

Insights: Alerts

Illinois Independent Contractors Afforded New Avenues of Wage Recovery

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Wage theft is a growing concern that poses significant threats to workers across Illinois and Chicago. This alert outlines recent legislative changes that expand the avenues for wage recovery for independent contractors, reflecting both city and state-level initiatives aimed at combating wage theft.

Chicago's Wage Theft Legislation & Enforcement Measures

As early as 2013, Chicago provided that employers guilty of wage theft risked the revocation of their business licenses. In 2018, Chicago established the Office of Labor Standards to enforce Chicago's employment ordinances. As part of former Mayor Lori Lightfoot's Chi Biz Strong Initiative in July 2021, Chicago amended its Minimum Wage and Paid Sick Leave Ordinance to include a private right of action for wage theft (including the failure to pay sick leave). Under the amended ordinance, employers must timely pay their employees' wages due for work performed, paid sick time off, and employee benefits required by contract. The new penalties for failing to do so included the amount of the underpayment plus 2% per month of that underpayment or the amounts specified by the Illinois Wage Payment and Collection Act (WPCA), whichever are greater. Effective July 9, 2021, the state of Illinois increased the penalties under the WPCA to 5% per month of the unpaid amount. Therefore, the 5% per month rate effectively applies to Chicago wage theft violations. In a private action, the unpaid/underpaid employee also can recover their costs of filing suit and reasonable attorney's fees.

Recent Developments & Inclusion of Independent Contractors

This past December, the Chicago City Council quietly expanded the scope of the Wage Theft Ordinance further by changing the Minimum Wage and Paid Sick Leave Ordinance to substitute "Worker" for "Covered Employee," but did not define the new term.

In January, however, the Chicago Office of Labor Standards released for public comment its proposed rules relating to the Wage Theft Ordinance. These rules were finalized and became effective on July 1, 2024. The rules explicitly define "Workers" to include independent contractors. Specifically, "Worker" means "either an Employee, ..., or a contractor, determined pursuant to Internal Revenue Service guidelines (often referred to as an 'independent contractor.')" By including independent contractors, Chicago greatly expanded the reach of its Wage Theft Ordinance to protect a larger set of workers.

Thus, if an independent contractor working in Chicago is not properly paid in accordance with their agreement, their recovery is no longer limited to contract damages. They can instead recover under Chicago's Minimum

Wage and Paid Sick Leave Ordinance by filing a claim with the Chicago Office of Labor Standards or in a private civil action in state court, but not both. Under the ordinance, the worker – employee or independent contractor – is able to recover the unpaid amount plus 5% per month of the unpaid amount, which is the available penalty under the WPCA.

State-Level Legislation: The Freelance Workers Protection Act

This year, the state of Illinois also passed the Freelance Workers Protection Act (FWPA), which applies to all independent contractor agreements entered into in the state after July 1, 2024. The FWPA requires that independent contractor agreements be in writing and mandates payment to contractors within 30 days or under the terms of the agreement. Illinois permits contractors suing under this Act to recover double their unpaid compensation, plus their costs and attorney's fees.

Conclusion

Both Illinois and Chicago are aggressively addressing wage theft with pro-worker statutes, ordinances, and rules. For questions concerning the application of these laws to your business, we encourage you to seek legal advice from one of Kilpatrick's Labor and Employment attorneys.

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