



JANUARY 25, 2019

## Governor Cuomo Plans to Implement Enhanced Criminal Penalties for Wage Theft in New York State

On January 24, 2019, New York Governor Andrew Cuomo announced his intention to implement enhanced criminal penalties for New York employers who commit wage theft against their employees. Governor Cuomo's office said his fiscal year 2020 budget will include a provision to increase the criminal penalty to as high as a Class B felony for employers who knowingly or intentionally commit wage theft. Penalties for a Class B nonviolent felony in New York can range from a minimum of one to three years in prison to a maximum of 25 years. In addition, the proposal will enhance the New York State Department of Labor's ability to refer cases for criminal prosecution to district attorneys and the New York Attorney General's office, who will also be provided latitude to independently prosecute more wage theft cases.

New York Labor Law §198-A sets forth the current criminal penalties applicable to employers who steal wages from their employees, providing, in pertinent part:

"Every employer who does not pay the wages of all of his employees[:]"

1. "[...] shall be guilty of a misdemeanor for the first offense and upon conviction therefor shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year," and;
2. for a second or subsequent offense "within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for

not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. [...].” (emphasis added).

Currently under New York Labor Law §198-A, only repeat offenders can be prosecuted with felony charges. Under the Governor’s new proposal, employers will be subject to penalties ranging from a Class B misdemeanor for wage theft of less than \$1,000 to a Class B felony for thefts of over \$50,000, without being a “repeat offender.” The Governor’s proposal also applies to employers overseeing public works projects, which are subject to the prevailing wage or minimum pay rates based on locality.

## **Takeaway for Employers**

Although the legislature has yet to ratify Governor Cuomo’s proposal, employers should use this time to make sure their pay practices comply with New York and Federal wage and hour laws. As this proposal affects virtually every New York employer, we encourage you to contact us for assistance in complying with New York Labor Law or interpreting Governor Cuomo’s proposed regulations.

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If you have any questions regarding this alert, or any other issue, please do not hesitate to contact us.

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