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# Utah Payment of Wages Act Amendments Passed

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On March 7, 2017, the Utah Legislature passed a bill amending certain provisions of the Utah Payment of Wages Act (“UPWA”). HB 238 was sponsored by Representative Tim Hawkes and if signed into law by the Governor, will make three primary changes to the law.

## **Individual Liability For Payment of Wages**

First, the bill changes the definition of “employer” from a unique Utah definition to the definition of employer as used in the federal Fair Labor Standards Act (“FLSA”). The change will allow case interpretation of the FLSA definition of employer to apply to Utah employers under the UPWA. The reason behind this change is to clarify that in certain situations, individual directors and officers of companies may be held individually liable for the non-payment of wages. In a 2015 case, the Utah Supreme Court had ruled that there was no individual liability under the UPWA (*Heaps v. Nuriche*, 2015 UT 26), causing the Utah legislature to take action this session to effectively overrule that decision, replacing it with the individual liability standards applicable under the FLSA.

## **Private Cause of Action**

Second, this new law expressly creates a private cause of action for wages under the UPWA. This change also was prompted by a court ruling, namely *Self v. TPUSA, Inc.*, 2009 U.S. Dist. LEXIS 10822, D.Utah Jan. 16, 2009, in which the federal court in Utah suggested that there was no private right of action under the UPWA. After the effective date of the new amendments, a private citizen clearly has the right to file a lawsuit to recover payment of wages under the UPWA in Utah state court. The amendments also provide that Utah state courts may award actual damages (*i.e.*, the unpaid wages), a potential penalty for the violation, and an amount equal to 2.5% of the unpaid wages owed for up to 20 days.

## **Administrative Process Mandatory For Smaller Wage Claims**

Finally, the new law requires that certain wage claims alleging a violation of the UPWA be filed first with the Utah Labor Commission. Currently, employees “may” file a wage claim at the Commission. After enactment, all wage claims that are less than \$10,000 must first be filed with the Labor Commission and the party must exhaust the administrative remedies there on such claims. Claims that are greater than \$10,000, employees with multiple claims (that aggregate above \$10,000), or multiple employees in the same civil action whose claims together are greater than \$10,000, may file such claims directly in court without exhausting the administrative

remedies.

### **Next Steps**

Utah employers should certainly take note of these changes, and specifically the potential for individual liability of directors and officers for the payment of wages. It is also worth watching to see if the new express private right of action increases the amounts of wage claims brought in Utah.

Contact Bryan Benard at [BBenard@hollandhart.com](mailto:BBenard@hollandhart.com) to discuss specifically how these changes may affect your company's practices and conduct.

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