The Legal Strategist

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This quarter's topic keeps with the employment theme of last quarter and focuses on the Texas Payment of Wages Act, referred to as the Texas Payday Law (TPDL). With employers wanting to cut cost, especially in a down economy, the TPDL is prime for review. Any business owner who employees personnel should be familiar with the TPDL. However, with employees becoming more litigious by the day, coupled with the economic pressures currently impacting businesses, the TPDL is quickly becoming a darling for plaintiff's attorneys.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter (which can be viewed on *The Legal Strategist* tab of our web site), please contact our office to set up a consultation.

Hopefully, this quarter's topic will enhance your awareness of the issues surrounding the Texas Payday Law. As always, we invite all comments and suggestions as well as ideas for new topics to be included in future issues.

Scott Barrett

Texas Esoteric Facts

- When two trains meet each other at a railroad crossing, each shall come to a full stop, and neither shall proceed until the other has gone.
- It is illegal to drive without windshield wipers. You don't need a windshield, but you must have the wipers
- It is illegal for one to shoot a buffalo from the second story of a hotel.

Feature Topic: Texas Payday Law

Except for public employers, all Texas business entities, regardless of size, are covered by the Texas Payday Law. Other than close relatives and independent contractors, all persons who perform a service for compensation are considered employees

EMPLOYER DUTIES: Each employee who is exempt from the overtime provisions of the federal Fair Labor Standards Act (FLSA) must be paid at least once a month; others must be paid at least twice a month. Semi-monthly pay periods must consist as nearly as possible of an equal number of days. Within those limitations, an employer may designate any paydays he/she chooses. Notices indicating the paydays must be posted in conspicuous places in the workplace. If an employer does not designate paydays, the employer's paydays are the first and 15th of each month. If an employee quits, she/he must be paid in full at the next regular payday. If an employee is terminated, he/she must be paid in full within six days (including weekends). If an employee is not paid on a payday for any reason, including the employee's absence, the employer shall pay those wages on another business day as requested by the employee.

PAYMENT OF WAGES: The kinds of payments subject to the Texas Payday Law include compensation for services rendered regardless of how they are computed, commissions and bonuses according to the agreement between the parties, and certain fringe benefits due under a written agreement with or policy of the employer. Expense reimbursements, gratuities, gifts and the like are not considered wages and are not covered by the Texas Payday Law. Unless an employee agrees in writing to accept part or all of his/her wages in kind, or in another form, wages must be paid in United States currency, a written instrument negotiable on demand at full face value for United States currency, or by electronic transfer of funds. Wages must be delivered to the employee at her/his regular place of work during working hours, mailed by registered mail to be received by the employee not later than payday, by any reasonable means, or to any person authorized in writing by the employee.

DEDUCTIONS FROM WAGES: One of the most troublesome aspects of determining what wages are due and unpaid is the question raised by deductions from wages made by the employer. The employer may not make deductions unless ordered to do so by a court of competent jurisdiction (as in court-ordered child support payments); authorized to do so by state or federal law (as in IRS withholding); or authorized in writing by the employee, and then only for a lawful purpose. The latter category is the one that causes many problems. Authorizations that are too general or too broad may not be given effect. Deductions for out-of-pocket loans to an employee, even though there is an oral agreement to repay, or even to repay out of a particular wage payment, will not be allowed, unless the deduction is authorized in writing. Employers must be careful to get a proper written authorization before making a payroll deduction.

PENALTIES: If the Commission determines that an employer acted in bad faith in not paying wages as required by the statute, the Commission may assess an administrative penalty against the employer in the amount of the wages claimed or $1,000, whichever is lesser. Penalties in the same amount may be assessed against an employee who files a wage claim in bad faith. An employer commits an offense that is a **third degree felony** if the employer hires or intends to continue to employ an employee with the intent to avoid payment of wages owed to the employee and if the employer fails after demand to pay those wages.

ON-GOING ENFORCEMENT: The Commission may require an employer to deposit a bond if the employer is convicted of two violations of the act or if a final order of the Commission remains unpaid after the 10th day after the order has become final and no appeal is pending. The bond must be in an amount set by the Commission; it must guarantee the payment of any sum recovered against the employer under this act, and that the employer, for a period of up to three years, will pay the employees in accordance with the Texas Payday Law. Because of the high cost of such surety bonds, the requirement that an employer furnish such security could well cause the failure of a business. Additionally, failure to deposit the bond required could result in an order from a court that the employer cease doing business until the bond is furnished

If you would like more information on the Texas Payday Law, please contact Scott Barrett to set up a consultation.