

District of Columbia's Amended Wage Theft Prevention Act to Take Effect February 26

District of Columbia Mayor Vincent Gray signed the Wage Theft Prevention Amendment Act of 2014 into law last September, and approved emergency amendments on December 29 to clarify its employee notice and recordkeeping requirements and penalties for noncompliance. The DC Council later approved additional amendments to avoid several unintended consequences of the new law. Currently under congressional review, the amended law is expected to take effect on February 26.

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Background

On September 19, 2014, DC Mayor Vincent Gray signed into law the [Wage Theft Prevention Amendment Act of 2014](#) (WTPAA), amending several existing DC wage and hour laws including the Living Wage Act, Minimum Wage Revision Act, Wage Payment and Wage Collection Law, and Accrued Sick and Safe Leave Act. The WTPAA was transmitted to Congress on November 21, 2014 and was slated to take effect on January 14. However, emergency amendments signed by the mayor on December 29 required resubmission of the law to Congress for review, delaying the effective date. The DC Department of Employment Services now projects the effective date of the law is February 26, 2015.

The Wage Theft Prevention Amendment Act

As originally enacted, the WTPAA imposes new obligations on DC employers, including wage notice requirements for existing employees and new hires, modifications to current wage payment laws, and increased penalties for noncompliance with DC wage and hour and leave laws.

Expanded Coverage of the Wage Payment and Collection Act

The WTPAA adopts a broader definition of "employee" under DC's Wage Payment and Wage Collection Law, expanding coverage to



employees who are employed in a *bona fide* executive, administrative, or professional capacity. As originally enacted, requirements that currently apply to nonexempt employees, such as paying employees at least twice each calendar month and rules for paying final wages after termination, would also apply to exempt employees subject to certain limited exceptions. An exception would, for example, be available where a different pay period is specified in a collective bargaining agreement or where the employer "by contract or custom" has paid employees at least once each calendar month.

New Notice and Posting Requirements

The new law imposes certain employee notice and posting requirements on employers with DC-based employees. Employers will have to provide current employees and new hires going forward with written notices that contain the following detailed information:

- Employer's name (including any "doing business as" or "dba" names it uses)
- Employer's or nonprofit's main office or principal place of business address, as well as a mailing address, if different
- Employer's telephone number
- Employee's rate of pay and basis of the rate (e.g., by the hour, shift, day, week, salary, piece, or commission)
- Allowance(s) claimed as part of minimum wage (such as tips, meals, or lodging)
- Overtime pay rate and exemptions from overtime pay
- Living wage and exemptions from living wage
- Applicable prevailing wages
- Employee's regular payday
- Other information the mayor deems material and necessary

Temporary Staffing Firms

The WTPAA imposes additional obligations on temporary staffing firms, requiring an employee notice at the time of the initial interview or hire, and a more specific notice when the staffing firm assigns the employee to perform work at, or provide services for, another organization.

Employers must provide the required notice to current employees within 90 days of the WTPAA's enactment, and to new employees at hire. The notice must be provided in English as well as in the employee's primary language if other than English. An updated notice will be required when any of the above information changes, such as pay rate or employer's address. The WTPAA required the mayor's office to provide sample templates in English within 60 days of the law's effective date, but was less clear on which non-English notices might also be provided.

The WTPAA also imposes a workplace posting requirement. Employers will be required to display a copy or a summary of the law, which the mayor's office is to make available within 60 days of the law's effective date.

Recordkeeping Requirements

The WTPAA provides increased penalties for failure to maintain required employee hour and compensation records. The law amends current recordkeeping requirements under DC's Minimum Wage Revision Act to require employers to record the "precise time worked" each day and each workweek by employees rather than just the "hours worked."

Comment. Guidance from the mayor's office is still needed to clarify how employers will have to track and record employee time to satisfy the new law.

The WTPAA also extends the current record retention period from three years to the greater of three years or the prevailing federal standard. Employers are required to retain copies of the wage notices that are signed and dated by the employer and the employee as proof of acknowledgement of receipt. Employers may be subject to a \$500 penalty for each failure to maintain a required payroll record, or to provide an itemized wage statement or employee notice. Employers may also be subject to criminal penalties for negligent or willful violations.

Anti-retaliation Provisions

The new law provides broad anti-discrimination and anti-retaliation protections for any employee who:

- Complains — or is believed to have complained — to his or her employer or to DC or federal authorities that the employer has violated the WTPAA or the Living Wage Act
- Initiates a proceeding under or related to the WTPAA
- Provides information to the authorities about a violation, investigation, or proceeding under the WTPAA
- Testifies in an investigation or proceeding under the WTPAA
- Otherwise exercises rights protected under the WTPAA

Retaliation will be presumed to have occurred if an adverse employment action is taken against an employee within 90 days of engaging in any of these activities. Employees may sue an employer for violation of the anti-retaliation provisions in court or request administrative enforcement. Penalties that may be levied against an employer found liable for retaliation include civil penalties, liquidated damages, attorneys' fees, injunctive relief, and reinstatement.

