



One Minute Memo™

Amendment to Illinois Minimum Wage Law Increases Employer Exposure

Employers will now face increased exposure from wage and hour claims under a new amendment to the Illinois Minimum Wage Law (IMWL) that Governor Rod Blagojevich signed into law on July 14, 2006.

Under the IMWL, employees may recover unpaid wages in a civil action or may assign his or her claim to the Director of Labor (DOL), who then may bring a legal action on behalf of the employee. 820 ILCS 105/12(a). Before the amendment, employees could recover unpaid wages, costs, and attorneys' fees. The amendment, Senate Bill 2339, adds punitive damages to this list of damages an employee may recover.

Before Senate Bill 2339's passage, an Illinois Appellate Court interpreted the IMWL to mean that only the Director of Labor, on behalf of the employee, could recover punitive damages from an employer. *Gelb v. Air Con Refrigeration & Heating, Inc.*, 356 Ill. App. 3d 686, 695 (Ill.App.Ct. 2005) (interpreting plain language of 820 ILCS 105/12(a) to limit the recovery of punitive damages to actions brought by the DOL). The Illinois Appellate Court reasoned that the statute only mentioned

punitive damages in the context of an action assigned to and subsequently brought by the Department of Labor. *Id.* Accordingly, the Illinois Appellate Court concluded that only the DOL could recover punitive damages. *Id.*

In response to *Gelb*, the Illinois Legislature enacted Senate Bill 2339. This amendment not only allows employees to obtain punitive damages in the amount of 2% of the wage underpayments for each month it remains unpaid, the amendment also applies to "presently existing claims and actions from which a final and no-longer appealable order has not been entered." That is, this amendment may be given retroactive application, thereby increasing an employers' exposure for existing claims.

Moreover, the Legislature's drafting may have inadvertently destroyed the pre-*Gelb* requirement that a court may award punitive damages only where the employee proves that the employer willfully underpaid the employee. See *Ladegaard v. Hard Rock Concrete Cutters, Inc.*, 150 Lab. Cas. (CCH) P34, 880 (holding that a showing of willfulness is required for an

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award of punitive damages under the IMWL). Under the amended IMWL, however, the only reference to willfulness is in the context of DOL actions. In the context of an employee's right to seek punitive damages, Senate Bill 2339 is silent. Therefore, it may be interpreted to allow the imposition of punitive damages even if an employer's conduct is not proven to be willful.

If you have any questions on this decision, please contact the Seyfarth Shaw LLP attorney with whom you work or any Labor & Employment attorney listed on our website at www.seyfarth.com.