

Illinois Nears 150% Increase to Wage and Hour Penalty

On May 25, 2021, the Illinois General Assembly approved an amendment to the Illinois Wage Payment and Collection Act (the Act). If approved by Governor J.B. Pritzker, 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. The new 5% penalty would represent a 150% increase to the existing 2% penalty. Given the likely increase in liability under the Act, Illinois employers should ensure that their exposure is limited by making certain that their pay practices comply with the Act. The Act requires, in part, the following:

- Wages for nonexempt workers must be paid no less frequently than semimonthly;
- Executive, administrative, and professional employees, as defined by the federal Fair Labor Standards Act (FLSA), must be paid on at least a monthly basis;
- The duration between the dates of wage earning and wage payment is restricted depending on whether a pay period is weekly, biweekly, or semimonthly, and sets forth specific rules for final payment of wages and compensation upon an employee's separation from the employer;
- Separated employees must receive the full monetary value of all unused vacation accruals at the employee's final rate of pay;
- No employment contract or policy may provide for forfeiture of earned vacation time upon separation; and
- Employers may only make deductions from wages or final compensation under certain conditions: if deductions are required by law or valid order, if deductions are made for the benefit of the employee, if the employer receives express written consent, or if certain statutorily authorized garnishments are deducted.

In addition to the proposed 5% damages penalty, employers who violate the Act may be liable for costs and attorneys' fees and fines of up to \$1,000, as well as criminal prosecution if the violation is deemed willful or fraudulent in nature.

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