

# advisory

## RI EMPLOYERS: WAGE THEFT BECOMES A FELONY BEGINNING JANUARY 1, 2024

*How to Minimize Your Risks of Violating Wage, Hour and Worker Misclassification Laws*

### Background

Over the past decade, there has been a sharp rise in employee misclassification litigation. This is largely attributed to greater awareness of workers' rights and pay requirements, higher scrutiny by the Obama and Biden administrations, the impact of decades old legal holdings on the new gig economy, and the fact that employers are frequently at a disadvantage when dealing with these claims.



As businesses adapt to evolving labor models and employment structures, there has been increased litigation to determine who should be properly classified as an independent contractor or employee. In a significant move to protect workers' rights and address employee misclassification and wage theft, the Rhode Island legislature amended the State's Payment of Wages Act in 2023, R.I. Gen. Laws § 28-14-1, et seq. ("Wage Act") to make "wage theft" a felony crime.

As of January 1, 2024, employers who "knowingly and willfully" fail to pay wages of more than \$1,500 could face imprisonment for up to three years and/or a fine of up to \$5,000. The amendment imposes harsh penalties for employers generally who fail to pay wages, and those in the construction industry specifically, that misclassify workers as independent contractors.

The Wage Act has far-reaching impact and applies to all Rhode Island businesses with at least one (1) employee in the state. In this Advisory, PLDO Partner Matthew C. Reeber examines the key components of the Wage Act, outlines the criminal consequences for any "knowing and willful" wage and hour infractions, and offers best practices to avoid penalties. *Employers with questions about this law should seek additional guidance from PLDO's Employment Law team.*

### Key Terms & Actions That Could Result in a Felony Conviction and/or Fine

Under Rhode Island law, “wage” means compensation due to an employee by reason of his or her employment. “Wage theft” is a term encompassing various practices that result in employees being denied the compensation they are entitled to under the law. This can include failure to pay the minimum wage, unpaid overtime, misclassification of employees as independent contractors, illegal deductions, and other tactics that undermine employees’ rights.

The terms “knowing and willful,” are more of a gray area. Since the Wage Act does not specifically define those parameters, the elevated standard would likely apply to:

- Repeated violations of the law;
- Failure to timely pay an employee when the employer knew that an employee had been wrongly classified as a “contractor” because:
  - The employer required the contractor to have a set schedule;
  - The employer paid the contractor on an “hourly basis;”
  - The employer paid benefits to the contractor; and
  - The employer provided the contractor with materials and support needed to complete their work.

### Worker Misclassification Specifics

Misclassification of employees is widespread in the construction industry. The Department of Labor and Training (“DLT”) publishes annual reports concerning offenders and these reports have specifically addressed construction companies over the past several years. The Wage Act specifically addresses these employers [defined under the law as businesses that construct, reconstruct, alter, maintain, move, rehabilitate, repair, renovate, or demolish any building, structure, or improvement to the excavation of or other development or improvement to land, highways, or other real property] and imposes even greater penalties.

Employers in the construction industry that “knowingly and willfully” misclassify employees are subject to:

- (1) a misdemeanor and one year of imprisonment and/or a fine of up to \$1,000 if the amount of misclassified wages does not exceed \$1,500; and
- (2) a felony and three years of imprisonment and/or a \$5,000 fine for the construction employer that receives their second violation for misclassification.

Any company that violates the misclassification mandates (not just those in the construction industry) may be held liable for a civil penalty of up to \$3,000 for their first misclassified worker, and up to \$5,000 for each subsequent misclassified worker.

### What Employers Must Do to Avoid Violations

The Wage and Hour Division of the Department of Labor (“DOL”) has broad authority to audit and investigate an employer’s workplace and pay practices and investigations can occur at any time, with or without notice. Employers should be prepared for “surprise” investigations that could involve inspecting records, interviewing employees, determining if the employer owes money to its employees, and assessing civil and criminal penalties in addition to wages and benefits owed.

Misclassification violations may also be investigated by the Rhode Island DLT. If the DLT finds that an employer has misclassified workers, it may seek civil remedies or recommend criminal prosecution to the Rhode Island Attorney General’s office.

***Below are key actions employers should take now to help mitigate your risks of violations:***

- 1) Conduct self-audits of job classifications, job descriptions, timekeeping policies.
- 2) Train supervisors and managers on wage payment policy.
- 3) Review independent contractor status and draft written agreements that define the nature of the relationship, the parties’ duties and obligations, compensation terms, and remedies if one party breaches the agreement.
- 4) Make sure independent contractors complete Form W-9 when you engage them so you can issue a Form 1099-NEC at the end of the year.
- 5) Be prepared for unscheduled and scheduled investigations.

The amendments to the Wage Act that go into effect on January 1, 2024, are complex and could result in many employers making an unintentional misstep that leads to a criminal violation and/or fine. Now, more than ever, employers should seek counsel on compliance or defense strategies if your company is found liable of a violation. For more information, contact Attorney Matthew C. Reeber at 401-824-5105 or [mreeber@pdlolaw.com](mailto:mreeber@pdlolaw.com).



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