Rhode Island Employers Take Note – New Penalties for Wage & Hour Violations Begin January 1, 2024

BY BENJAMIN J. HINKS AND RAYMOND M. RIPPLE • OCTOBER 3, 2023

As of January 1, 2024, a new amendment to the Rhode Island Payment of Wages Act, R.I. Gen. Laws § 28-14-1, *et seq*. (the "Wage Act") will impose criminal liability for certain wage and hour violations by Rhode Island employers, which could result in penalties including fines and/or jail time.

Under this so-called "Wage Theft" amendment, employers who "knowingly and willfully" fail to pay wages of more than $1,500 may be criminally charged with a felony. Specifically, the law pertains to employers' obligation to pay all wages and benefits due on an employee's regular pay date, at the time of an employee's termination, and in the event of the employee's death. In the event of a guilty plea or a conviction, the employer could face imprisonment for up to three years and/or a fine of up to $5,000.

The law imposes the same penalties for employers who "knowingly and willfully" misclassify workers as independent contractors in the construction industry. [Under the law, "Construction industry" means the business of constructing, reconstructing, altering, maintaining, moving, rehabilitating, repairing, renovating, or demolition of any building, structure, or improvement to the excavation of or other development or improvement to land, highways, or other real property.] Employers operating outside of the construction industry may be held liable for a civil penalty of up to $3,000 for their first misclassified worker, and up to $5,000 for each subsequent misclassified worker. Misclassification violations will be investigated by the Rhode Island Department of Labor and Training (DLT), using the current test set forth under the Federal Fair Labor Standards Act regulations. If the DLT finds that an employer has misclassified worker(s), it may seek civil remedies or recommend criminal prosecution to the Rhode Island Attorney General's office.

It is important to note that the law does not include a definition of "knowing and willful," which unfortunately leaves employers guessing as to what types of conduct will meet this elevated standard. At least one court, however, has previously found that an employer acted knowingly and willfully when it repeatedly committed the same wage violations. *See Allied Elec. Group, Inc. v. Rhode Island*, No. PC20133514, 2014 WL 4412619, at *6 (R.I. Super. Sep. 03, 2014).

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Rhode Island employers with questions about this law should seek guidance from their employment attorney at Bowditch.

We will continue to monitor this situation and will report on any new developments impacting Rhode Island employers.

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