LEGAL ALERT

Cook County's New Wage-Theft Ordinance

Cook County recently increased the stakes on wage and hour compliance for employers that transact business with or receive tax incentives from the County. After May 1, 2015, Cook County may refuse to allow businesses to operate or do business with the County for up to five years, if the business has been found in violation of state or federal wage-payment laws, regardless of whether the employees lived or worked in the County.

Under the Cook County Wage Theft Ordinance, businesses accused of violating the Illinois Wage Payment and Collection Act, (Illinois Wage Act), Illinois Worker Adjustment and Retraining Notification, the Illinois Employee Classification Act, the federal Fair Labor Standards Act, (FLSA), or any other comparable state laws governing the payment of wages, also risk being found:

- ineligible to receive business licenses;
- barred from contracting with Cook County;
- in default under existing County contracts;
- ineligible for property tax incentives; and
- disqualified from receiving or renewing County business licenses.

The County's unanimous passing of this ordinance makes it the largest municipal entity in the United States to have passed such a measure. The City of Chicago passed a similar measure in 2013, which authorized the City Commissioner to deny business licenses to employers that have been found in violation of state or federal wage payment statutes. As a result, employers that do business in Chicago or Cook County risk financial ruin, if accused of violating state or federal law by a single employee – anywhere in the country – who may only have claimed a few hours' extra pay.

Details of the Ordinance

Under the terms of the Wage Theft Ordinance, absent a finding of "good cause," any person who within the prior five-year period has admitted or has been adjudicated liable in any judicial or administrative proceeding of committing a repeated or willful violation of federal or state wage payment laws will be ineligible to: a) enter into a County contract; b) respond to a request for proposal; or c) submit a bid to Cook County.

Further, any person seeking to contract with Cook County must attest under oath that the applicant has not been found to have willfully or repeatedly violated federal or state wage and hour laws anywhere in the country, either by a court or an administrative agency. The County Chief Procurement Officer may issue a notice of default under existing contracts whenever it learns that an employer has violated wage payment laws.

In addition, businesses requesting tax incentives from the County Assessor must certify, under oath, that for the past five years they have not been found in willful or repeated violations of such laws. Unless expressly waived by the County Board, any person who has been found liable for a repeated or willful violation of state or federal wage payment laws will be ineligible for such incentives.

If the County Assessor learns that an employer has violated these statutes within the prior five years, the Assessor may revoke the incentive or classification unless the employer cures the violation with 45 days. Business can also be ordered to repay the County for tax savings from past years. On the other hand, businesses do not need to voluntarily disclose violations that may occur after the business has already received a tax incentive from the County.

Finally, businesses located in unincorporated Cook County cannot do business without obtaining a two-year General Business License from the County. The County Director of Revenue may deny, revoke, or refuse to renew a license to any person who has been found to have either willfully violated or committed two or more violations of state or federal wage laws within the past five years.

Our Advice

Because the Wage Theft Ordinance opens the door for unions, activist groups, or the Department of Labor to target employers that operate in, contract with, or do business in Cook County, employers should consider auditing their wage and hour practices to protect their contracts, tax incentives, and business licenses. Before signing affidavits of compliance, businesses should make sure that they have not been found liable for wage and hour violations in any other location.

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Businesses that face possible disqualification under the Wage Theft Ordinance may request waivers, which may, for example, excuse technical violations when there has otherwise been good faith compliance efforts or remedial actions taken to correct prior violations. It remains to be seen how liberal County officials will be in granting waivers, or whether the County's enforcement of the Wage Theft Ordinance will survive possible legal challenges.

Moreover, employers facing wage payment or misclassification claims should consult with counsel regarding the potential repercussions under the Wage Theft Ordinance before agreeing to resolve wage payment-related disputes.

For more information visit our website at www.laborlawyers.com, contact your regular Fisher & Phillips attorney, or any of the lawyers in our Chicago office.

This Legal Alert provides an overview of a specific municipal ordinance. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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