



# HIRE PERSPECTIVES

Summer 2009

A periodic newsletter from the Labor & Employment Law Group at Dickinson, Mackaman, Tyler & Hagen, P.C.

## Chapter 91A Changed Again: More to Come in 2010?

by [JILL R. JENSEN-WELCH](#)

For the fifth year in a row, the Iowa Legislature amended Iowa Code Chapter 91A, the Iowa Wage Payment Collection Act, which governs how employers pay wages to employees. This year only one small change was made. Effective July 1, 2009, civil penalties for violations of the Act will increase from not more than \$100 per violation, to not more than \$500 *per pay period* for each violation. This is a significant increase in monetary exposure for employers. It does not mean more money in the pockets of aggrieved employees, however, because these civil penalties are paid to the state's General Fund. In essence, this is like a tax increase for employers who do not pay employees in accordance with Iowa law.

This 2009 change to 91A was included in H.F. 618. The main focus of that legislation was to increase penalties and reduce the burden of proof required for child labor violations. That legislation was intended to address the outrage over alleged employment practices regarding minors at Agriprocessors in Postville, Iowa. For more information on the changes affecting child labor regulation in Iowa, contact a member of our [Employment and Labor Law Group](#).

Employers narrowly escaped additional changes to 91A this year in S.F. 413. Although that bill passed the Senate, the House ran out of time to act on it. Because the Iowa Legislature runs on two-year sessions, this bill is alive for the 2010 session. The version that made it through the Senate this year would have made the following changes to Chapter 91A:

- Made damages available for any violation of the Act, whether the violation was intentional or not, and such damages would include unpaid wages or expenses, liquidated damages, court costs, and usual and necessary attorneys' fees.
- Doubled the liquidated damages remedy from a former maximum of one times the amount of unpaid wages to a new maximum of *two* times the amount of unpaid wages. Also, it would have allowed liquidated damages to continue to accumulate even for an employer in bankruptcy.
- Codified the burden as being on the *employer* to prove deductions were lawfully taken from wages.
- Required employers to obtain written authorization from employees for all deductions *in advance* of taking the deductions.
- Required employers, *as a matter of course*, and not just when ordered to do so by the Labor Commissioner or a court after a finding of a violation of the Act, to (a) give all employees written notice of wages and regular paydays at the time of hiring; (b) notify employees of the method used to calculate wages, and when wages are earned, if pay is based on task, piece, mile, or load; (c) notify employees at least one pay period in advance of any changes that reduce wages or change regular paydays; (d) make available written statements regarding policies on vacation, sick leave, expense reimbursements, retirement benefits, severance pay, and other comparable matters regarding wages; (e) retain for three calendar years payroll records that show hours worked, wages earned, deductions taken, and employment agreements (if any); and (f) provide that failure to maintain such payroll records raises a rebuttable presumption that the employer did not pay the required Iowa minimum wage.
- Required employers to provide the following information with each paycheck/paystub: (a) hours worked, if the employee is paid in whole or any part by the hour; (b) the list or amount of each sale, or amount of revenue generated, during the pay period if the employee is paid based on a percent of sales or a percent of revenue; and (c) the number of miles or loads performed if the employee is paid based on the number of miles or loads.
- Broadened the anti-retaliation provisions to protect any employee *or other person* who exercises rights, provides assistance or information, or testifies or plans to testify in an investigation or proceeding, under Chapter 91A. In

addition, any adverse action taken within 90 days of these protected activities will raise a *presumption* of retaliation, which can be rebutted with evidence that the action was taken for other permissible reasons.

- Increased the penalty for retaliation based on protected activity taken in connection with founded unlawful deductions from wages to include an “amount sufficient to compensate the employee or other person and to deter future violations, but not less than *\$150 dollars for each day* that the violation occurred.”
- Codified *personal liability* of officers, members, managers, or partners for judgments under Chapter 91A and Chapter 91D (minimum wage) when such persons had control, supervision, or authority for the wage payments, and had a controlling interest or ownership in the employing entity, and knowingly violated the law. Personal liability would be limited to the amount of wages due and would not include liquidated damages, court costs, attorneys’ fees, civil penalties, or interest.
- Prohibited the requirement that a person be a “current employee” to be paid a commission that was otherwise earned.

Stay on the lookout for more changes to Chapter 91A, such as those outlined above, in 2010.

If you have questions regarding Chapter 91A changes, please contact a member of the Firm’s [Employment and Labor Law Group](#) or the Dickinson attorney with whom you normally work.

#### MORE INFORMATION

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*Hire Perspectives* is published periodically by the law firm of Dickinson, Mackaman, Tyler & Hagen, P.C., 699 Walnut Street, Suite 1600, Des Moines, Iowa 50309.

This newsletter is intended to provide current information to our clients in various areas relating to employment and labor law. The articles appearing in this newsletter are not intended as legal advice or opinion, which are provided by the Firm with respect to specific factual situations only upon engagement. We would be pleased to provide more information or specific advice on matters of interest to our clients. Selected articles are available on our website.

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