Paying employees

How to ensure you don't run afoul of the Pennsylvania Wage Payment and Collection Law **Interviewed by Jayne Gest**

The Pennsylvania Wage Payment and Collection Law (WPCL) allows employees to bring a civil legal action against an employer if they are not paid for work performed and wages earned.

"The law, which has the aim of making sure employers are paying employees what is due when due, provides tough consequences for employers who don't comply," says Alfredo M. Sergio, an attorney with the Employment Law and Commercial Litigation groups at Semanoff Ormsby Greenberg & Torchia, LLC.

Smart Business spoke with Sergio about what employers need to know about the Pennsylvania law, including possible individual penalties for noncompliance.

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What are the highlights of the Pennsylvania Wage Payment and Collection Law?

The WPCL requires employers to notify employees at the time of hire of their rate of pay, the time and place of payment, and the amount of wage supplements and fringe benefits. Employers must pay wages on regular paydays designated in advance, and must pay non-salaried employees semimonthly or more frequently, unless stipulated in an employment contract. The statute has a fairly broad definition of wages, and includes all earnings of an employee, such as regular wages, overtime and commissions.

Employers are also responsible for keeping accurate records of hours worked and wages paid to each employee. If an employer is separating or terminating an employee from the company, the business must pay any wages due by the next regular payday.

If not, the employee can file a claim with the Department of Labor and Industry (which can take up the action on behalf of the employee), or the employee can file suit against the company.

What penalties can an employer and its personnel face for failing to comply?

Penalties for failing to pay wages can have a substantial impact on an employer, whether resulting from a private civil action or action by the Secretary of Labor and Industry. If an employee files a claim for unpaid wages, the employer must immediately pay any undisputed portion of wages.

If the employer or former employer fails to pay the claim or provide a satisfactory explanation of the failure to do so within 10 days after receipt of a certified notification (or ultimately, if the explanation is deemed unsatisfactory), the employer will be liable for a penalty of 10 percent of the portion of the claim found to be justly due, in addition to the principal. If the employer goes 30 days past the regularly scheduled payday without paying wages due an employee, the penalty increases to 25 percent of what is owed, or $500, whichever is greater, plus the principal.

Additionally, the WPCL provides for mandatory attorney's fees in the event a lawsuit is filed to recover wages. The court has some discretion regarding the amount, but if an employer has violated the law, the employer will end up paying the principal, the penalties and some degree of the employee's attorneys' fees, which can be significant. While criminal penalties are not always imposed, the law provides that an employer can be fined up to $300 or for imprisonment of up to 90 days, or both, for each offense. The nonpayment of wages to each individual employee constitutes a separate offense.

Can company personnel be held personally liable for noncompliance?

In addition to general and criminal liability, the WPCL provides for individual, personal liability for violations. This surprises many employers, as they generally think of the corporate structure as providing protection from individual liability or debts of the company.

The WPCL defines 'employer,' in part, as including a company's agent or officer. An agent or officer who has been involved in the decision to withhold wages can be found individually liable for violations of the law. This can even include the company CEO, president or CFO.

Employees often file wage claims not just against the company but also against individual officers of the company to place additional pressure on the employer and its principals to recover unpaid wages.

In what situations do employers most often violate The WPCL?

Among the biggest missteps to avoid are not paying an employee's wages when due and making deductions from the last paycheck when the employer is not entitled to do so.

Wage payment and collection issues often arise when an employee is separated from an employer, either because he or she quits or is terminated. These issues are arising more often in recent years in a difficult economy. A company might be closing, contemplating bankruptcy or laying off employees, but employers need to pay employees what is owed.

When a company files for bankruptcy, employees often seek to hold corporate officers personally liable for unpaid wages. Even short of bankruptcy, if an employer thinks it will not have enough funds to continue the employment of certain employees, it is dangerous to fire them and not pay what is due.

Wage payment and collection issues also often arise when an employee owes money to the company at the time of separation. While certain enumerated deductions from wages are permitted by the law, it is easy for an employer to think it is justified in making a deduction from a paycheck, only to run afoul of the WPCL (for example, the employer might want to deduct from a separated employee's final paycheck the cost of a missing piece of equipment or unreturned laptop).

In general, the employer needs to pay the full amount of wages owed to the employee and can pursue the disputed sums separately. The WPCL needs to be foremost in employers' minds because the consequences — including the danger of individual liability — can be severe. <<

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