



Illinois Department of Labor Wage Payment and Collection Act (WPCA)

Public Act 96-1407 (SB 3568)
Effective: January 1, 2011

The Wage Payment and Collection Act (“WPCA”) establishes how often wages must be paid and provides assistance to workers in the collection of earned compensation. Workers must receive their final wages, vacation pay, commissions and bonuses on their next regularly scheduled payday. SB3568 amends the WPCA and provides the Illinois Department of Labor (“the Department”) and workers with additional tools and resources to enforce the law.

Applicability

The WPCA applies to workers within the State of Illinois who:

- were not paid their last paycheck;
- are owed vacation time;
- are owed bonus pay;
- are owed commissions; and
- have had any illegal deductions made from their paycheck.

Enforcement

The Department is responsible for administering and enforcing the WPCA. Individuals who would like assistance in the collection of their earned compensation can file a claim with the Department. All claims must be filed within one year of the date the alleged earned compensation was owed. In some cases, the Department may be unable to assist workers with claims against bankrupt employers or in claims made by workers with union representation.

New Formal Default Hearing:

SB3568 gives the Department the authority to establish a new formal default hearing for claims, or specific categories of claims, for \$3000 or less. The new process will result in an enforceable judgment at the Department level. This authority is subject to appropriation by the Illinois General Assembly.

Although the Department has not received appropriation, it will start processing a small subset of claims that are filed on or after January 1, 2011 for violations occurring on or after January 1, 2011.

The small subset of claims that will go through the new process must meet all of the following criteria:

- The employer’s address must be verified by means stipulated in Section 300.940(c) of the rule;
- The claim must be for \$3000 or less; and
- The employer does not respond to any of the Department’s mailings and notices.

Civil and Criminal Penalties

The new amendments provide significantly enhanced penalties for non-payment of wages. For example, the amendments:

- Establish a non-waivable administrative fee of \$250 to be paid by employers found liable of owing wages to an employee. The fee is payable directly to the Department and will be used solely for enforcement activities.
- Provide for damages equal to 2% of the underpayment per month (calculated from the date of the underpayment) for each month during which wages or final compensation remain unpaid. These damages are payable to the employee.
- Increases the penalty for repeat criminal violations from a misdemeanor to a felony.
- Increases the criminal penalty for claims of \$5,000 or less from a Class C to a Class B misdemeanor.
- Increases the criminal penalty for claims over \$5,000 from a Class C to a Class A misdemeanor.

Employer Definition

The amendments set forth in SB 3568 clarify the Act's definition of "employer", making it consistent with the Illinois Minimum Wage Law and the federal Fair Labor Standards Act. Furthermore, any officers of a corporation or agents of an employer who knowingly permit the employer to violate the Act shall be **personally liable** for an employee's unpaid wages or final compensation, as well as any fees or penalties assessed.

Private Right of Action

The amendments in SB 3568 also clarify the Act's private right of action language to make it clear that employees may file suit in the county where the alleged violation took place or where an employee/party resides. The employee(s) need not file a claim with the Department first in order to file a private lawsuit. Additionally, the amendments allow the employee to recover costs and all reasonable attorney's fees.

Retaliation

The new amendments in SB 3568 also provide a private right of action for an employee who has been retaliated against, and allow the employee to recover all costs and reasonable attorney's fees.

Enforcement Fund

SB3568 creates the Wage Enforcement Fund. All civil penalties and fees due to the Department will be deposited in this Fund. The Fund can only be used for the enforcement of the WPCA, providing the Department with additional staff and resources.

For more information, contact:

**Illinois Department of Labor
160 North LaSalle Street, Suite C-1300
Chicago, Illinois 60601
(312) 793-2800**

www.state.il.us/agency/idol