

Wage Payment Reminders in Wake of Uncertain Economic Conditions

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In light of the recent failure of Silicon Valley Bank, employers are well-advised to revisit their wage payment obligations to employees. As you may be aware, the SVB failure caused concern amongst some employers that they might fail to meet their payroll obligations. While some payment obligations can be postponed during a crisis in limited circumstances, employers should take special notice that wage payments are protected and liability for violating wage payment statutes can be steep.

The federal Fair Labor Standards Act governs an employer's recordkeeping and wage payment obligations on a federal level. Improper classification or payment of employees can result in an employer becoming liable for enhanced damages—including potentially equating to twice the amount of unpaid wages due the employee—as well as attorneys' fees and other damages.

While the federal Fair Labor Standards Act governs an employer's recordkeeping and wage payment-related obligations on a federal level, many states have their own wage payment laws with which employers must also comply. For example, the South Carolina Payment of Wages Act requires SC employers to give written notice to employees of when and how their wages will be paid, as well as what deductions the employer will make from those wages. If employers are unable to satisfy their obligations at the specified date and time, they face penalties and other potential liability under South Carolina state law (including up to three times the amount of unpaid wages owed), in addition to applicable federal remedies. The SCPWA also governs when and how employees must be paid both during their employment and upon separation, whether or not accrued, unused PTO is considered "wages" that must be paid when an employee separates, and what records an employer must keep. Under some circumstances, courts have also construed the SCPWA to assess personal liability for decision

makers with respect to wage payments when the company does not or is not able to make wage payments.

Similarly, the North Carolina Wage and Hour Act governs NC employer's wage-payment, recordkeeping, and overtime obligations at the state level. NC employers must pay each employee all wages owed on the regularly scheduled payday as prescribed in advance. NC employers must also notify employees in writing at least one pay period prior to any changes in their wage agreements that result in the reduction in pay, any such wage reduction may only be prospective, and an employer cannot retroactively reduce wages or benefits that have already been earned. Nor may an employer reduce an employee's pay below the state or federal minimum wage which is currently \$7.25/hour. The definition of wages under NC law includes sick pay, vacation pay, and severance pay, among other items, where an employer has a policy or practice of making such payments. Violations expose employers to possible liquidated damages, as well as attorneys' fees. Some North Carolina courts have also addressed circumstances when individual liability may be liable for some decision-makers for unpaid wages.

Even in uncertain economic times, employers must take steps to prioritize their payroll obligations to employees, as the damages for failing to make payroll at the required time and in the required amounts can, as noted above, result in substantial liability. If you need assistance with your wage payment obligations, please contact one of Nexsen Pruet's labor and employment practitioners who will gladly work with you.