

ALERTS AND UPDATES

Illinois Wage Payment and Collection Act Amended to Expand Coverage, Increase Penalties and Toughen Enforcement

August 13, 2010

On July 30, 2010, Illinois Gov. Patrick Quinn signed into law amendments¹ to the Illinois Wage Payment and Collection Act (IWPCA, which become effective January 1, 2011. This amends the IWPCA² in ways that expand the IWPCA's coverage, increase penalties for violations by employers and make enforcement easier for employees and the Illinois Department of Labor (IDOL).

What the IWPCA Requires and Prohibits

The IWPCA requires employers to pay their employees in Illinois the compensation due them within a number of specific days following the pay period in which the compensation is earned. The IWPCA also requires employers to pay all employees who have quit or been terminated their "final compensation" at the time of separation, if possible, or if not, by the next regularly scheduled payday for the employee. "Final compensation" means wages, salaries, earned commissions, earned bonuses, the monetary equivalent of earned (but unused) vacation and holidays and other compensation due the employee.

The IWPCA also prohibits employers from withholding from wages any sums that an employee has not voluntarily authorized in writing to be withheld, except for tax withholdings and other withholdings required by law; insurance or pension payments or other sums that benefit the employee; and sums pursuant to a valid wage assignment or wage-deduction order, such as a garnishment or child or spousal support order. The IWPCA also prohibits employers from discharging or otherwise discriminating against an employee who complained to the employer, the IDOL or the employee's union for not being paid in accordance with the IWPCA, or who has testified or is about to testify in an IWPCA proceeding or investigation.

The IWPCA imposes personal liability on officers of a corporation or other agents who knowingly permit the employer to violate it, regardless of the form of corporate organization.

Changes in the IWPCA Made by the Amendments (Effective January 1, 2011)

- **De novo actions will be a thing of the past.** Currently, wage orders issued by the IDOL under its own administrative procedures pursuant to wage claims filed with it by employees are not self-enforcing. Under the amendments, IDOL wage orders will now be final agency decisions that may be enforced by the IDOL or challenged by an employer only under the Illinois Administrative Review Act (ARA). Under the ARA, final state-agency decisions may be appealed to the state circuit courts in an appellate-type proceeding. As a result, employers will have to fully try wage claims before the IDOL to preserve their rights, and the IDOL's decisions will be subject only to limited court review.
- **The whole process will be expedited, with potentially costly consequences for employers who do not comply with the new deadlines.** Currently, an employer can ignore an IDOL wage order and wait for the IDOL to sue in circuit court. As a result of the amendments, an employer will have to comply with a final IDOL

administrative decision (which when issued also subjects the employer to a \$250 administrative fee) within 15 days or appeal the decision under the ARA within 35 days. Failure to do one or the other will result in a penalty payable to the IDOL of 20 percent of the wages found due to the employee, and a penalty payable to the employee of 1 percent per day.

- The financial stakes for employers are likely to be higher.** Currently, employees who prevail in private civil actions under the IWPCA can recover only the compensation found due them. The amendments additionally entitle a prevailing employee to attorneys' fees and costs, and damages of two percent of any underpayment of wages found due for each month during which they remain unpaid. Employees will also be entitled to bring class actions, which are not currently permitted under the IWPCA. Finally, civil claims of retaliation, which are not permitted currently under the IWPCA, will be litigable before the IDOL or in the state circuit courts. Employees who prevail will be entitled to appropriate legal and equitable relief and reasonable attorneys' fees and costs. Employee activity protected from retaliation will be extended to complaints of IWPCA violations made in any public hearing or to "a community organization," in addition to those types of complaints currently protected.
- Criminal penalties will also increase.** If a criminal action is successfully brought for failure to pay compensation in violation of the IWPCA, a conviction will now be:

Amount Unpaid	Penalty	Usual Sentence/Fine
\$5,000 or less	Class B misdemeanor	Up to six months / \$1,500
More than \$5,000	Class A misdemeanor	Under one year / \$2,500
Second offense in two years	Class 4 felony	One to three years / \$25,000

What This Means for Employers

As a result of the enhanced enforcements procedures and stiffer penalties in the IWPCA amendments, employers who are subject to the IWPCA may want to take steps in consultation with legal counsel to minimize their exposure to IWPCA claims. These steps include reviewing and updating employment policies, employment contracts with individual employees, and collective bargaining agreements to comply with the IWPCA and the IDOL regulations in the following areas:

- Vacation accrual and forfeiture provisions;
- Bonus, commission or other incentive pay plans;
- Wage withholding policies for reasons other than taxes, employee insurance or other benefits, child or spousal support orders, and wage assignments and garnishments;
- No-discrimination policies to provide for nonretaliation for exercise of IWPCA rights.

All policies or other documents concerning matters covered by the IWPCA should be published in hard copy or electronically to employees with provisions for proof of receipt.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact [Cheryl Blackwell Bryson](#), [Howard L. Mocerf](#) or [Jon Zimring](#) in our [Chicago office](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. Act of July 30, 2010, Ill. Public Act 96-1407.
2. Illinois Wage Payment and Collection Act, 820 Ill. Comp. Stat. 115/1 *et seq.* (2010).