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FOCUS ON WAGE & HOUR

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Attorneys in the Employment Litigation & Policy Practice represent corporate employers throughout the United States in all types of employment matters. To learn more about the SHB employment group and its members, see SHB.com.

ANOTHER WAGE-AND-HOUR PITFALL: LATE PAYCHECK LAWS

These days, most employers are well aware of the increased litigation in the area of wage-and-hour law. It seems like every week a news headline appears describing the latest collective- and class-action lawsuit brought against an employer for overtime compensation, minimum-wage violations or improper classification of employees. While these lawsuits garner the most publicity, employers should be wary of the growing trend in more obscure areas of the wage-and-hour arena.

One such example is state late-paycheck laws. Every state except Alabama, Florida, Georgia, and Mississippi requires employers to provide departing employees with their final paychecks within a certain amount of time after their departure. The timeframes vary by state and depending on whether an employee quit or was discharged. California, Massachusetts, Illinois, Missouri, and Nevada, for example, require employers to provide discharged employees with their final paychecks on the day of their discharge. For employees who quit, Nevada and Massachusetts require employers to provide final paychecks the next scheduled payday. The majority of the states—regardless of whether an employee quits or is discharged—require employers to provide final paychecks by the next scheduled payday. As an example, New York law states the following about final paychecks: "If employment is terminated, the employer shall pay the wages not later than the regular pay day for the pay period during which the termination occurred, as established in accordance with the provisions of this section." N.Y. CLS Labor, § 191.

The penalties for violating a late paycheck law vary just as much as the deadlines for providing a paycheck. In Minnesota, for instance, an employee who quits and fails to receive a final paycheck within 24 hours of requesting one is entitled to recover his average daily earnings for each day he fails to receive the paycheck, up to 15 days. California permits employees to recover their daily earnings up to 30 days. Kansas imposes a penalty that can equal the total of unpaid wages.

With the increase in federal and state wage-and-hour litigation, late paycheck claims have become more prevalent. Earlier this year, two former employees of Chipotle Mexican Grill, Inc. filed a class-action suit in Minnesota state court alleging that the popular restaurant chain failed to send them and other employees their final paychecks within the timeframe required under the Minnesota Payment of Wages Act. *See Cortes, et al. v. Chipotle Mexican Grill, Inc.*, Case No. 27-CV-11-2630, District Court of Hennepin County, Minnesota. The plaintiffs were discharged in December 2010 after a federal immigration audit showed some workers were illegal immigrants and made a written request the next day for their paychecks. Although Minnesota law requires that final paychecks be delivered within 24 hours of a written request, Chipotle did not allegedly send out the paychecks until a week after the plaintiffs requested them. The plaintiffs seek to represent a class of 50 to 100 employees.

In states that require final paychecks to be delivered earlier than the next scheduled payday, employers should closely monitor when employees—especially discharged employees—receive their final pay. Not having policies and procedures in place that ensure payment of final wages at the earliest possible time could result in an employer having to pay twice the wages owed. And employers who maintain policies on final paychecks that violate the applicable state laws open themselves to potential class action lawsuits that may permit employees to recover not only their wages and penalties but also attorney's fees.
