

Employers Beware: Wage Theft Soon to be a Felony in Colorado and Minnesota

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Recent legislation in Colorado and Minnesota imposes harsh criminal penalties—including potential felony convictions—for the failure to pay wages. To limit their exposure under these strict new laws, employers with operations in either state should familiarize themselves with these upcoming changes.

Colorado Increases Criminal Penalties under the Wage Claim Act

On May 16, 2019, Colorado Governor Jared Polis signed HB 19-1267, into law, addressing penalties for failure to pay wages. While Colorado currently imposes misdemeanor penalties for nonpayment of wages, the new law classifies that nonpayment as theft under Colorado law, punishable by a felony when the amount of theft exceeds \$2,000. Penalties vary based on the amount of the theft:

Amount of Theft	Imprisonment	Fine
\$2,000 – \$4,999	1-1.5 years	\$1,000 – \$100,000
\$5,000 – \$19,999	1-3 years	\$1,000 – \$100,000
\$20,000 – \$99,999	2-6 years	\$2,000 – \$500,000
\$100,000 – \$999,999	4-12 years	\$3,000 – \$750,000
\$1,000,000 or more	18-24 years	\$5,000 – \$1,000,000

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The revisions were grounded in a 2018 report of the Colorado Human Trafficking Council, finding that those “who commit the crime of human trafficking often commit other crimes such as wage theft, tax evasion, and workers’ compensation fraud, which drains local and state resources, as well as denies the state its right to revenue.” The Colorado General Assembly further found that “wage theft costs individual workers in Colorado hundreds of millions of dollars in wages and benefits each year and costs the State of Colorado tens of millions of dollars in revenue.”

Under these revisions, an employer *or any agent of an employer* commits theft by: (1) willfully refusing to pay wages or compensation, (2) falsely denying the amount of a wage claim or the validity thereof with the intent to secure a discount on the indebtedness or with the intent to annoy, harass, oppress, hinder, coerce, delay, or defraud the employee.

HB 19-1267 also expanded the definitions of “Employee” and “Employer” under the Colorado Wage Claim Act. It omits language currently limiting the definition of “Employee” to those “in which the employer may command when, where, and how much labor or service shall be performed.” Instead, it employs a broader definition, noting that “relevant factors” in determining whether someone is an employee “include the degree of control the employer may or does not exercise over the person and the degree to which the person performs work that is the primary work of the employer.” HB 19-1267 also adopts a broader definition of “Employer” set forth in the Federal Fair Labor Standards Act. 29 U.S.C. 203(d) (“Employer’ includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such organization.”).

The changes take effect January 1, 2020, but Colorado employers should familiarize themselves with the changes—especially the expanded definitions of employee and employer—now to determine how they will be affected.

Minnesota Follows Suit

Less than two weeks later, Minnesota passed even stricter felony penalties for wage theft. The provisions were part of an omnibus bill sent to Minnesota Governor Tim Walz last week. Governor Walz has indicated that he will sign the bill.

The law defines wage theft as any of the following actions, taken with intent to defraud:

1. Failing to pay an employee all wages, salary, gratuities, earning, or commission as required by federal, state, or local law
2. Directly or indirectly causing an employee to give a receipt for wages for a greater amount than that actually paid to the employee for services rendered,
3. Directly or indirectly demanding from employees any rebate or refund from the wages owed to the employee, or
4. Making it appear, in any manner, that the wages paid to any employee were greater than the amount actually paid to the employee.

Under Minnesota’s new law, the penalties also vary based on the value of the theft:

Amount of Theft	Maximum Imprisonment	Maximum Fine
\$1,000 – \$4,999	5 years	\$10,000
\$5,000 – \$34,999	10 years	\$20,000
\$35,000 or more	20 years	\$100,000

Minnesota’s new wage theft protections will apply to actions occurring on or after August 1, 2019. The bill also allocates over \$2 million for wage theft prevention enforcement.

Avoiding Hard Time for Wage Theft

It remains to be seen whether these enactments are part of a larger trend towards significant criminal liability for wage theft. For the time being, employers with operations in Colorado and Minnesota should carefully evaluate all wage practices to ensure that they are

complying with all applicable wage laws. Employee complaints and wage claims should be promptly and carefully reported. Employees involved in the payroll process should be informed of these changes and managers and supervisors should be reminded of their responsibility to report all employee complaints immediately. Akerman's Labor and Employment Lawyers can assist with each of these steps.

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