

# What's your risk?

## How the Wage Payment Act can hold employers liable for executive pay

**B**usinesses are familiar with the notion that written employment contracts can be a source of rights and liabilities in the event of a split with an executive employee. However, businesses are often not as familiar with other potential sources of employment liability in those situations, including the Wage Payment and Collections Act, sometimes called the Wage Payment Act.

*Smart Business* spoke with John Haarlow Jr., an attorney at Novack and Macey LLP, to discuss the relationship between this statute and executive compensation.

### What is the act and why is it important?

Generally speaking, the Wage Payment Act requires Illinois employers to pay the final compensation of separated employees. Employers need to be conscious of the act because it applies to all employees, from hourly wage earners to top executives. It also provides a range of powerful remedies for separated employees, including attorneys' fees and potential personal liability.

### What are the elements of a claim?

To prevail on a Wage Payment Act claim, a separated employee must demonstrate that he or she has been denied final compensation in violation of an 'agreement' with an employer. Under the act, an agreement is broader and less formal than a traditional contract. For example, an agreement can arise from the pattern or practice between the employee and employer, such as payment of a fixed amount at regular intervals, or from a conversation between an employee and employer. Claims under the act are brought, and sometimes won, solely based on an executive employee's testimony that the employer promised a payment it later refused to make.

### JOHN HAARLOW JR.

Attorney  
Novack and Macey LLP

(312) 419-6900  
jhaarlow@novackmacey.com



**WEBSITE:** Visit [www.novackmacey.com](http://www.novackmacey.com) to learn more about this and other legal issues.



Insights Legal Affairs is brought to you by **Novack and Macey LLP**

### What types of compensation may an employee seek under the act?

Final compensation is essentially any payment due and owing pursuant to an agreement between the employee and employer, including salary, wages, commissions, bonuses, vacation pay, stock options, severance pay and pension contributions. In the event of mid-year separation, some of these payments must be made pro rata. Calculating these payments can be complicated and expensive when dealing with executive separations that include substantial commissions, bonuses or golden parachute packages that vest at various times.

### When is an employee entitled to receive a bonus under the act?

Whether executive employees are entitled to a bonus upon separation under the act has been heavily litigated. Generally, if an executive can show that the employer made an unequivocal promise to pay a bonus and that the conditions for payment have been met, a bonus may be awarded under the act. Such an award is still possible even though a bonus is within the employer's discretion and is typically awarded at year's end.

### When may a separated employee recover attorneys' fees?

A recent amendment to the act provides that

employers are liable for the attorneys' fees of any employee that brings a successful claim under the act. The relatively easy access to attorneys' fees provides departing executives a key bargaining chip in connection with their claims and makes claims for smaller amounts feasible to bring.

### Under what conditions is personal liability possible?

One of the most striking features of the act is that an employer's officer or agent can be held personally liable for the departing employee's damages and attorneys' fees. For personal liability to attach, an officer must have knowledge of the compensation arrangement between the departing executive and the employer and knowingly permit the employer to violate the act. This can provide executives tremendous leverage by putting individual officers at personal risk in connection with a Wage Payment Act claim.

### How can a business protect itself?

Every business is different, so there is no silver bullet to protecting against Wage Payment Act liability. However, broadly speaking, businesses should make clear what comprises an executive's compensation package and when and how it will be paid. That way, there are less likely to be disputes about payment upon separation. ●