

WAGE THEFT IN NEW YORK IS NOW CRIMINAL LARCENY

Hodgson Russ Labor & Employment Alert
October 3, 2023

On September 6, 2023, New York State Governor Kathy Hochul signed into law a bill that amended the New York Penal Law to make wage theft criminal larceny.

Section 155 of the Penal Law provides that “Larceny includes a wrongful taking, obtaining or withholding of another’s property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:”

The statute previously listed five subsections: (a) by embezzlement, (b) by taking lost property, (c) by issuing a bad check, (d) by false promise, or (e) by extortion.

The amended law, which went into effect when the Governor signed it, added a sixth subsection: “(f) by wage theft.”

The amended statute will increase the criminal penalties for wage theft. It does this by allowing prosecutors to aggregate an employer’s failures to pay or underpayments of wages to its workers into one case, even if such failures to pay or underpayments occurred in multiple counties. Further, the amendment now allows prosecutors to aggregate unpaid or underpaid wages to a “workforce” (now defined as “a group of one or more persons who work in exchange for wages”) into one count of larceny, even if these alleged wage thefts occurred in multiple counties.

If the amount of such aggregated amount not paid exceeds \$1,000, that crime will constitute grand larceny in the fourth degree, which is a Class E felony. Conviction for a Class E felony can result in up to four years of imprisonment. However, higher amounts not paid could result in longer prison sentences, with a maximum prison sentence of twenty-five years for the failure to pay an aggregate amount of more than \$1,000,000. Wage and hour class and collective actions, involving numerous employees, will sometimes concern such substantial amounts of alleged unpaid wages. The amended law’s aggregation provision raises the specter of significant prison terms for executives in such situations.

Employers in New York now have a further incentive to make sure that they are properly paying wages, including overtime, to their employees. In addition, to the extent that employers have categorized workers as independent contractors, it is important that management make sure that such individuals are truly free from direction and control. Failing to make overtime and other wage payments due to such misclassifications will now also result in potential criminal liability.

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If you have any questions about your obligations as an employer under amended section 155 of the New York Penal Law, please contact [Glen P. Doherty](#) (518.433.2433), [Charles H. Kaplan](#) (646.218.7513), [Elizabeth D. McPhail](#) (716.848.1530), or any other member of Hodgson Russ LLP's [Labor & Employment Practice](#).

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