Penalties for Noncompliance

The WTPAA increases the civil and criminal penalties for employers that violate DC's wage and hour laws, and expands remedies available to employees. Employers face enhanced penalties for noncompliance with the WTPAA and the various DC wage laws it will amend, including the Living Wage Act, Minimum Wage Revision Act, Wage Payment and Wage Collection Law, and Accrued Sick and Safe Leave Act. In addition to increased monetary penalties, the WTPAA provides that business licenses and permits may be denied or suspended for noncompliance, and liens can be placed on real and personal property for penalties owed.

Expanded Liability for Contractors and Temporary Staffing Firms.

Under the WTPAA, general contractors are jointly and severally liable for violations of certain laws by their subcontractors, including the failure to pay wages properly. Subcontractors generally must indemnify their general contractors for any penalties for subcontractor violations unless the general contractor's failure to timely pay the subcontractor caused the violations.

In addition, employers that use temporary staffing agencies may be held jointly and severally liable for violations by those agencies.

However, both entities must be given at least 30 days' notice before the District or employee files a claim for these violations and the staffing agency must indemnify the employer unless their agreement provides otherwise.

Expanded Liability

Because employers may be liable for a subcontractor's or temporary staffing agency's noncompliance, they will want to take steps to make sure that those entities are mindful of their wage payment and other obligations under the WTPAA.

Unlimited Penalties. In addition to a number of provisions that increase employer penalties for violating various employment laws, other provisions provide for unlimited monetary penalties.

Emergency Amendments

On December 29, Mayor Gray signed an emergency measure, the [Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2014](#), to make a number of clarifying and technical corrections to the WTPAA. The measure includes substantive changes to the WTPAA's liability provisions, clarifies who can bring claims, narrows certain notice obligations, gives the mayor authority to issue rules implementing the WTPAA's provisions, and repeals a retroactive applicability provision.

Since passing the measure, the DC Council identified several unintended consequences of the WTPAA that could impact how salaried workers are paid, how their time records are kept, and how wage related information must be provided. On February 3, 2015, the DC Council unanimously passed a [resolution](#) and [temporary amendments](#) to the WTPAA that address these issues.

Wage Payment and Recordkeeping

The temporary amendments include two important clarifications that affect *bona fide* executive, administrative, and professional employees. First, they except exempt employees from the WTPAA's requirement for employers to record the "precise time worked" each day and each workweek by employees. Second, they except exempt employees from the twice-a-month wage payment requirement, requiring only that *bona fide* executive, administrative, and professional employees are paid once per month.

Liability for Noncompliance

The emergency amendments provide a very narrow exception from the WTPAA's imposition of joint and several liability on general contractors and temporary staffing agencies for noncompliance by others. The amendments clarify that general contractors and employers using temporary staffing arrangements may be excepted from the expanded liability provisions if contracts between general contractors and their subcontractors or between employers and their temporary staffing agencies were in effect prior to the WTPAA's effective date and explicitly provide otherwise.

Also amended are the provisions that provided for unlimited monetary penalties. As a result, penalty provisions now include caps.

Who Can Bring Claims

The WTPAA allowed "any entity a member of which is aggrieved" by a violation of wage and leave laws to bring a civil action, leaving open the door for social and political clubs or unions to potentially bring claims on behalf of their members. To eliminate that possibility, the emergency amendments made clear that only employees can bring an action to enforce their rights under the WTPAA.

Notice Obligations

The WTPAA requires employers to provide employee notices in both English and, in certain circumstances, a second language. The



New York's Wage Theft Protection Act

As DC imposes new administrative burdens on employers, New York has recently taken steps to reduce those burdens by eliminating an annual wage notice requirement in effect since 2012. (See our [January 6, 2015 For Your Information](#).)

temporary amendments make clear that employers will be required to provide a non-English notice only if the mayor's office has made a translation available in a language that the employer knows to be the employee's primary language or that the employee requests.

Applicable Date

As originally enacted, the WTPAA applied to violations occurring after October 1, 2014, even though the law was not then in effect. The emergency amendments repealed that provision, eliminating retroactive application to violations that occur prior to the new law's effective date.

Rules and Guidance

The emergency amendments make clear that the mayor may issue rules to implement the WTPAA's provisions.

In Closing

The WTPAA amends existing DC wage and hour laws, imposing new obligations on employers and providing new anti-retaliation protections for employees. The new law is expected to take effect on February 26, 2015, when a mandatory congressional review period expires. New wage notice and recordkeeping requirements will affect DC employers, and they will face enhanced remedies, fines, and administrative penalties for noncompliance. Employers should continue to watch for regulations and other administrative guidance to assist their compliance efforts.

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