

Illinois Laws Expand Wage Theft and Privacy Protections for Job Applicants and Employees

August 12, 2010

Over the last few weeks, Illinois Governor Pat Quinn has signed into law two bills that are likely to have a significant impact on employers within the state. The first amends the Illinois Wage Payment and Collection Act by expanding protections for employees who are owed wages. The second, the Employee Credit Privacy Act, prohibits Illinois employers from inquiring into, or making employment decisions on the basis of, an employee's or job applicant's credit history.

Wage Act Withholding Protections Expanded

An amendment to the Illinois Wage Payment and Collection Act (IWPCA), to take effect on January 1, 2011, makes it easier and quicker for employees to initiate administrative or court actions to pursue wages they believe are due to them, imposes increased civil and criminal penalties for illegally withheld wages, and provides protections for employees who are retaliated against for reporting alleged wage violations.

New Procedure for Adjudication of Small Claims

The new amendment authorizes the Illinois Department of Labor to establish an administrative procedure for adjudicating small claims filed with the Department for \$3,000 or less per individual employee. This new small claims process will be paid for by a special wage theft enforcement fund that will be funded by assessed penalties and fines.

No Need to Exhaust Administrative Remedies

In addition, the new amendment allows aggrieved employees to directly file suit on behalf of themselves as well as a class of similarly situated employees in Illinois circuit court without having to first exhaust their administrative remedies. The right to pursue a cause of action on behalf of a class of individuals together with the current delays caused by the strained resources of the Illinois Department of Labor, will likely result in a substantial increase in litigation under the IWPCA.

Enhanced Civil Recovery

The amendment also provides employees interest of 2% per month for the period of wage underpayment. Previously, interest was only assessed after judgment had been entered against the employer. The IWPCA

was also amended to specifically allow for the recovery of costs and reasonable attorney's fees for a prevailing plaintiff. This ends the need for plaintiffs to make a pre-suit written demand for the allegedly unpaid wages as a prerequisite for obtaining attorney's fees under the Illinois Attorneys Fees in Wage Actions Act.

Enhanced Criminal Penalties

An additional amendment to the IWPCA enhances criminal penalties for those who violate the Act. An employer or agent of the employer who willfully refuses to pay wages as provided for in the IWPCA is guilty, upon conviction, of a Class B misdemeanor (if the wages withheld were \$5,000 or less) or a Class A misdemeanor (if the wages withheld were more than \$5,000). Prior to the amendment, these violations were treated as Class C misdemeanors.

The amendment also provides that an employer or agent of the employer who violates the IWPCA again within two years of a prior criminal conviction under the IWPCA is guilty, upon conviction, of a Class 4 felony. Prior to the amendment, there was no enhancement of penalties for repeat offenders.

Anti-Retaliation Provision

Lastly, an amendment to the IWPCA provides that an employee who claims to have been unlawfully retaliated against for reporting alleged violations of the IWPCA shall be entitled to file either a claim with the Department of Labor or a suit in Illinois circuit court to recover legal and equitable relief as may be appropriate. If recovery is sought in circuit court, the employee is also permitted to recover costs and all reasonable attorney's fees.

Next Steps for Employers

Employers should review compensation policies and practices to confirm employees are paid on a consistent, recurring basis as well as all amounts due upon termination of employment. In the event that employees are not paid on a regular pay schedule, employers should ensure that employees are paid within 14 days after the work is performed. As usual, employers should continue to meet their statutory and regulatory obligations to keep adequate records.

New Employee Credit Privacy Act Prevents Employers from Using Credit History in Employment Decisions

Governor Quinn also recently signed into law House Bill 4658 that creates the Illinois Employee Credit Privacy Act. This law, which will take effect on January 1, 2011, prohibits Illinois employers from using a person's credit history to determine employment, recruiting, discharge, or compensation.

Credit Checks and Employment Decisions Based on Credit History Forbidden

The Employee Credit Privacy Act prohibits Illinois employers from failing to hire or recruit, discharging, or otherwise discriminating against an individual with respect to employment, compensation, term, condition, or privilege of employment on the basis of the individual's credit history. The Act further forbids Illinois employers from inquiring about a job applicant's or employee's credit history.

Exemptions in Limited Circumstances

The prohibitions of the new law do not prevent an inquiry about or employment decision based on a job applicant's or employee's credit history if a good credit history is an established bona fide occupational requirement of a particular position. For a good credit history to be an established bona fide occupational requirement, it must be required by state or federal law, involve custody of assets valued at \$1,000 or more, or involve signatory power over business assets of \$100 or more per transaction. The Illinois Department of Labor may also promulgate regulations creating further exemptions.

Remedies

A person who is injured by a violation of the new law may bring a civil action in Illinois circuit court to obtain injunctive relief, damages, or both. The act also specifically authorizes recovery of costs and reasonable attorney's fees to a prevailing plaintiff.

Next Steps for Employers

Employers should review their policies and practices to limit credit checks or inquiries about to circumstances within the exemption of the new law. Employers should take steps to ensure that management does not make employment decisions based on credit history except where it is an established bona fide occupational requirement.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact either of the following Morgan Lewis attorneys:

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