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Illinois State Legislators Authorize Increased Wage Theft Penalties

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Friday, May 28, 2021

On May 25, 2021, both houses of the Illinois General Assembly approved an **amendment** to the State’s Wage Payment and Collection Act (“the Act”). The change would require employers who violate the Act to pay damages of 5% of the amount of any underpayment of wages, compensation, or wage supplements for each month following the date of payment during which the amount(s) owed remain unpaid. This represents a 150% increase to the penalty, as the statutory rate before this amendment was 2%. The measure will take effect immediately upon signature by Governor J.B. Pritzker.

The **Act** covers private employers as well as local government units, including school districts, but exempts state and federal employees. It requires that wages for non-exempt workers be paid no less frequently than semi-monthly, and that executive, administrative, and professional employees, as defined by the federal Fair Labor Standards Act (FLSA) be paid on at least a monthly basis. It restricts the duration between the dates of wage earning and wage payment, depending on whether an employer’s pay period is weekly, bi-weekly, or semi-monthly, and sets forth specific rules for final payment of wages and compensation upon an employee’s separation from the employer. Notably, the Act requires that Illinois employers pay departing employees the full monetary value of all unused vacation accruals at the employee’s final rate of pay and prohibits any employment contract or policy from providing for forfeiture of earned vacation time upon separation. The Act also forbids employers from making any deductions from wages or final compensation unless they are required by law or valid order, for the benefit of the employee, with express written consent, or for certain statutorily authorized garnishments.

Failure to comply with the Act can cost an employer significantly: employees who are not paid in accordance with the mandatory timelines may file a complaint with the state’s Department of Labor or commence a lawsuit. In addition to recovery of any underpayments and damages, a prevailing plaintiff will also be entitled to costs and attorney’s fees, and the employer will also be subject to fines of up to \$1,000. If an employer’s violation of the Act is deemed willful or fraudulent in nature, the employer will be deemed guilty of a misdemeanor as well. Repeat offenders may be convicted of a felony.

The Act’s amendment changes only the severity of the penalty for non-compliance, not the substantive requirements imposed on employers. Nonetheless, now is a good opportunity for Illinois employers to ensure that their exposure is limited by making certain that their pay practices are fully compliant with the Act.

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