department of Labor and Workforce Development will publish.

Take Aways

Wage and hour compliance has long been a vulnerable area for employers, and New Jersey employers must now contend with wage and hour protections that are among the strongest in the nation. It is more imperative than ever for New Jersey employers to (i) properly classify workers, where warranted, as employees rather than as independent contractors, (ii) properly classify employees as exempt or non-exempt from overtime requirements, (iii) timely pay employees all wages, compensation and benefits due, including overtime, and (iv) maintain required wage and hour records for at least 6 years.

In Part II of this Alert, which will be published in September, we will address, among other recent employment law developments, New York State's enhanced wage-related protections.

Attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

Jill Turner Lever, Esq.

Client Alert Issue Author; Of Counsel, Employment and Labor Practice Group
jlever@sillscummis.com | (973) 643-5691

David I. Rosen, Esq.

Client Alert Issue Editor; Chair, Employment and Labor Practice Group
drosen@sillscummis.com | (973) 643-5558