

New York Legislature Passes Bill Allowing Liens on Employers for Alleged Wage Claims

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A bill aimed at increasing protections for employer “wage theft” by allowing an employer’s current or former employee, or the New York State Department of Labor (NYSDOL), to place a lien on the employer’s interest in real or personal property for the value of a wage claim, plus liquidated damages, has passed the New York State Legislature. If signed by Governor Andrew Cuomo, the law will become effective 30 days after signing.

Examples of employer wage theft include minimum wage violations, failing to pay overtime, and not paying tipped workers the difference between their tips and the legal minimum wage.

The bill permits workers to put a lien on an employer’s property in connection with an alleged “wage claim.” A “wage claim” is defined as a claim for a violation of New York Labor Law Sections 170 (hours of labor for domestic workers), 193 (deductions from wages), 196-d (gratuities), or 652 and 673 (minimum wages), as well as the related regulations and wage orders promulgated by the labor commissioner. A “wage claim” also includes a claim for wages due to an employee pursuant to an employment contract that were unpaid in violation of that contract, and a claim for violations of the Fair Labor Standards Act (FLSA) (*e.g.*, overtime claims).

An employee’s lien for a wage claim may not be placed on an employer’s bank accounts or goods.

The lien may be filed at any time, but not later than three years following the end of the employment giving rise to the wage claim.

If the bill becomes law, it could have unintended negative consequences for employers operating in New York. Of the handful of other states that already allow similar liens on employers, only one (Wisconsin) allows such liens based solely on allegations, rather than a finding of liability. Opponents of the bill have identified a number of other concerns for the state’s business community should the bill become law, including a potential freeze to credit needed by small businesses when a lien is filed because banks may not extend credit under such circumstances. They also argue that the bill would give employees unfair leverage.

Jackson Lewis will continue to monitor the status of this bill. In the meantime, if you have any questions about this bill or any other wage and hour issue, please contact the Jackson Lewis attorney(s) with whom you regularly work.

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