California Dreaming: Minnesota Legislature Enacts Sweeping Wage Theft Law

June 19, 2019

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The Minnesota Legislature wrapped up its 2019 legislative session with a one-day special session last month that resulted in the passage of an omnibus appropriations bill, the Jobs and Economic Development Omnibus. The legislation includes new and surprising notice and recordkeeping mandates for Minnesota employers and creates new civil and criminal penalties for “wage theft.” In addition, it grants more authority to the Minnesota Department of Labor and Industry (DLI) to enforce compliance with the new statute.

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New Requirements for Minnesota Employers

Wage Theft

The legislature expanded protections and recourse available to employees, specifically providing a "substantive right for employees to the payment of wages." Wage theft is committed when, with intent to defraud, a Minnesota employer

fails to pay an employee the wages, salary, gratuities, earnings, or commissions at the employee's rate of pay, or at the rates required by law;
directly or indirectly causes an employee to give a representation that they were paid greater wages than they were actually paid;

directly or indirectly demands or receives any rebates or refunds from the wages owed the employee under contract of employment; or

makes, or attempts to make, any appearances that wages paid to an employee were greater than the amount actually paid.

The new law creates unprecedented criminal penalties for those who commit wage theft. The maximum penalty would be imprisonment for up to 20 years, a fine of up to $100,000, or both, a penalty applicable when the wage theft exceeds $35,000.

Recordkeeping Requirements

Besides the wage theft provisions, the new law requires employers to maintain more records. Previously all employers had to keep records of the name, address, and occupation of each employee, the rate of pay and amount paid each pay period to each employee, and the hours worked each day and each workweek. The new law requires that employers record not only the hours worked by an employee each day and each workweek, but also that information for piece-rate employees. Further, the new law requires employers to maintain records of the personnel policies provided to the employee with the date the policies were given and a copy of notice provided of any updates made to the initial notice of personnel policies. These records must be kept for three years on the premises where the employee works, and must be readily available (within 72 hours) for the commissioner to inspect on demand. Failure to maintain records as required by the new law adds a $5,000 penalty for each failure in addition to the $1,000 fine provided in the old statute.

Earnings Statements

The law modifies and adds requirements for what must be disclosed to employees in their earnings statements. It modifies the existing law and requires that, in addition to the hourly rate of pay, earnings statements must disclose the basis of pay (e.g., hourly, daily, weekly, etc.). The law also requires earnings statements to list any allowances for meals and lodging, and the employer's address of principal place of business and telephone number. The requirement that employees be given access to an employer-owned computer during the employee's working hours to access and print the electronic earning statements is carried forward. Employees may now request a paper earnings statement.

Notice Requirements

Minnesota employers are now required to make certain disclosures to new employees when they begin work. Among the required disclosures are (1) a written notice to new employees that includes the rate and basis of their pay, (2) paid time-off accrual and terms of use, (3) the employee's employment status, and (4) any wage or overtime exemptions.

Under the new law, employers must also retain signed copies of the notice given to employees at the start of their employment, and employers must provide employees with written notification of any updates to the original notice. DLI is planning to issue additional guidance soon regarding the form of notice to be provided to employees.

Payment Timing

The law also establishes new deadlines for the frequency of payment of earnings, including wages, commissions, and gratuities. The statute now requires that Minnesota employers pay employees their wages, including salary, earnings, and gratuities, at least once every 31 days. In addition, the law requires that employers pay all commissions earned at least once every three months.

Failure to comply with these new payment requirements subjects the employer to additional penalties. For failure to pay wages, the new law modifies the 15-day maximum penalty to unlimited penalties after a 10-day notice period. If an employer fails to pay wages within 10 days of the notice, the commissioner may charge and collect the wages and impose a penalty of the employee's average daily earnings for each day after the first 10 days. There is also a 10-day notice period for unpaid commissions and a 1/15 penalty per day for commissions that remain unpaid after the notice period has expired.

Enforcement Authority Granted to DLI and the Attorney General

In addition to increasing the requirements of employers, the new law also grants greater authority to DLI to enforce the new laws. All documents and records required under this law must be "readily available" for inspection by the commissioner or agent of the commissioner.

If DLI finds that the records have not been maintained as required by the statute, they can fine an employer up to $1,000 and an additional $5,000 for each subsequent violation. In addition, the commissioner has the authority to privately interview nonmanagement employees about any matters being investigated. Further, the law grants enforcement power to the attorney general and protects employees from retaliation for exercising the rights granted by the Minnesota Fair Labor Standards Act, and amended wage provisions in statutes 177.30, 181.01 to 181.723, and 181.79. Violation of the protection against retaliation could result in a penalty of up to $3,000.

Key Takeaways for Minnesota Employers

State legislatures expanding recordkeeping requirements and penalties for wage theft is not unique to Minnesota. Colorado has enacted similar legislation strengthening penalties against employers that commit wage theft this year. Other jurisdictions that directly address wage theft on the state level include California, Texas, and Illinois. With the effective date of July 1, 2019, fast approaching, Minnesota employers must act quickly to comply with the new law. DLI recently released guidance generally clarifying the new law and plans to issue further guidance in the coming weeks.

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