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New Washington Law Creates Statutory Wage Lien for Claims on Unpaid Wages

On April 16, 2021, Governor Jay Inslee signed into law the Washington Wage Recovery Act, allowing employees to place a lien on their employers' property to secure unpaid wages.

The purpose of the law is to provide employees with another tool to secure their unpaid wages. Currently, Washington employees must wait until resolution of a civil demand or lawsuit or an investigation by a governmental agency to receive payment of unpaid wages. With the Washington Wage Recovery Act, employees can now hold a security interest in their employers' property while they wait for resolution. Washington joins several other states that also have broad wage lien provisions, including Wisconsin, Maryland, Indiana, and Tennessee.

Scope of Wage Claims Subject to Wage Liens

Employees can obtain a wage lien on claims for any unpaid wages and other compensation, including "interest, statutory damages, liquidated damages, attorneys' fees and costs, or statutory penalties that may be owed for violation of a local, state, or federal wage law."

However, an employee cannot obtain a wage lien based on claims for "vacation or severance pay, contributions to an employee benefit plan, or paid leave except paid leave that is statutorily mandated."

Employees Who Are Eligible to Obtain Wage Liens

Because "employee" is broadly defined in the new law as "any individual currently or formerly employed by an employer," many employees will now have the ability to bring a wage lien against their employers.

However, "highly compensated employees" cannot establish a wage lien. "Highly compensated employees" mean:

- Any employee who was a 5% owner of the business at which the employee is employed during the current or preceding year, or
- Any employee who has received compensation from the employer in excess of the indexed compensation established by the U.S. Department of Treasury. This threshold will change annually. The 2021 indexed compensation is \$130,000.

Types of Property Subject to Wage Liens

A wage lien can be placed on property owned or subsequently acquired by the employer, including (1) real property in the state; (2) goods and tangible chattel paper (i.e., records establishing a monetary obligation or security interests) in the state; and (3) accounts and payment intangibles. Only property in the state of Washington is subject to a lien, but employers or property owners do not need to be located in Washington for the lien to attach.

Importantly, for willful violations property can include the real property and personal property of any officer, vice principal, or agent. The lien could also apply to the property of those individuals' spouses, domestic partners, and heirs.

Certain limitations to wage liens apply as provided in the statute, including claims subject to a lien under Washington's construction lien statutes. Additionally, wage liens cannot attach to the personal or real property of the state or other public entities.

Requirements for Recording a Wage Lien

The statute establishes specific procedures for recording wage liens. Wage liens must be filed within two years from the date the wages were first due. For wage liens on real property, a lien claimant must file a notice of the wage lien in the county where the property is located, pay a filing fee, and mail a copy of the notice to the employer and property owner. For wage liens on personal property and goods, the claimant must file a notice with the Department of Licensing, pay a filing fee, and mail a copy of the notice to the employer. Actions on wage claims must be brought within eight months of the recording of the lien; otherwise, they will be extinguished.

A wage lien is not effective against good faith buyers or acquirers of goods, personal property, or real property if the buyer or acquirer obtains the property prior to the filing of the wage lien in good faith, for value, and without actual notice or knowledge of the lien.

Challenging a Wage Lien

If an owner or employer believes the wage claim is frivolous and made without reasonable cause, or is clearly excessive, the party can file a motion in court directing the employee to appear before the court to show cause as to why the requested relief should not be granted. The employee can be required to appear for a hearing no earlier than six days and no later than 15 days from the date of service of the motion. After a hearing, the court will issue an order releasing, reducing, or verifying the validity of the lien. The prevailing party on the claim is entitled to attorneys' fees and costs.

Employees Cannot Waive Their Rights to Obtain a Wage Lien

Employers cannot require their employees to waive their rights to obtain a wage lien in any employment contracts or agreements.

Additional Information for Employers

The new law has specific provisions setting out procedures on how to foreclose on a lien, the priority a wage lien is given over other types of liens, and form notices of wage liens. Employers should familiarize themselves with the new statute before it goes into effect on January 1, 2022. A copy of the law can be found [here](#).

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