

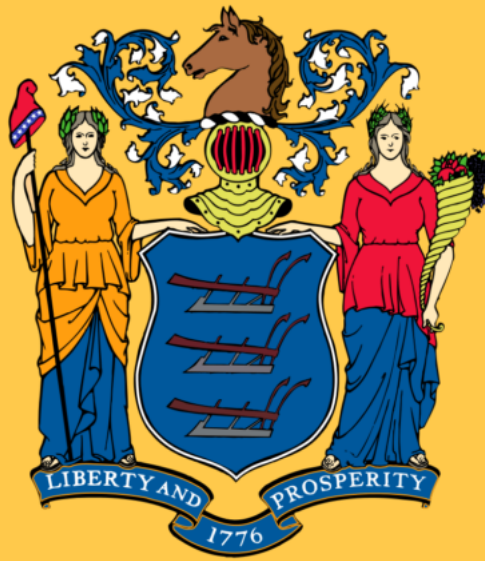
Employers Beware: New Jersey Enacts One of the Toughest “Wage Theft” Laws in the Country

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By [Michael J. Westwood-Booth](#)



On August 6, 2019, Acting Governor Sheila Oliver signed the New Jersey Wage Theft Act (WTA) into law. The law has been touted by proponents as the toughest wage theft statute in the country. Notwithstanding its name, the WTA goes far beyond attempting to prevent and punish intentional “wage theft” by significantly expanding the liability even the best-intentioned employers will face for state wage law violations.



On August 6, 2019, Acting Governor Sheila Oliver signed the [New Jersey Wage Theft Act \(WTA\)](#) into law. The law has been touted by proponents as the toughest wage theft statute in the country. Notwithstanding its name, the WTA goes far beyond attempting to prevent and punish intentional “wage theft” by significantly expanding the liability even the best-intentioned employers will face for state wage law violations.

The majority of the WTA took effect immediately, amending a host of existing New Jersey civil and criminal statutes. The WTA is confusingly constructed, however, and it remains to be seen precisely what the interplay will be among its various sections.

For most employers, one critical takeaway is that the WTA requires employers to provide current and newly hired employees a written statement of wage rights, which will be produced by the New Jersey Department of Labor and Workforce Development (NJDOLE). In addition, the WTA substantially amends three key New Jersey wage statutes:

the New Jersey Wage Payment Law (NJWPL) (N.J.S.A. 34:11-4.1, et seq.), which governs, among other things, the time and mode of payments of wages to employees;
the New Jersey Wage and Hour Law (NJWHL) (N.J.S.A. 34:11-56a, et seq.), which, among other things, requires the payment of minimum and overtime wages to employees; and

the New Jersey Wage Collection Law (NJWCL) (N.J.S.A. 34:11-57, et seq.), which empowers the NJDOL to investigate and remedy alleged wage violations.

This article highlights the significant amendments to these statutes and related provisions.

Significant Amendments to the New Jersey Wage Payment Law

Express Prohibition of Retaliation

The WTA amends the NJWPL to expressly prohibit retaliation against employees who complain about their employers' alleged violations of the NJWPL. Employee activity explicitly protected from retaliation under the WTA is not limited to formal complaints filed with the NJDOL or a court, but includes employee complaints to employers or employee representatives (if any) and even general discussions about wage rights with other employees. In instances where adverse action is taken against an employee within 90 days of his or her filing a complaint with the NJDOL or in a court, the WTA creates a rebuttable presumption that the adverse action was taken against the employee in retaliation for the filing of the complaint. In addition to the various other penalties and remedies, the WTA also provides that an employer may have to offer reinstatement to an employee discharged in retaliation for complaining about a violation of the NJWPL.

Express Private Right of Action and Availability of Liquidated Damages and Attorneys' Fees

While New Jersey courts have allowed employees to sue their employers in court for alleged violations of the NJWPL, the WTA amends the NJWPL to explicitly permit employees to do so. More importantly, the WTA greatly expands employer liability in such actions, permitting employees to recover attorneys' fees and liquidated damages of up to 200 percent of the wages recovered, in addition to the recovered wages. Thus, with this enactment, New Jersey has effectively more than tripled employers' potential wage liability for violations of the NJWPL. Although the WTA provides employers with a good faith defense to liquidated damages, that defense is only available where the violation was a first offense, was made in good faith, and where the employer admits the violation and pays the employee the amounts due within 30 days.

Significantly Increased Penalties for Violations, Including Possible Jail Time

The WTA also amends the NJWPL to increase the penalties available for "knowing" violations of the NJWPL, which apply with equal force to violations of the newest anti-retaliation provisions of the NJWPL. For the first time, violations of the NJWPL can result in jail time. First-time violations of the NJWPL may subject employers to fines between \$500 and \$1,000 and/or imprisonment between 10 and 90 days. Second or subsequent violations are punishable by a fine between \$1,000 and \$2,000 and/or imprisonment between 10 and 100 days. As was already the case, each week that a violation continues is a separate and distinct offense.

Significant Amendments to the New Jersey Wage and Hour Law

Enhanced Anti-Retaliation Provisions

Unlike the NJWPL, the NJWHL expressly prohibited retaliation before the enactment of the WTA. However, the WTA significantly amends the anti-retaliation provisions of the NJWHL, as well as the remedies and penalties available for violations of same, to mirror those now contained in the NJWPL.

