

# WAGE THEFT PREVENTION ACT

## NOTICE

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES

LABOR STANDARDS BUREAU OFFICE OF WAGE-HOUR

### The Wage Theft Prevention Amendment Act of 2014

The Wage Theft Prevention Amendment Act of 2014 (WTPAA) has an effective date of February 26, 2015. The law includes provisions to enhance applicable remedies, fines, and administrative penalties when an employer fails to pay earned wages, to provide for suspension of business licenses of employers that are delinquent in paying wage judgments or agreements, to clarify administrative procedures and legal standards for adjudicating wage disputes, to require the employer to provide written notice to each employee of the terms of their employment, and to maintain appropriate employment records.

#### Requirements

##### **Written Employment Notice:**

As an employer of the District of Columbia, upon hire, you are required to provide a notice to employees of their employment. Also, within 90 days of the effective date of WTPAA, every employer shall furnish each employee with an updated written notice containing the information required. As proof of compliance, every employer shall retain copies of the written notice furnished to employees that are signed and dated by the employer and by the employee acknowledging receipt of the notice. *(There are additional requirements for temporary staffing firms.)*

##### **This notice must include:**

- 1) The name of the employer and any "doing business as" (DBA) names used by the employer
- 2) The physical address of the employer's main office or principal place of business, and a mailing address if different
- 3) The telephone number of the employer
- 4) The employee's rate of pay and the basis of that rate, including:
  - a. Rate by the hour, shift, day, or week (whichever is applicable)
  - b. Salary, Piece Rate, or commission (whichever is applicable)
  - c. Any allowances claimed as part of the minimum wage, including tip, meal, or lodging allowances
  - d. Overtime rate of pay or exemptions from overtime pay
  - e. Living wage or exemptions from the living wage
  - f. Any applicable prevailing wages
- 5) The employee's regular pay day designated by the employer

The Mayor shall make available for employers a sample template of the notice within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014. **(Immediate Notice to new employees is required regardless of the template release date.)**

##### **Wage Payment Liability:**

- When the employer is a subcontractor and has failed to pay an employee any wages earned, the subcontractor and the general contractor shall be jointly and severally liable to the subcontractor's employees for violations of this Act, the Living Wage Act, and the Accrued Sick and Safe Leave Act.
- When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of another employer pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the employer shall be jointly and severally liable for violations of this Act, the Living Wage Act, and the Accrued Sick and Safe Leave Act to the employee and to the District.
- Every employer shall pay wages earned to his employees on regular paydays designated in advance by the employer and at least twice during each calendar month.

##### **Notice of Complaint**

For any employer alleged to be in non-compliance with the Act, The Mayor shall deliver two (2) notices to the employer.

1. Notice of Complaint that specifies:
  - a. The alleged violation
  - b. Potential damages, penalties, and other cost
  - c. Rights and obligations of the parties
  - d. Process for contesting the complaint
2. Notice of Investigation that must be posted for all employees to see for a period of at least 30 days that specifies:
  - a. An investigation is being conducted
  - b. Information for employees on how they may participate

##### **Rules against Retaliation**

The WTPAA extends the protection and it also gives the Mayor power to enforce this law.

- Threats are now included as a form of retaliation.
- It is illegal for any person to retaliate.
- This law protects employees even if their employer incorrectly believes they made a complaint.

##### **Procedural Options**

- Wage-Hour Investigation
- Administrative Law Judge Hearing
- Civil Court Proceedings

# WAGE THEFT PREVENTION ACT (Continued)

## Potential Penalties

### Wage Payment Penalties, D.C. Official Code § 32-1307; D.C. Official Code § 32-1307(a) Section 7a – Wage Theft Prevention Fund

- Any employer who negligently fails to comply with the provisions of this Act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:
  - For the first offense, an amount per affected employee of not more than \$2,500; for any subsequent offense, an amount per affected employee of not more than \$5,000.
- Any employer who willfully fails to comply with the provisions of this Act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:
  - For the first offense, an amount not more than \$5,000 or imprisoned not more than 30 days, or both; for any subsequent offense, an amount not more than \$10,000, or imprisoned not more than 90 days, or both.

### In addition to and apart from any other penalties or remedies provided for in this Act or the Living Wage Act, the Mayor shall assess and collect administrative penalties as follows:

- For the first offense, \$50 for each employee or person whose rights under this Act or the Living Wage Act are violated for each day the violation occurred or continued.
- For any subsequent offense, \$100 for each employee or person whose rights under this Act or the Living Wage Act are violated for each day the violation occurred or continued.

The Mayor shall collect administrative penalties in the amounts set forth below for the following violations:

- Five hundred dollars for failure to provide notice of investigation to employees
- Five hundred dollars for failure to post notice of violations to the public

### Accrued Sick and Safe Leave Act or the Minimum Wage Revision Act.

- No administrative penalty may be collected unless the Mayor has provided any person alleged to have violated any of the provisions of this section notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request a formal hearing held pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat 1203, D.C. Official Code § 2-501 et seq).
- The Mayor shall issue a final order following the hearing, containing a finding that a violation has or has not occurred. If a hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

There is established as a special fund the Wage Theft Prevention Fund ("Fund"), which shall be administered by the Department of Employment Services. The Fund shall be used to enforce the provisions of this Act, the Minimum Wage Revision Act, the Accrued Sick and Safe Leave Act, and the Living Wage Act. The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

### Minimum Wage Penalties D.C. Official Code § 32-1011

- Any person who willfully or negligently violates any of the provisions of §32-1010 shall, upon conviction, be subject to a fine of not more than \$10,000, or to imprisonment of not more than six (6) months, or both.
- No person shall be imprisoned under this section except for an offense committed willfully after the conviction of that person for a prior offense under this section.
- Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Attorney General of the District of Columbia.
- In addition to and apart from the penalties or remedies provided for in this section, the Mayor shall assess and collect administrative penalties as follows:
  1. For the first violation, \$50 for each employee or person whose rights under this Act are violated for each day that the violation occurred or continued;
  2. For any subsequent violations, \$100 for each employee or person whose rights under this Act are violated for each day that the violation occurred or continued;
  3. \$500 for each failure to maintain payroll records or to retain payroll records for three (3) years or whatever the prevailing federal standard is, whichever is greater for each violation;
  4. \$500 for each failure to allow the Mayor to inspect payroll records or perform any other investigation;
  5. \$500 for each failure to provide each employee an itemized wage statement or the written notice as required by section 9(b) and (c); and
  6. \$100 for each day that the employer fails to post notice as required under section 10(a).

### ASSLA Penalties D.C. Official Code § 32-131.12

An employer who willfully violates the requirements of this Act shall be subject to a civil penalty for each affected employee of \$1,000 for the 1st offense, \$1,500 for the 2nd offense, and \$2,000 for the 3rd and each subsequent offense. If the Mayor determines that an employer has violated any provision of this Act, the Mayor shall order the employer to provide affirmative remedies including: compensatory damages, punitive damages, and additional damages as provided in the law. The administrative fines and penalties collected under this section shall be deposited in the Wage Theft Prevention Fund.

For the complete text of the Wage Theft Prevention Amendment Act of 2014, go to <http://lims.dccouncil.us/Download/31203/B20-0671-SignedAct.pdf>.