

# New Jersey Expands Liability for Violations of Wage-Related Laws: What Employers Need to Know

## Labor & Employment Alert

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A recently enacted amendment to New Jersey's existing wage and hour, wage payment, and wage collection laws substantially increased the damages and penalties for violations by employers. Most provisions of the law, commonly referred to as the Wage Theft Act (WTA), went into effect immediately in August. A brief summary of the key provisions of the WTA follows.

### Statute of Limitations and Increased Penalties

The WTA increased the statute of limitations for violations of the New Jersey wage and hour laws from two years to six years, matching the existing limitations period for statutory wage payment claims. And perhaps the most harmful impact of the WTA, at least to employers, is the imposition of treble damages: an employer that violates New Jersey wage and hour and wage payment laws must pay the wages owed to the employee *plus* liquidated damages of 200% of the unpaid wages.

An employer may avoid liquidated damages for a first-time violation if it (i) admits the violation, (ii) pays the amount of unpaid wages owed within 30 days, and (iii) shows that it acted in good faith and had reasonable grounds for believing that its actions were not in violation of the at-issue wage and hour or wage payment law.

Employees who prevail on their wage claims may also recover reasonable attorney's fees and costs under the WTA.

### Collective Actions

Under the WTA, an employee can bring an action for unpaid wages either individually or on behalf of similarly situated employees. The potential for collective actions, coupled with the six-year statute of limitations and treble damages, dramatically expands potential employer liability for violations of New Jersey's wage and hour and wage payment laws.

### Stronger Anti-Retaliation Protection

The WTA broadens protection to employees who complain about unpaid wages by prohibiting a retaliatory action in response to (i) an employee making a complaint to his/her employer or to the New Jersey Department of Labor and Workforce Development (NJDOL) regarding an employer's failure to pay wages; (ii) an employee instituting or testifying in a proceeding related to the wage and hour or wage payment law; or (iii) an employee informing any other employee about rights under the state's wage laws. To further this protection, the WTA creates a rebuttable presumption of retaliation if an employer takes adverse action within 90 days of an employee filing a complaint with the NJDOL or filing a lawsuit in court for unpaid wages. That presumption may only be rebutted by the employer presenting clear and convincing evidence that the adverse action was taken for legitimate, non-retaliatory reasons. In addition to fines payable to the state and the damages and liquidated damages that may

be awarded to an aggrieved employee, an employer may be required to offer reinstatement to a discharged employee upon a finding of retaliation.

**Failure to Maintain/Produce Records**

The WTA creates another rebuttable presumption that a violation occurred if an employer fails to produce the records that it is required to keep under New Jersey wage and hour laws.

**What Employers Should Do Now**

The WTA creates new penalties for wage and hour violations in New Jersey and will likely lead to a significant increase in litigation. Employers should audit compliance with wage and hour laws, including conducting a thorough review of policies and practices, given the heightened risks posed by the WTA. In addition, employers must provide notice to each current and newly hired employee of employee rights under New Jersey wage and hour laws. The NJDOL has been charged with preparing a model notice, which has not yet been released.