

Amended D.C. Wage Theft Prevention Act Adds Employer Obligations and Onerous Penalties for Violations

Article By:

Leslie A. Stout-Tabackman

Kesia M. Brown

Jacqueline C. Tully

*The new **District of Columbia Wage Theft Prevention Amendment Act of 2014** makes sweeping changes to D.C.'s wage and hour laws, **greatly increasing employer obligations, penalties, and liability** and creating a cumbersome administrative hearing process.*

The Act, signed by Mayor Vincent Gray on September 19, 2014, comes on the heels of the Wage Theft Protection Amendment Act of 2013, which became effective on October 1, 2013, and included an expanded definition of “wages” and added a penalty of *triple damages* for violations of the D.C. Wage Payment and Wage Collection Law.

Effective Date

Although it was anticipated that the Act would go into effect in mid-December, the current effective date is expected to be January 14, 2015. A staff member in the Mayor's office reported that the law may not go into effect until late-February, or even late-March 2015, because a new Congress begins in January 2015. We will continue to monitor the Act's status and report any further information on this.

Key New Provisions

Written Notice Requirements for Current Employees and New Hires

Once the law goes into effect, employers are required to give employees written notice of their wages. This notice must include the following, both in English and in the employee's primary language:

- the employer's name, address, and telephone number;
- the employee's regular payday, rate of pay and basis of that rate; and

-
- any other information “as the Mayor considers material and necessary.”

The Mayor will provide employers with a template of this notice within *60 days of the 2014 Act's effective date*.

Employers are required to issue a written notice with the above information to *each employee within 90 days of the Act's effective date*. Thereafter, employers must provide the notice to all employees at the time of hire or any time the employer's or employee's information changes.

Temporary staffing firms have different notice requirements from other employers under the Act. Like other employers, these firms must provide written notice. However, the required content of the notice is tailored to the temporary staffing industry and includes such information as the specific rate of pay for an employee's assignment and the location and name of the staffing agency's client to which the employee is assigned.

Recordkeeping and Posting Requirements

In addition to the recordkeeping requirements under D.C.'s Minimum Wage Act, employers must now keep a record of the “precise time” an employee works each day. Prior to this new requirement, employers need only to record the total hours an employee worked each day (e.g., 8 hours). The 2014 Wage Theft Act requires employers to ensure that employees' actual working time is tracked more accurately, to the minute (e.g., 9:03 a.m.-12:05 p.m. and 12:35 p.m.-5:00 p.m.).

The 2014 Wage Theft Act also amends recordkeeping requirements for the D.C. Accrued Sick and Safety Leave Act of 2008. Employers must keep not only records of an employee's hours worked, but also the amount of paid leave taken by each employee. These records must be maintained for at least three years and the requirements apply to *both exempt and non-exempt employees*.

The 2014 Act maintains the requirement that employers post a copy or summary of the Act. However, employers no longer need to request a copy from the Mayor's office. Instead, *within 60 days of the Act's effective date*, the Mayor's office will provide employers with a copy or summary of the Act to post on the employer's premises.

The Act not only modifies employers' recordkeeping obligations, it changes the consequences for employers who fail to comply with the new requirements. Failure to comply with the notice, recordkeeping, or posting requirements of the Act could result in the tolling of the three-year statute of limitations (i.e., it does not begin to run) typically applicable to wage claims until the employer complies with the requirements.

New Retaliation Provision

The 2014 Wage Theft Act provides a cause of action for retaliation. The Act allows aggrieved employees to pursue a retaliation claim either in a civil action or within the administrative proceeding process described below.

If an employer takes adverse action against an employee within 90 days of the employee engaging in an activity protected by the Act, there is a rebuttable presumption that the employer retaliated against the employee due to the employee's protected activity.

Expansion to Include Exempt Employees

The 2014 Wage Theft Act broadens the definition of “employee” by eliminating the exception for exempt employees. As a result, exempt employees now enjoy the protections of the D.C. Wage Payment Law, including being paid twice each month. Employers must keep records of employees’ time worked.

Changes to Administrative Process, Increased Penalties

New Administrative Procedure

The 2014 Wage Theft Act, like similar laws in California and New York, creates an administrative procedure for employees to pursue relief for any alleged violations of D.C. wage-and-hour laws. Although the Act allows parties to resolve claims through conciliation, the new procedure creates a formal hearing process for claims that do not settle through conciliation. Administrative law judges preside over these formal hearings and have the authority to issue subpoenas and compel evidence and discovery from parties. The administrative law judge’s ruling is considered final and is not subject to appeal on the merits to a higher court.

New Civil and Criminal Penalties

In addition to procedural changes, the Act significantly increases civil and criminal penalties in the event an employer is found liable. If an employer is found guilty or has admitted to liability for willful violations under the Act in any judicial or administrative proceeding, the employer may lose its D.C.-issued business license.

Additionally, the 2014 Wage Theft Act adds new criminal penalties for negligent violations. Before the 2014 Act, only willful violations were subject to criminal penalties. The Act increases the potential civil liability of employers for liquidated damages, attorneys’ fees, and litigation costs.

Class Actions Likely to Increase

Class action relief for wage-and-hour violations is easier to achieve under the Act. First, the Act permits claims under the D.C. Minimum Wage Law to be brought as opt-out class actions, instead of the previous procedure of opt-in collective actions. This change can dramatically increase employee participation in litigation. Second, the Act broadens the crucial definition of who may be “similarly situated,” which also may lead to larger classes of employees participating in litigation. Indeed, the Act explicitly allows employees with different job titles to be included in the same class as long as the differences between these employees are “unrelated to their claims.”

Joint and Several Liability for General Contractors, Temporary Staffing Firms

General contractors will be jointly and severally liable for any D.C. wage-and-hour law violations committed by subcontractors. Additionally, temporary staffing firms and their clients will be jointly and severally liable for DC wage-and-hour law violations committed by the other party, unless a contract between the parties provides otherwise.

Source URL: <https://natlawreview.com/article/amended-dc-wage-theft-prevention-act-adds-employer-obligations-and-onerous-penalties>