Significantly Expanded Employer Liability

The WTA significantly expands employer liability for violations of the NJWHL. In addition to increased penalties for retaliation, the WTA allows, for the first time, liquidated damages of up to 200 percent of the wages recovered (for minimum wage, overtime wage, and/or retaliatory violations), and extends the statute of limitations from two years to six years. Successful claimants continue to be eligible to recover attorneys' fees. Although, as with the NJWPL, first-time offenders may avail themselves of a good-faith defense to liquidated damages, in certain limited circumstances, the WTA's provision for treble damages and tripling of the limitations period could result in recoveries up to *nine times* larger than would have been available before the WTA.

Significant Amendments to the New Jersey Wage Collection Law

Expanded NJDOL Investigative Authority / Employer Liability

The NJDOL is authorized to investigate alleged violations of "State wage and hour laws," which are defined to include the NJWPL and the NJWHL, among others. The WTA expands the NJDOL's investigative and enforcement authority in two key respects: First, the WTA authorizes the NJDOL to hear employee claims of retaliation in violation of State wage and hour laws. Second, the WTA increases the jurisdictional limit on claims the NJDOL can hear from \$30,000 to \$50,000.

The WTA also expands the liability employers may face in proceedings before the NJDOL. The NJDOL may now investigate both wage and retaliation claims going back six years from the date a claim was filed and may order the payment of liquidated damages of up to 200 percent of the wages found due. Further, the WTA provides that where employers fail to maintain adequate records, the agency will presume that the employee is entitled to the amounts claimed in the complaint, and the employer will have the burden of proving otherwise.

Significantly Increased Audit Risk

The WTA further amends the NJWCL to increase audits. When the NJDOL finds an employer owes an employee more than \$5,000 in wages, the NJDOL must now: (a) inform the employer of the NJDOL's

right to audit the employer, or successor firms; and (b) notify the Division of Taxation of the wage liability finding and recommend the Division of Taxation also perform an audit to ensure proper withholding and payment of payroll taxes and other taxes.

License Suspension / Stop-Work Orders for Failure to Timely Comply With Orders

The WTA increases the NJDOL's ability to enforce its own determinations and court judgments requiring the payment of wages and/or damages to employees. Importantly, where an employer fails to comply with an NJDOL determination or court judgment to pay wages or damages to an employee within 10 days of when that payment has been required by the determination or judgment, the NJDOL may direct the appropriate agencies to suspend licenses held by the employer or its successor company until the employer complies with the determination or judgment. The NJDOL may also issue stop-work orders against violating employers, which may last until the violation is corrected, and which may result in the employer being placed on probation for two years, during which the employer may be required to file periodic compliance reports with the NJDOL. The stop-work orders will apply only at the employer location where the violation occurred. The WTA also sets forth extremely low standards for determining what may qualify as a successor entity.

Joint and Several Liability With Staffing Agencies

The WTA provides that "labor contractors" (e.g., staffing agencies) that provide laborers or workers to "client employers" shall be jointly and severally liable for violations of State wage and hour laws. The WTA states that both the staffing agency and employer have the right to recover the costs associated with the other's violations, a nuance that potentially increases the likelihood of litigation between staffing agencies and their client companies.

Required Distribution of the Statement of Employee Rights Under State Wage and Hour Laws

The WTA requires employers to provide current and newly hired employees with written copies of the statement produced by the NJDOL regarding employee rights under the State wage and hour laws. The NJDOL has not yet issued any new statement in response to the WTA.

NJDOL Partnerships with Community and Legal Aid Organizations

The WTA empowers the NJDOL to contract with community-based organizations and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of New Jersey's wage and hour laws. This provision allows the NJDOL to engage these organizations directly to investigate alleged violations of the State wage and hour laws, and even to prepare and/or represent employees in connection with actions arising under State wage and hour laws.

Wage Violator “Naming and Shaming”

Further, the WTA now empowers the NJDOL to post wage enforcement information on its public website. Among other things, the information will include the names and addresses of violating employers, the nature of the claims, the number of affected employees, the amount of wages found owed, and any penalties, license suspensions, or revocations resulting from the claims.

Pattern of Wage Nonpayment Crime

Lastly, the WTA created the crime of “pattern of wage nonpayment.” Pattern of wage nonpayment is committed when an employer knowingly violates, for a third or subsequent time, the wage payment laws subject to the WTA. Pattern of wage nonpayment is a third-degree crime, and is punishable by imprisonment for three to five years and/or a fine of up to \$15,000. Critically, there is no presumption of non-imprisonment. This provision will not take effect until November 1, 2019.

Conclusion

The WTA’s provision of enlarged wage and hour statutes of limitations, substantially increased causes of action, penalties, and available damages, and the NJDOL’s enhanced investigative and remedial authority, should concern all New Jersey employers. These changes may make claims arising under State wage and hour laws more attractive, and employers may need to anticipate an aggressive wave of new litigation—and aggressive enforcement by the NJDOL itself. Employers may want to consider conducting internal audits of pay, timekeeping, and recordkeeping practices in light of employers’ expanded liability under the WTA.

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