

# New York State Advances Bill That Would Allow Liens Against Employers For Unpaid Wage Claims

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The New York state legislature has [passed a bill](#) that would allow employees making certain claims for unpaid wages to obtain a lien against their employers' property for the value of the claim, inclusive of liquidated damages. If signed by Governor Cuomo, the bill would take effect 30 days after becoming law.

The bill would apply to claims involving non-payment of wages under both the federal Fair Labor Standards Act and the New York Labor Law (and associated wage orders), including claims relating to minimum wage, overtime, spread of hours, call-in pay, uniform maintenance pay, withheld gratuities, unlawful deductions from wages, or improperly taken meal and tip credits, as well as unpaid compensation pursuant to an employment contract.

Employees making such claims would be permitted to obtain an "employee's lien" against the employer's interest in real property and certain personal property, excluding "deposit accounts" or "goods," as defined in Section 9-102 of the Uniform Commercial Code. Liens also could be obtained by the NYS Department of Labor or state attorney general against employers who are the subject of an investigation, court action, or administrative agency action, either on behalf of an individual employee or a class of employees.

Notice of a lien could be filed up to three years following the end of the employment giving rise to the wage claim. Within five days before or 30 days after filing the lien notice, the party seeking the lien would be required to serve a copy of the notice upon the employer, as well as affix a copy to any real property identified in the lien. The lien would extend for up to one year after the notice of lien is filed, unless an extension of up to one additional year is timely filed or action is taken to enforce the lien, in which case it would be extended during the pendency of such action and for a period following entry of final judgment. An employer would, however, be able to purchase a bond in order to discharge the lien at any time.

In the event that an action is not commenced to obtain judgment on the wage claim or to foreclose the lien, the lien would be automatically extinguished unless extended by court order. Further, should a court find that the employee willfully exaggerated the amount of the lien, the lien would be discharged and the employee would be restricted from obtaining another lien against the employer based on the same claim.

In addition to creating the new right of lien, the bill would, in connection with covered wage claims:

- allow plaintiffs to seek an order of prejudgment attachment on an employer's assets pursuant to Section 6210 of the New York CPLR, and require courts to hold a hearing on such a request within 10 days of the employer's opposition; the bill also would limit the amount of bond that a plaintiff would need to post when seeking an attachment to no more than \$500 (or allow a court to waive the bond requirement altogether);
- provide employees and their agents with a right to access the minutes of shareholder meetings and records of shareholders, as well as certain information about members of LLCs, related to their claims; and
- expand the potential personal liability for the 10 largest shareholders of non-public New York corporations, currently limited to the amount of unpaid wages in the event the company cannot pay, to also include liquidated damages, penalties, interest, attorney's fees and costs.

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We will continue to monitor this bill and report on any further developments.

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