

August 19, 2010

NEW WAGE THEFT BILL, DOES IT HAVE TEETH?

YES, FINALLY . . .

. . . the new amendments enact some long overdue common sense changes and makes the Illinois Wage Payment and Collection Act 820 ILCS 115/1 *et. seq.* into a law that actually serves a purpose. There is finally a common sense clause that actually protects employees from retaliation. There is also the attorney's fees clause, which means that attorney's no longer need to plead the elusive Attorney's Fees In Wage Actions Act, 705 ILCS 225/1.

I should point out that the amendments do effectively take away an employer's previous right to steal from their employees with impunity. I state the latter presuming that the threat of a class C misdemeanor probably didn't stop employers from theft, and it definitely did not prevent retaliation if an employee complained. Actually the Illinois Courts routinely held such retaliation was legal, and that the class C misdemeanor was supposed to function as the deterrent for all abuse! Thus the law actually rewarded those who broke it, and anyone complained, they were fired.

If the Illinois Department of Labor actually became functional for small claims it would be a very positive force, so long as the claimants understand that they are better off in small claims court or finding a lawyer willing to take their case to collect a couple bucks in attorney's fees from the employee.

The law also apparently gives the Department Labor the power to prosecute their cases in civil court, whereas before, the Attorney General acted as counsel. And lastly, the recalcitrant employer can catch a class 4 felony in addition to fines and making the victims whole if he is a second offender.

Most importantly, the need for a retaliation clause has been addressed, and these amendments clearly provide one.

Thus, this law does have teeth.

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THE AMENDMENTS TO THE LAW ARE BELOW:

Section 10. The Illinois Wage Payment and Collection Act is amended by changing Sections 11, 13, and 14 as follows:123456789101112131415161718192021222324SB3568
Enrolled - 2 - LRB096 20650 RLC 36363 b(820 ILCS 115/11)
(from Ch. 48, par. 39m-11)

Sec. 11. It shall be the duty of the Department of Labor to inquire diligently for any violations of this Act, and to institute the actions for penalties herein provided, and to enforce generally the provisions of this Act. An employee may file a complaint with the Department alleging violations of the Act by submitting a signed, completed wage claim application on the form provided by the Department and by submitting copies of all supporting documentation. Complaints shall be filed within one year after the wages, final compensation, or wage supplements were due. Applications shall be reviewed by the Department to determine whether there is cause for investigation. The Department shall have the following powers:(a) To investigate and attempt equitably to adjust controversies between employees and employers in respect of wage claims arising under this Act and to that end the Department through the Director of Labor or any other person in the Department of Labor designated by him or her, shall have the power to administer oaths, subpoena and examine witnesses, to issue subpoenas duces tecum requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry and to examine and inspect the same as may relate to the question in dispute. Service of such subpoenas shall be made by any sheriff or any person. Any court in this

State,1234567891011121314151617181920212223242526SB3568
Enrolled - 3 - LRB096 20650 RLC 36363 upon the application of the Department may compel attendance of witnesses, the production of books and papers, and the

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giving of testimony before the Department by attachment for contempt or in any other way as the production of evidence may be compelled before such court.(b) To take assignments of wage claims in the name of the Director of Labor and his or her successors in office and prosecute actions for the collection of wages for persons financially unable to prosecute such claims when in the judgment of the Department such claims are valid and enforceable in the courts. No court costs or any fees for

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necessary process and proceedings shall be payable in advance by the Department for prosecuting such actions. In the event there is a judgment rendered against the defendant, the court shall assess as part of such judgment the costs of such proceeding. Upon collection of such judgments the Department shall pay from the proceeds of such judgment such costs to such person who is by law entitled to same. The Department may join in a single proceeding any number of wage claims against the same employer but the court shall have discretionary power to order a severance or separate trial for hearings. (c) To make complaint in any court of competent jurisdiction of violations of this Act. (d) In addition to the aforementioned powers, subject to appropriation, the Department may establish an administrative procedure to adjudicate claims or specific categories of claims filed with the Department for \$3,000 or less per individual employee, exclusive of penalties, costs and fines, including instances where an employer fails to timely respond to a notice of claim issued by the Department; and to issue final and binding administrative decisions on such claims subject to the Administrative Review Law. To establish such a procedure, the Director of Labor or her or his authorized representative may promulgate rules and regulations. The adoption, amendment or rescission of rules and regulations for such a procedure shall be in conformity with the requirements of the Illinois Administrative Procedure Act.

