

Wage Theft Update: Increased Efforts to Recover Lost Wages

Labor & Employment Workforce Watch

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Most employers are familiar with the basic tenets of the Fair Labor Standards Act (“FLSA”): generally an employer must pay covered employees a minimum wage and pay non-exempt employees overtime for hours worked over 40 in a workweek. Beyond that, the minefield of federal and state wage laws can be one of the most challenging areas for employers to navigate. Multistate employers must comply with varying requirements for pay frequency, notice requirements, recordkeeping obligations, and more. Now, both the federal and multiple state governments are compounding these challenges by increasing their enforcement efforts against alleged “wage theft” – the failure to pay employees all wages due to them. In some instances, employers’ good faith payroll mistakes could result in criminal charges, hefty fines, or liens on a company’s assets. Therefore, employers should be aware of the evolving patchwork of wage theft legislation across the country.

Federal Enforcement

Employees who believe they have not been paid all wages due can sue their employers for such wages. Alternatively, the United States Secretary of Labor has the authority to bring a lawsuit against employers to recover wages on behalf of employees. The Secretary of Labor may impose civil penalties against employers for willful or repeated violations, and may also seek injunctions to prevent future violations. Further, “willful violators” of the FLSA can face criminal prosecution, up to and including imprisonment.

Although the Department of Labor recovers millions of dollars in back wages for employees each year, some commentators believe these numbers are a small fraction of the potential claims. In May 2022, Democratic members of Congress introduced the Wage Theft Prevention and Wage Recovery Act ([H.R. 7701](#); [S. 4174](#)). According to the bill, American workers lose more than \$15 billion per year due to alleged wage theft. The proposed legislation would amend the FLSA to create uniform paystub, notice, and final payment requirements, and create civil penalties for minimum wage and overtime violations of \$22,030 per employee for initial violations and \$110,150 per employee for repeat or willful violations. Among various other enforcement mechanisms, the proposed bill would also direct the Department of Labor to refer willful violators to the Department of Justice for criminal prosecution and impose criminal penalties of \$10,000 per affected employee. Although the bill has not progressed beyond its introduction in both chambers of Congress, the expansive law highlights a growing push to pursue unpaid wages.

State Developments

At the state level, there is no one-size-fits-all penalty or enforcement mechanism for wage theft violations. For

example, Arizona allows employees to recover treble (3x) damages if their employer fails to pay all wages due. Meanwhile, the Illinois Attorney General has implemented its own wage theft taskforce.

Recently, there has been a flurry of new and pending state legislation targeting wage theft. For example, in California, [an employer's intentional wage theft](#) can be prosecuted as grand theft if the wages at issue exceed \$950 for a single employee or \$2,350 for two employees in a 12-month period. Effective January 1, 2023, [Colorado employers that fail to pay employees past-due wages](#) within 14 days of receiving notice of a civil action or administrative complaint are subject to a penalty equal to the *greater* of two times the amount of wages or \$1,000. These penalties increase for more egregious violations, and the Colorado law now classifies wage theft as a criminal misdemeanor. In Washington, [newly enacted legislation](#) allows employees to impose a lien on their employer's property to recover owed wages. As a result, an employer's failure to pay wages could expose the company's assets and accounts to liens. Other states are following suit and have proposed similar legislation, such as New York, which [nearly passed an expansive wage theft law](#) that also would have permitted employees to place liens on their employers' property.

Key Takeaways

The recent federal push to prevent wage theft is noteworthy and consistent with the Biden Administration's pro-employee, enforcement agenda. As states continue to bolster their local efforts to recover employees' wages and impose stricter penalties, employers should consider reviewing their payroll practices and increase the frequency of self-audits. Multistate employers should also continue tracking the evolving wage theft legislation, and ensure their wage payment practices remain compliant with changing state laws.

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