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LEGAL ALERT

New Colorado Wage Law Expands Coverage And Enforcement Methods

The Wage Protection Act of 2014, signed by Gov. John Hickenlooper on May 29, expands the state's wage payment law to include additional types of claims, and grants the Colorado Department of Labor and Employment (CDLE) more authority and resources to pursue wage claims on behalf of employees. The law applies to nearly every private employer in Colorado who employs even a single employee.

Expanded Coverage

The Act amends Colorado's Wage Payment Act, which addresses paydays, deductions from pay, and payment of wages on separation from employment. It also amends a statute on minimum wages which provides a limited remedy for violations. Until now, the CDLE accepted complaints but only assisted the parties to try to resolve them informally.

The Act expands coverage to include claims by employees who have not separated from employment and adds attorneys' fees to the remedies that may be recovered by an employee paid less than minimum wage. It changes notice of claim requirements; adds a recordkeeping requirement; grants employees access to records; and provides the division with authority and resources to adjudicate claims and impose new fines and penalties.

Early Notice Of Claim Not Required

Beginning January 1, 2015, employees will no longer be required to make a written demand on their employers within 60 days to trigger penalties for nonpayment. Employees have two years to file a complaint with the division or a court, and notice of the filing of a complaint will trigger the penalty provision. Penalties will accrue from the date the wages were owed, rather than from the date of demand.

New Fines And Penalties

Also beginning January 1, 2015, the division may fine employers (but not employees) \$250 for failing to timely respond to a division notice. Failure or refusal to testify or produce records in response to a division subpoena will be a misdemeanor, punishable by a \$200 fine, 60 days in jail or both, and each day of a failure or refusal will be a separate offense.

The Act authorizes the division to collect fines and penalties without a hearing. Fines imposed by the division will be credited to a "wage theft enforcement fund" created to pay the division's costs.



Administrative Adjudication

The new law directs the division to establish an administrative procedure for adjudicating claims of \$7,500 or less for wages earned on or after January 1, 2015 and allocates funds for enforcement. Under the new procedure, the director of the division will notify the employer of the complaint and, unless the employer pays the full amount demanded within 14 days of the notice, the director will investigate the complaint and issue a determination within 90 days.

If the director determines that the employer owes wages, the director must issue a citation and assessment for the wages owed that includes fines and penalties. If, within 14 days of the determination, the employer tenders the wages determined to be due, the director may, but is not required to, waive or reduce the fines and reduce the penalties by up to 50%. The employee is not required to accept the amount tendered. Within 35 days of the determination, the employee may choose to terminate the administrative process and file a court complaint.

Alternatively, any interested party may appeal a determination within 35 days to a hearing officer to be selected by the director. The hearing officer's decision may be appealed to a court, and court review will be limited to appeal briefs and the record.

If a determination is not appealed and the employee does not terminate the process and file in court, the determination may be filed with a court and enforced as a judgment. Employees are not required to file an administrative complaint before filing suit.

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Additional Changes

Also effective January 1, 2015:

- an employee who receives less than the legal minimum wage will be able to recover attorneys' fees in a civil action in addition to the unpaid wages and costs of suit;
- employers must maintain records reflecting the information in an employee's pay statement for at least three years after payment of the wages and provide copies of the records to the division or to an employee on request (the division may fine an employer up to \$250 per month, per employee, up to a total of \$7,500 for violations); and

- if an employer makes final wages available at a work site or local office and an employee has not received them within 60 days of the date they were due, the employer must mail the check to the employee's last known address.

Before year end, the division will adopt regulations to interpret and enforce the Wage Protection Act. In the meantime, employers should develop recordkeeping procedures and begin educating managers and supervisors about the increased importance of responding promptly to wage complaints.

For more information contact any attorney in the Denver office of Fisher & Phillips LLP at 303.218.3650.

This Legal Alert provides a summary of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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