

NWSBA-EMPLOYMENT LAW COMMITTEE -OCTOBER 19, 2010

AMENDMENTS TO THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT

Illinois Wage Payment and Collection Act, 820 ILCS 115/1 *et seq.* (2010). (IWPCA)

Signed by Governor Patrick Quinn on July 30, 2010. Effective on January 1, 2011.

The IWPCA requires that employers pay their employees in Illinois compensation due them within a number of specific days following the pay period in which the compensation is earned. The IWPCA also requires employers to pay all employees who have quit or been terminated their “final compensation” at the time of separation, if possible, if not, by the next regularly scheduled payday for the employee. Final compensation means wages, salaries, earned commissions, earned bonuses, the monetary equivalent of earned (but unused) vacation and holidays and other compensation due the employee. The IWPCA also prohibits employers from withholding from wages any sums that an employee has not voluntarily authorized in writing to be withheld, except for tax and other withholdings required by law.

Broadened Definition of Employer Consistent with the IMWL/FLSA

The amendments make it clear that individual liability for officers or agents of the employer with day-to-day operational control is to be consistent with the definition of “employer” under the FLSA and IMWL, and does not require establishing a “knowing” violation. Section 13 allows for individual liability of officers or agents of the employer without day-to-day operational control upon establishment of a “knowing” violation.

Enforcement for Claims Under \$3000

The amendments permit IDOL to create a special administrative procedure for such “small claims” whereby a determination by the agency would be enforceable, absent an appeal. The details of the administrative proceeding will be defined in the Rules process. Given IDOL’s limited resources, this process is likely to be initiated for those cases in which an employer has been properly given notice of the claim but has ignored a notice of claim from IDOL, essentially resulting in a default judgment where appropriate.

Under the Administrative Review Act (ARA), final state agency decisions may be appealed to the state circuit courts which provides for a streamlined review of the administrative order, and generally no new evidence or testimony is allowed. As a result employers will have to fully try wage claims before the IDOL to preserve their rights and the IDOL’s decision will be subject to only limited court review. Prior to the amendment the employer could basically ignore the ruling and then wait until the IDOL sued in circuit court. Now the employer will have to comply with a final IDOL administrative decision (which when issued also subjects the employer to a \$250 administrative fee)

within 15 days or appeal the decision under the ARA within 35 days. Failure to do one or the other will result in a penalty payable to the IDOL of 20 percent of the wages found due to the employee, and a penalty payable to the employee of 1 percent per day. All penalties under the Act, except those owed to the employee, will be deposited into the Wage Theft Enforcement Fund which is a special fund created in the state treasury used only enforcement of the Act.

Private Right of Action

Employees may still take cases directly to State court regardless of the amount claimed.

Attorneys' Fees, Penalties and Retaliation

The amendments provide that any employee or group of employees may bring a private action on behalf of themselves *or a class* and shall recover all reasonable attorneys' fees, costs and damages of two percent of any underpayment of wages found due for each month during which they remain unpaid. The present statute caps the amount of the penalty to up to a maximum of double the wages owed.

Under the new amendment there is no requirement to make a demand in accordance with the Attorneys' Fees in Wage Actions which required a written demand for a definite amount at least 3 days prior to filing suit and then the employee must recover as least as much as demanded before attorneys' fees could be awarded. Under the amendments, attorneys' fees for prevailing plaintiffs will be mandatory and unlike the present statute will also be recoverable for a plaintiff alleging they were retaliated against for exercising their rights under the IWCPA.

Increased Criminal Penalties

The amendments now provide for enhanced criminal penalties for willful violations of the Act, particularly for repeat violators.

Amount Unpaid	Penalty	Usual Sentence/Fine
\$5,000.00 or less	Class B misdemeanor	Up to six months/\$1,500
More than \$5,000	Class A misdemeanor	Under one year/\$2,500
Second offense in 2 years	Class 4 felony	One to three years/\$25,000

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