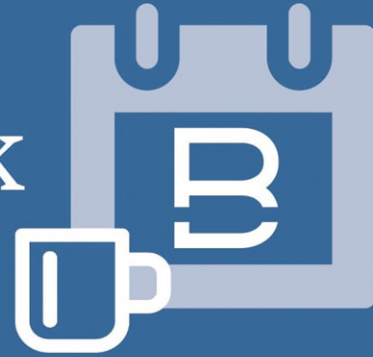


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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From Fines to Felonies: The High Stake of Wage Theft

[Beth L. LaCanne](#)

Efforts to crack down on wage theft are no longer just about fines and warnings in Minnesota. Although Minnesota's wage theft statutory scheme included criminal sanctions for violations, until recently, enforcement has primarily involved civil fines and penalties. The Minnesota Attorney General's Office and county attorneys are now wielding the criminal provisions of the wage theft statutory scheme to deter wage theft.

WTPA Background

In 2019, Minnesota amended existing statutes and enacted new ones to combat wage theft (the Wage Theft Protection Act ("WTPA")). The statutes included a clarification of the term "wages"; notice requirements to employees at the outset of employment, and any time the employer changed such things as wages, paid time off accrual and usage; payroll deductions; and earning statement requirements.

Wage theft can take many forms, including the obvious failure to pay earned wages. Additionally, failing to pay the applicable minimum wage is wage theft, even if the employer pays the employee for all hours worked. Misclassifying an employee as an independent contractor may also violate the WTPA if the employee isn't paid overtime, or if the misclassification negatively affects the employee's right to Earned Sick and Safe Time ("ESST").

Criminal Wage Theft Explained

Wage theft rises to the criminal level when the employer engages in one or more of the following, with the intent to defraud:

- Fails to pay an employee all wages, salary, gratuities, earnings or commissions at the employee's rate or rates of pay or at the rate or rates required by law, whichever is greater.
- Directly or indirectly causes any employee to give a receipt for wages for a greater amount than that actually paid to the employee for services rendered.
- Directly or indirectly demands or receives from any employee any rebate or refund from the wages owed the employee under contract of employment with the employer.
- Makes or attempts to make it appear in any manner that the wages paid to any employee were greater than the amount actually paid to the employee.

The length of the prison term for violations of the wage theft statute ranges between one year and twenty years, depending on the value of the stolen wages. Moreover, the employer is still responsible for paying the unpaid wages and civil fines.

Criminal Cases

Earlier this month, a Hennepin County judge convicted a painting contractor of felony wage theft and theft by swindle. In 2020, the contractor was awarded a contract on a publicly funded project, which required him to pay his employees a prevailing minimum wage. Instead, the contractor paid his employees well below the prevailing wage and covered up the underpayment by submitting falsified records to the general contractor. The contractor is facing up to twenty-one months in prison.

We previously [covered](#) a civil wage theft case brought by the Minnesota Attorney General's Office against a farming entity and its owners in Stearns County. In October 2024, the defendants settled the civil case by agreeing to pay \$250,000 to the State of Minnesota for distribution to workers, and a civil penalty of \$250,000, which did not have to be paid so long as the defendants did not violate the terms of the agreement. Just four months after resolving the civil case, the Minnesota Attorney General's Office charged one of the farm's owners with four felonies under the WTPA and felony racketeering.

Even if an employer's violation of the WTPA does not rise to the criminal level, wage theft investigations can lead to the discovery of other criminal activities or statutory violations, such as tax fraud or worker misclassification. In February, a Stillwater-based masonry contractor pled guilty to felony tax fraud. Its fraudulent practices were uncovered during an investigation into wage theft complaints against the contractor, highlighting how wage theft investigations can have broad-reaching impacts.

Given the risk of both criminal and civil liability, employers should ensure they are complying with the WTPA by giving the requisite notices, properly classifying workers, maintaining detailed payroll and timekeeping records, and providing ESST.

Bonus Case Update

Last year, we [covered](#) *Kuklenski v. Medtronic USA, Inc.*, a decision issued by the United States District Court for the District of Minnesota where the court held that remote employees living outside of Minnesota are not covered under the Minnesota Human Rights Act ("MHRA"), which prohibits

discrimination due to membership of a protected class. Recently, the [Eighth Circuit Court of Appeals](#) upheld the district court's decision and held that to be covered under the MHRA, the employee must "perform the labor, task, or duty of employment within the limits, bounds, or area of the state." While the MHRA may not cover remote employees, employers should be aware of similar anti-discriminatory statutes or laws in the state where the remote employee performs their work.

At Bassford Remele, we monitor court cases at both the state and federal levels so that we can advise clients regarding the impact of court decisions or the enforcement activities of administrative agencies. We also advise on employers' policies and procedures to ensure compliance with state and federal laws and court decisions that interpret those laws.

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