Nothing herein shall be construed to prevent any employee from making complaint or prosecuting his or her own claim for wages. Any employee aggrieved by a violation of this Act or any rule adopted under this Act may file suit in circuit court of Illinois, in the county

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where the alleged violation occurred or where any employee who is party to the action resides, without regard to exhaustion of any alternative administrative remedies provided in this Act. Actions may be brought by one or more employees for and on behalf of themselves and other employees similarly situated. Nothing herein shall be construed to limit the authority of the State's attorney of any county to prosecute actions for violation of this Act or to enforce the provisions there of independently and without specific direction of the Department of Labor. (Source: P.A. 95-209, eff. 8-16-07.) (820 ILCS 115/13) (from Ch. 48, par. 39m-13) Sec. 13. In addition to an individual who is deemed to be an

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employer pursuant to Section 2 of this Act, any officers of a corporation or agents of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation. (Source: P.A. 78-914.) (820 ILCS 115/14) (from Ch. 48, par. 39m-14) Sec. 14.(a) Any employee not timely paid wages, final compensation, or wage supplements by his or her employer as required by this Act shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, the amount of any such underpayments and damages of 2% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. In a civil action, such employee shall also recover costs and all reasonable attorney's fees. (a-5) In addition to the remedies provided in subsections (a), (b), and (c) of this Section, any employer or any agent of an employer, who, being able to pay wages,

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Enrolled - 6 - LRB096 20650 RLC 36363 compensation, or wage supplements and being under a duty to pay, willfully refuses to pay as provided in this Act, or falsely denies the amount or validity thereof or that the same is due, with intent to secure for himself or other person any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, upon conviction, is guilty of: (1) for unpaid wages, final compensation or wage supplements in the amount of \$5,000 or less, a Class B misdemeanor; or (2) for unpaid wages, final compensation or wages supplements in the amount of more than \$5,000, a Class A misdemeanor a Class C misdemeanor. Each day during which any violation of this Act continues shall constitute a separate and distinct offense. Any employer or any agent of an employer who violates this Section of the Act a subsequent time within 2 years of a prior criminal conviction under this Section is guilty, upon conviction, of a Class 4 felony. (b) Any employer who has been demanded or ordered by the Department Director of Labor or ordered by the court to pay wages, final compensation, or wage supplements due an employee shall be required to pay a non-waivable administrative fee of \$250 to the Department of Labor. Any employer who has been so demanded or ordered by the Department or ordered by a court to pay such wages, final compensation, or wage supplements and who fails to seek timely review of such a demand or order as provided for under this Act and who fails to comply within 15 calendar days after such demand

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or within 35 days of an administrative or court order is entered shall also be liable to pay a penalty to the Department of Labor of 20% of the amount found owing and a penalty to the employee of 1% per calendar day of the amount found owing for each day of delay in paying such wages to the employee. All moneys recovered as fees and civil penalties under this Act, except those owing to the affected employee, shall be deposited into the Wage Theft Enforcement Fund, a special fund which is hereby created in the State treasury. Moneys in the Fund may be used only for enforcement of this Act. And who shall fail to do so within 15 days after such demand or order is entered shall be liable to pay a penalty of 1% per calendar day to the employee for each day of delay in paying such wages to the employee up to an amount equal to twice the sum of unpaid wages due the employee. Such employer shall also be liable to the Department of Labor for 20% of such unpaid wages. (b-5) Penalties and fees under this Section may be assessed by the Department and recovered in a civil action brought by the Department Director in any circuit court or in any administrative adjudicative proceeding under this Act. In any such civil action or administrative adjudicative proceeding under this Act this litigation, the Department Director of Labor shall