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California Law Makes Intentional Wage Theft a Jailable Offense

On September 27, 2021, California Governor Gavin Newsom signed [Assembly Bill No. 1003](#) (AB 1003) into law. The purpose of AB 1003 is to make the intentional theft of wages punishable as grand theft under the California Penal Code and, therefore, a felony in California. Previously, violations of wage and gratuity provisions were classified as misdemeanors. AB 1003 provides that:

- The "intentional" theft of wages in an amount greater than \$950 from any one employee, or \$2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period is punishable as grand theft.
- "Theft of wages" means "the intentional deprivation of wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to the employee under the law."
- For the purposes of AB 1003, independent contractors are included within the meaning of "employee" and hiring entities of independent contractors are included within the meaning of "employer."

AB 1003 does not define "intentional," but other provisions in the Labor Code concerning willful acts, such as Section 203 of the Labor Code, require conduct that is deliberate as opposed to a simple or good faith mistake. Nevertheless, AB 1003 may make California prosecutors more likely to investigate and bring charges against employers for wage theft now that intentional violations are a felony under state law. As compared to misdemeanors, felonies give prosecutors in California more tools at their disposal to investigate employers, including search warrants and use of a grand jury. Further, the Economic Policy Institute recently [reported](#) that, nationwide, "[p]rosecutors are increasingly pursuing employer crimes against workers." In the wake of the passage of AB 1003, which takes effect on January 1, 2022, companies with employees or independent contractors located in California should ensure that they comply with wage and hour laws. Employers should consider:

- Requiring employees to verify or attest to the accuracy of their time sheets;
- Ensuring policies are in place that require all payroll errors to be brought to the company's attention for immediate correction;
- Making sure all wages are paid in a timely fashion, including overtime at the correct regular rate of pay;
- Examining independent contractor agreements and/or invoices;
- Tracking the payout of all tips and bonuses.

Companies with questions about this law should contact experienced counsel.

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