

JPI

WORKING

Fighting for Workers' Rights

Winter 2020

for you



THE ANNUAL COST OF WAGE THEFT

Exceeds the Total Annual Cost of Burglary, Larceny, and Motor Vehicle Theft Combined

It is estimated that employers steal more than \$50 billion in wages from their employees in the United States each year. By comparison, only \$14 billion in annual costs are incurred as a result of burglary, larceny, and motor vehicle theft. That makes wage theft one of the most common forms of theft in the United States!

Under the Pennsylvania Wage Payment and Collection Law ("WPCL"), employers are required to pay their employees all earned wages owed on the regular scheduled pay date. Under the Fair Labor Standards Act ("FLSA") and the Pennsylvania Minimum Wage Act ("PMWA"), an employer is also required to pay its non-exempt employees time and one half their regular hourly

rate for every hour worked in excess of 40 hours in one week. However, many employers fail to pay their employees as agreed and also fail to properly pay their employees overtime compensation.

Some employers simply fail to pay their employees for overtime, or only pay the employee's regular hourly rate when an employee works more than 40 hours in one week. However, other employers engage in more elaborate schemes to hide the fact that they are not paying their employees properly. For example, an employer might issue you two separate paychecks in an effort to avoid paying

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For more than 75 years, the attorneys of Jubelirer, Pass & Intrieri have served as trusted allies for those we represent.

- Labor and Employment Law
- Workers' Compensation
- Personal Injury
- Social Security Disability
- Estate Planning and Administration
- Driver's License and DUI Issues
- Civil Litigation

Jubelirer, Pass & Intrieri has served as legal counsel for more than 80 local and national labor organizations in various industries in both the public and private sectors. The lawyers at JPI have represented working people and their families in a variety of legal proceedings.

JPI has a well-established track record protecting and enforcing workers' rights. Our attorneys are honored to have been named among Pennsylvania Super Lawyers, Pittsburgh's Top-Rated Lawyers, and Best Lawyers in America.

JPI has been designated as a Top-Tier Law Firm by *U.S. News & World Report*.

Let us serve you and your family.



SOCIAL SECURITY DISABILITY UNDER ATTACK

The Trump administration has proposed two very significant changes to the Social Security Disability Insurance program. These changes, if enacted, will make it harder for individuals to qualify for benefits, and for those individuals who have already been approved, it will be more difficult to remain on benefits.

The first proposal would revise the eligibility requirements for disability benefits based on age, education, and work experience. Under current rules, workers can qualify for social security disability insurance benefits if they have a condition that is on a list of impairments recognized by the agency as disabling. However, only the most severe impairments are considered a listed impairment. Examples are individuals who have undergone a liver transplant, have chronic kidney failure, or have suffered a severe spinal cord injury.

The more typical situation involves applicants who can no longer perform their past work. Under current rules, individuals above the age of 50 are more likely to qualify because they are considered less able to adapt to new jobs. The proposed rule would no longer assume that age seriously affects a person's ability to adapt to lighter duty work. It would raise the age at which education and work experience are considered relevant in determining eligibility to 55. If this proposal is enacted, individuals between the age of 50 and 54, who have worked their entire life in physically demanding occupations, would no longer be considered disabled if they are capable of performing work in an office setting. The proposal would simply

ignore the fact that such individuals have no prior experience or skills transferable to less physical occupations.

The second proposal would mandate that claims for individuals who have previously been awarded disability benefits be reviewed every two years. Under current review standards, the Social Security Administration must demonstrate an individual's condition had improved since the initial award of benefits. However, under the new proposal, individuals will lose their benefits not because their condition has improved to such an extent they are now able to work, but because they no longer meet the revised eligibility requirements.

Both proposals overlook overwhelming evidence that workers over 50 years of age face hurdles in adapting to new occupations. Not surprisingly, the Trump administration claims these proposals are needed to preserve the solvency and integrity of the social security program. However, this argument overlooks the fact the Social Security Disability Insurance program is financed primarily by a 1.8% payroll tax divided evenly between employers and employees. Revenues from the tax flow into a trust fund, and payments to disabled workers flow out of the fund. It is entirely separate from the Social Security retirement program.

At the present time, fewer than 4 in 10 applicants qualify for social security disability insurance benefits. Our elected representatives appear to be lining up along party lines. U.S.

Representative Mike Kelly, a Republican from Butler County, who sits on the House Ways and Means Committee, is an enthusiastic supporter of the proposal. Conversely, U.S. Senator Bob Casey, a Pennsylvania Democrat, has expressed his opposition to the proposals, stating "it appears to be yet another attempt by the Trump administration to make it more difficult for people with disabilities to receive critical benefits."

As a law firm with an unwavering commitment to organized labor, we strongly urge everyone to contact their elected representatives and voice their opposition to the proposed changes. Your representatives need to know you are paying attention to this issue, and that you will consider it of paramount importance when you vote.

