

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 1790

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JULY 2, 2019

SUMMARY

- Synopsis:** Concerns law regarding failure to pay wages.
- Type of Impact:** Annual expenditure and revenue increases to State General Fund.
- Agencies Affected:** Department of Labor and Workforce Development; Department of Law and Public Safety; and The Judiciary.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual</u> |
|-------------------------------|----------------------|
| State Cost Increase | Indeterminate |
| State Revenue Increase | Indeterminate |

- The Office of Legislative Services (OLS) estimates that this bill will result in indeterminate annual increases in administrative, enforcement, and incarceration expenditures to the State, and indeterminate annual increases in State revenue collected from certain new and expanded criminal and administrative penalties.

BILL DESCRIPTION

This bill assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

Upon conviction for a first violation of a wage payment law subject to the bill, an employer is punishable by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment. Upon conviction for a second or subsequent violation, an employer is punishable by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

Additionally, the bill permits an aggrieved employee to bring a civil action, wherein a violator can be required to pay wages owed, plus liquidated damages equal to not more than 200

percent of the wages. However, payment of liquidated damages is not required for a first violation if the employer demonstrates that the action was taken in good faith and reasonable grounds for believing the action was not a violation of the bill, the employer admits the violation, and the employer pays the amount owed within 30 days. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to not more than 200 percent of those wages. No payment of wages or damages pursuant to this bill shall result in a violator paying wages owed or damages more than one time for the same violation.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner must inform the employer that the commissioner will conduct an audit of the employer or any successor firm of the employer and notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

The bill also directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction. In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill permits the Department of Labor and Workforce Development (DOLWD) to contract with community-based and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of State wage and hour laws.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

Finally, the bill establishes the crime of a "pattern of wage non-payment" when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is classified as a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years or a fine of up to \$15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in indeterminate annual increases in enforcement and administrative costs to the State, which will partially, or fully, be offset by indeterminate annual increases in revenue collected from certain new and expanded criminal and administrative penalties.

The Division of Wage and Hour Compliance within the DOLWD administers and enforces New Jersey State labor laws, including those regarding the failure to pay wages by an employer. According to the department, the division has an estimated 59 employees managing an estimated 4,016 violations resulting from complaints in fiscal year 2018.

The bill expands existing enforcement actions available to the department, broadens the scope of wage replacement claims that may be filed with the department, and requires the department to provide certain information and reports to the public. These provisions, as well as a potential rise in the volume of claims submitted to the department as a result thereof, will likely result in an indeterminate annual expenditure increase to the State. However, the OLS is unable to quantify the additional expenses or the number of additional claims. Depending on DOLWD operating decisions, however, a portion of the added costs may be absorbed into the department's existing operating budget.

The additional operating expenses will likely be offset partially, if not fully, by revenue collected from certain new and expanded criminal and administrative penalties. The OLS cannot determine, however, the additional number of claims that will result in violations, and therefore the additional amount of penalties to be collected under this bill.

The bill also permits the department to enter into contracts with community-based legal services organizations to disseminate information regarding State wage and hour laws, and to help or represent employees in wage theft actions.

Finally, the bill permits employees to bring a civil action for alleged violations under the bill. As a result, the Judiciary may incur an annual cost increase to the extent that the caseload of courts may rise. The OLS does not have information to determine the number of cases and, therefore, the associated costs.

Section: Commerce, Labor and Industry

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).