

## What Employers Need to Know About New Jersey's Tough New Wage Theft Law

*Legal Alert*

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On August 6, 2019, New Jersey amended its Wage and Hour Law and adopted the new Wage Theft Act (WTA), creating one of the toughest wage and hour enforcement laws in the country. This law puts a high burden on employers and imposes significantly increased liability for employers who fail to pay wages owed, including potential jail time.

### **What does the WTA mean for employers?**

The use of the word “theft” in its title sends an unmistakable signal that New Jersey’s new law introduces employee-friendly provisions and imposes draconian measures on the employers. The most important aspects of the WTA for employers are that it:

1. Increases damages employees can recover for liquidated damages for wage theft to up to 200% of the unpaid wages, in addition to reasonable costs and the employee’s attorneys’ fees. This means employers can be liable to pay a successful employee three times any wage claim (the original wages owed plus 200%) in addition to the employee’s counsel fees and costs.
2. Creates a presumption of retaliation for any adverse employment action that occurs within 90 days after an employee complains about his or her wages. The presumption is rebuttable, but only if the employer produces “clear and convincing” evidence to show the adverse action was not retaliatory. This is a higher standard of proof for employers. Thus, an employer who fires, demotes, disciplines, or takes any other adverse action against an employee within 90 days after a qualifying complaint will be automatically presumed to have taken that action in retaliation for the complaint. To rebut that presumption, an employer will have to meet the high standard of proving by clear and convincing evidence it was not acting in retaliation for the complaint.
3. Extends the statute of limitations from two to six years.
4. Adds reinstatement as a remedy, such that an employer may be compelled to reinstate an employee who was terminated in retaliation for making a qualifying wage and hour complaint.
5. Establishes harsh penalties and criminal liability. Employers who knowingly fail to pay wages or retaliate face penalties for a first violation of \$500 to \$1,000 and imprisonment of 10 to 100 days for a disorderly persons offense, which increase for a second violation to fines of \$1,000 to \$2,000 and imprisonment of 10 to 100 days; and, in the event of a further violation, can be treated as a crime of the fourth degree and give rise to a fine of \$2,000 to \$10,000 with imprisonment of up to 18 months.
6. Expands the potential for successor liability.

### **What should employers do to protect themselves from liability under the WTA?**

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Now more than ever, employers have an incentive to ensure they carefully record and maintain documentation of employee hours. The cost of disproving an employee's claims about hours worked and the statutory presumptions reinforce that strong documentation is an employer's best first-line defense. This is particularly important because liability arises not just for failure to pay wages but also for failure to pay other elements of compensation, such as commissions, bonus, piecework compensation, and other benefits arising out of an employment agreement. Employers also need to update their employee notices — normally, Department of Labor and Workforce Development posters hung in common areas — to provide further information about these rights.

Employers facing wage payment claims should be prepared as the new law gives employees and their counsel greater leverage due to the expanded remedies, more time due to the extended statute of limitation, and an easier path to asserting retaliation claims. While this law may not necessarily lead to an uptick in the number of cases filed, as employees already had incentives to pursue these claims, it may well make these cases more difficult, and more expensive, to resolve.

*If you have any questions about this new law or would like an attorney to review your employment manual for compliance, please feel free to contact Adam Gersh or any other member of Flaster Greenberg's Labor & Employment Department.*

#### **ATTORNEYS MENTIONED**

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