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INTO THE WEED(S): THE HIGHS AND LOWS OF THE OF THE PENNSYLVANIA MEDICAL MARIJUANA ACT IN THE WORKPLACE

According to increasingly abundant scientific evidence, medical marijuana in its various forms has proven an effective treatment for a range of medical ailments such as PTSD, chronic pain, and epilepsy, to name a few. In recognition of the medicinal benefits of marijuana, the Pennsylvania legislature passed the Pennsylvania Medical Marijuana Act (“MMA”) which Governor Wolf signed into law. 35 P.S. §10231.101 et seq. That law became effective on May 18, 2016 and the first medical marijuana patients in Pennsylvania received their medication on February 15, 2018.

The MMA established procedures and practices for how patients can obtain authorization to use medical marijuana, how physicians can prescribe the medication, and how growers and dispensaries must operate. Some provisions of the MMA also addressed how implementation of the law would affect employment in the Commonwealth. For one, the MMA provides employment protections for patients authorized to use medical marijuana to treat a medical condition. More specifically, the law prohibits an employer from discharging or

disciplining an employee “solely” because an employee has been certified to use medical marijuana. In other words, an employee cannot be terminated simply because they have a medical marijuana prescription.

It is important to note, however, that employers may still prohibit medical marijuana patients from working in certain safety sensitive positions, in confined spaces, or with certain chemicals for instance. The MMA also clearly provides that the law does not require employers to violate federal law—which does not currently recognize marijuana as legal medical treatment. In addition, employers may still lawfully discipline employees who use medical marijuana at work or who are impaired while at work. This can present a sticky issue for employees and employers alike. Unlike tests for

alcohol impairment, current tests for marijuana, though they detect the presence of marijuana, are not yet a reliable indicator of whether or not someone is actually impaired. Compounding this problem is the fact that the legislature did not provide clear guidance on when exactly an employee might be considered impaired and there are very few judicial decisions that have interpreted the MMA.

Many employer policies simply have not kept pace with the evolving legal landscape of medical marijuana. As a result, some employees have been left to wonder whether they might face discipline under an employer’s drug testing policy even though they lawfully used medical marijuana off-duty only. If you have any questions regarding the PA Medical Marijuana Act, please contact our office.

The law prohibits an employer from discharging or disciplining an employee “solely” because an employee has been certified to use medical marijuana.

For more information about JPI, go to jpilaw.com/practice-overview.html

WORKERS' COMPENSATION Update

We have recently updated our Pennsylvania Workers' Compensation Handbook. Please contact us for a free copy.

Reporting Injuries:

Unless your employer has knowledge of your injury within 21 days of the injury, no compensation benefits are due until notice is given. Notice must be given no later than 120 days after the injury for compensation to be allowed.

Your employer is required to immediately report all injuries to its insurer or, if self-insured, the individual responsible for management of its workers' compensation program.

Employee Compensation Benefits:

Injured employees are entitled to employer-paid medical treatment and, if cumulative periods of disability exceed 7 days, wage loss benefits. Wage loss benefits must commence within 21 days of your employer's knowledge or notice of the injury resulting in disability, unless the claim is denied within that time period. If your claim is denied, you have 3 years from the date of your injury to file a claim with the Bureau of Workers' Compensation.

Workers' compensation wage loss benefits can be reduced by wages received through other employment or self-employment. Wage loss benefits for injuries occurring after August 31, 1993, can be reduced by unemployment

compensation benefits received. Wage loss benefits for injuries sustained after June 24, 1996, can be reduced by 50 percent of "old age" Social Security benefits received, as well as employer-paid severance and pension plan benefits.

Bureau of Workers' Compensation Contacts:

- Bureau of WC..... (717) 783-5421
- Helpline..... (800) 482-2383

Reference Materials:

The WC Act is available in soft form on the internet at www.dli.state.pa.us and in hard copy from the State Bookstore of PA, Commonwealth Keystone Building, Plaza Level, 400 North Street, Harrisburg, PA 17120.

Contact us for a copy of our Workers' Compensation Handbook.



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overtime. Other employers will attempt to reduce the employee's hourly rate in any week in which he/she works more than 40 hours in an effort to avoid paying overtime compensation. Still, other employers will give their employees so much work that it is impossible to take a meal break during their shift, but still deduct an unpaid meal break from the employee's pay in the timekeeping system. Make no mistake... such practices are completely illegal and amount to outright theft of your hard-earned wages.

However, you have recourse if a current or former employer has stolen your hard-earned wages. The FLSA, PMWA, and WPCL allow

employees to take legal action against their current or former employer to recover stolen wages. In such action, an employee may recover their unpaid wages, an additional amount of damages as a penalty (referred to as "liquidated damages"), as well as reasonable attorneys' fees and costs. Importantly, even if you still work for

the employer who has stolen your wages, you are protected under the law from retaliation for pursuing a wage claim. If you are retaliated against for challenging your employer's unlawful pay practices, you may be able to file a retaliation claim in court or an unfair labor practice charge with the National Labor Relations Board ("NLRB").

If you or someone you know may have been the victim of wage theft, please contact our firm today for a free consultation. Our firm accepts wage theft cases on a contingency basis, which means you do not owe attorneys' fees or costs unless we recover your stolen wages.

