



AUGUST 5, 2019

New York Legislature Passes Bill Permitting an Employee to Place a Lien on an Employer's Property for Alleged Wage Claims

The New York State Assembly and Senate recently passed a bill (S2844B/A486B) that, if signed into law by Governor Cuomo, would allow current and former employees to obtain a lien against an employer's real or personal property based merely on the assertion of a wage claim. The proposed legislation encompasses wage claims under the New York Labor Law ("NYLL") and the Fair Labor Standards Act ("FLSA"), including claims for minimum wage, spread of hours, overtime, unlawful deductions and improper tip and meal credits, along with claims for unpaid compensation pursuant to an employment contract. The bill defines employer as any person that is an "employer" under the NYLL and FLSA. As a result, an employee lien's can be imposed not only against the corporate entity, but personally against individuals, including managers, executives, supervisors, owners, shareholders, human resources professionals and any other person who has control over employees' working conditions. Specifically, the bill amends the limited liability company and business corporation laws, to allow employees to hold the ten members with the largest ownership interests in a company and the ten largest shareholders of non-publicly traded corporations personally liable for any wage theft.

The bill further provides that the lien can be for the value of the employee's wage claim, inclusive of liquidated damages, and can remain on the property for the duration of the lawsuit. However, the lien is limited to the employee's individual claims and not applicable to putative class claims. Moreover, the lien cannot be placed on an employer's bank accounts or goods. According to the bill, the lien must be filed within three years following the end of the employment giving rise to the wage claim. It is unclear whether the lien could be utilized for claims that are already in litigation. Once the lien is filed, the

employer can try to remove the lien by either obtaining a bond or, if applicable, prove the employee willfully exaggerated the lien.

Additionally, the bill contains a provision that allows employees to examine a business' books and records to obtain the shareholders' or members' names, addresses, and ownership value in the company.

Takeaway for Employers

Although the Governor has not yet signed this bill, employers should be aware of the serious consequences the bill will have on employers operating in New York if signed into law. Employers should use this time to ensure they are in full compliance with all applicable wage and hour laws, including conducting an internal audit of their wage and hour practices, to avoid employees filing wage claims, since a mere allegation of unpaid wages could result in a lien being filed that could disrupt the employer's finances or, in certain cases, put the employer out of business.

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

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