

# D.C.'s New Wage Theft Law Imposes Additional Notice, Posting and Recordkeeping Requirements on Employers

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Last October, we [reported](#) on D.C.'s soon-to-be-enacted [D.C. Wage Theft Prevention Amendment Act](#). This Act, which amends several existing D.C. wage and hour laws, includes new notice requirements and retaliation protections, increases employer liability for wage and hour violations and introduces a new administrative hearing process – all changes that employers with D.C.-based employees need to be aware of.

The Act becomes effective on February 26, 2015. Previously, the Act was slated to go into effect on January 14, 2015, but an emergency amendment pushed back that date. There is a chance it is pushed back again and we will update this post accordingly if that happens. An overview of the key provisions follows below.

## Written Pay Notices to Current and New Employees

The Act requires employers to provide pay notices to existing employees starting on May 27, 2015. The Act also requires employer to provide pay notices to new hires, but is unclear when this obligation begins – either on February 26, when the Act becomes effective or on May 27, 90 days after the Act becomes effective. We recommend taking the most conservative approach and issuing these notices to any new hire employed as of February 26 even though it is unlikely the Mayor's office will have released the sample pay notice template by then (the Mayor has until April 27 to do that).

Employers must provide the notice both in English and in the employee's primary language, and it must contain the following information:

- The name of the employer and any “doing business as” names used by the employer;
- The physical address of the employer's main office or principal place of business, and a mailing address, if different;
- The telephone number of the employer;
- The employee's rate of pay and the basis of that rate, including by the hour, shift, day, week,

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salary or piece;

- Any allowances claimed as part of the minimum wage, including tip, meal or lodging allowances;
- The employee's overtime rate of pay, exemptions from overtime pay, living wage, exemptions from the living wage, and the applicable prevailing wages;
- The employee's regular payday designated by the employer; and
- Any other information the Mayor considers material and necessary.

In addition, employers must provide updated notices to existing employees when any of the above information changes. Employers and employees must sign and date all notices, employees must acknowledge receipt, and employers must retain copies of the signed notices as proof of compliance for at least three years. Failure to comply with the notice provision could result in a \$500 penalty for each violation. Special pay notice rules apply to temporary staffing firms.

## **Posting Requirements**

The Act also requires employers to post a summary of D.C.'s Minimum Wage Revision Act along with the relevant amendments in the Act. The mayor must provide a new summary of the required posting for employers by April 27, 2015 for employers to use.

## **Recordkeeping Requirements**

The Act amends the recordkeeping requirement under the Minimum Wage Revision Act and requires employers to record the "precise time worked," rather than the hours worked, "each day and each workweek by each employee." Though not entirely clear, it appears this provision may require that employers record the exact time that an employee works each day (i.e., 8:31 am through 12:01 pm and 12:31 pm through 5:01 pm). Although the Act does not expressly exclude exempt employees from this requirement, some commentators believe that it does not apply to exempt employees. We are hopeful that the Mayor will issue regulations or other guidance addressing this issue soon. Failure to comply with the recordkeeping requirements can be costly, and result in the tolling of the three-year statute of limitations for wage claims and include a fine of \$500 for each failure to maintain or retain records.

## **Application of Wage Payment and Collection Action Extended to Exempt Employees**

The Act broadens the definition of "employee," under the Wage Payment and Collection Act and no longer excludes from coverage persons employed in a "bona fide executive, administrative, or professional capacity." The takeaway for employers is that, once the law becomes effective on February 26, 2015, both non-exempt and exempt employees are subject to D.C.'s Wage Payment and Collection Act. For example, and subject to any exceptions, beginning February 26, 2015 employers will be required to pay all employees at least twice per month and follow specific requirements for paying employees at the time of termination. Violations can be costly, including that an employer who negligently fails to comply could be convicted of a misdemeanor and fined up to

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\$5,000 and \$10,000 for each negligent and willful violation, respectively.

## **Joint and Several Liability for Contractors and Temporary Staffing Companies**

With a few exceptions, the Act imposes joint and several liability on a subcontractor and general contractor to a subcontractor's employees where the subcontractor is alleged to have failed to pay an employee's wages or otherwise failed to comply with the DC Wage Payment and Collection Act, the Living Wage Act of 2006, or the Sick and Safe Leave Act. In addition, the Act also holds employers and temporary staffing companies jointly liable when the staffing firm employs a person who provides services for the benefit of another employer under a temporary staffing arrangement. The December 2014 emergency amendment clarified that any general contractor and subcontractor or employer and temporary staffing agency having a contract in effect prior to February 26, 2015 and providing for liability contrary to the Act would be excepted from this requirement.

## **Retaliation**

The Act prohibits retaliation against any employee for complaining about any conduct that the employee reasonably and in good faith believes violates the Wage Payment and Collection Act, the Living Wage Act or the Sick and Safe Leave Act. The Act also provides that employees who are retaliated against may sue their employer for damages. Notably, retaliation is presumed to have occurred if an adverse employment action is taken against an employee within 90 days of the employee engaging in protected activity. The presumption may only be rebutted by "clear and convincing evidence." This makes it very difficult for employers to take adverse action against an employee who engages in protected activity, effectively giving those employees an umbrella of protection from adverse action for the 90 day period.

## **New Administrative Procedure and Penalties**

The Act establishes a new administrative process through which employees may pursue claims, including class action claims, for alleged violations of D.C.'s wage and hour laws. In addition, the Act provides increased civil and criminal penalties for employers that violate the Act. The Act also provides for attorneys' fees, costs and other remedies for prevailing employees. Under the Minimum Wage Revision Act, employees may be entitled to liquidated damages in the amount of three times the amount of unpaid wages.

## **Employer Takeaways**

The Wage Theft Prevention Amendment Act of 2014 substantially amends current D.C. wage and hour laws, imposing new obligations on employers and granting employees new rights. Prior to the Act's effective dates, employers would be wise to confer with legal counsel to ensure compliance with the upcoming law and avoid liability under the Act. In the meantime, we will continue to monitor and report on any further developments associated with the Act, including the release of any regulations by the Mayor's office.

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