

## Labor & Employment



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### New York Closes in on Comprehensive Employee Wage Lien Law

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*New York is on the precipice of passing a law that would allow employees to easily file liens against an employer's property in connection with pending wage disputes. The bill also would permit employee access to certain sensitive employer records and expand the scope of personal liability for owners in disputes over wages. Employers should monitor these developments and work with counsel to prepare an action plan should this bill become law.*

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The New York State Legislature has recently passed a bill that could substantially alter the legal landscape of wage disputes if signed into law by Governor Cuomo. The proposed Employee Wage Lien bill would allow employees to obtain liens against an employer's real property and personal property based on allegations involving nonpayment of wages. If signed into law, the bill will become effective within 30 days. Similar laws have been enacted on other states.

The law will allow employees to file a notice of a lien up to three years following the end of the employment giving rise to the wage claim. Employees will be able to place liens up to the total amount allegedly owed based on claims relating to overtime compensation, minimum wage, spread of hours pay, call-in pay, uniform maintenance, unlawful wage deductions, improper meal or tip credits or withheld gratuities, unpaid compensation due under

an employment contract, or a claim that the employer violated an existing wage order. In addition, the State Attorney General and Department of Labor will be able to obtain a lien on behalf of an individual employee—or a class of employees—against an employer that is the subject of an investigation, court proceeding, or agency action.

After a lien is filed, the employer can only release the lien by obtaining a bond to cover the amount or by seeking court intervention. If the employer takes no action on the lien, it will remain in effect for a one-year period, which can be extended by court order, and which will be automatically extended for the length of any proceeding regarding the wage dispute (including court cases, agency proceedings, or arbitrations). If an employee willfully exaggerates a lien, the lien will be discharged, and the employer can obtain an order barring the employee from

placing future liens. The bill does not, however, provide any other penalties, and it is unclear whether any such additional remedies will be made available.

The bill will also allow plaintiffs with wage or wage retaliation claims to obtain from the court an attachment of property (i.e., seizure preventing its sale) during the pendency of a litigation. Under existing law, if a plaintiff seeks prejudgment attachment, that plaintiff must post a bond and can be liable for a defendant's counsel fees and costs if the plaintiff's attachment motion fails. This bill provides the bond required on wage and wage retaliation claims cannot exceed \$500 and can be waived by the court.

In addition to the employee lien provisions, the pending bill would also expand the scope of the existing personal liability for wages that can be imposed on the 10 largest shareholders of non-public New York corporations. Currently, the 10 largest shareholders are personally liable for unpaid wages in the event the corporation does not pay. This bill expands that personal liability to include liquidated damages, penalties, interest, attorney's fees and costs in that personal liability (in addition to the unpaid wages).

Finally, the proposed bill would also expand the rights of employees and their agents (i.e., their attorneys) to review the books and records of a corporation or limited liability company ("LLC") within five business days of a written demand. Specifically, the law would provide employees and their agents the right to review the minutes of shareholders' meetings and to obtain shareholders' names, addresses, and—remarkably—the value of the shareholders' interests in the corporation or each member's contribution and share of profits in an LLC.

## WHAT IS THE EFFECT ON EMPLOYERS?

If signed into law, this bill will have serious consequences for New York employers. It will allow employees to attach liens against an employer's property based on allegations alone, regardless of the employee's position, income level, or motivation. Individual employees at any level could seek to hamper merger and acquisition activity by attaching liens to company assets. Executives could apply liens in connection with bonus or other compensation disputes. Unionized workforces might try to use the lien process for leverage in negotiations. There will also likely be downstream consequences for companies with joint employer relationships, outsourced human resources functions, or professional employer organization relationships. The proposed law provides little deterrent for misusing the process.

## WHAT CAN EMPLOYERS DO NOW?

If, as expected, the bill becomes law, New York employers must be vigilant in ensuring compliance with all federal, state, and city wage and hour laws and work to manage processes for responding to records requests. Businesses should also consider reviewing and updating their insurance coverages to determine whether their carriers will be able to provide sufficient bonds to discharge any liens that may be filed against them.

As of August 0, 01, the bill had not been signed by the Governor.

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