

## Publications

### *Labor and Employment Alert: Ohio City Enacts Wage Theft Ordinance*

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#### CLIENT ALERT | 2.16.2016

In January 2016, Cincinnati became the first city in Ohio to enact a law prohibiting “wage theft” and “payroll fraud” in city contracts. The ordinance applies to city contracts in excess of \$25,000, including those involving community reinvestment area tax abatements, job creation tax credits, commercial loans, and conveyances of land for less than fair market value. The ordinance allows individuals to file complaints of wage theft and payroll fraud with the city and, as noted below, requires employers and contractors to self-report complaints and adverse determinations regarding those violations.

Under the ordinance, “wage theft” is broadly defined to include violations of Ohio and federal laws relating to prompt pay, minimum wage, overtime, child labor, and prevailing wage as well as violations of Cincinnati’s living wage requirements. “Payroll fraud” means concealing a person’s true tax or other financial liability to a government agency from government licensing, regulatory, or taxing agencies through tax evasion or fraud; misclassification of employees; unreported or underreported payment of wages; or paying a business transaction in cash without keeping appropriate records of reporting and withholding.

As part of the city contracting process, employers and contractors are required to certify that there has not been an “adverse determination” against them in the past three years involving wage theft or payroll fraud. An “adverse determination” is a determination by an administrative agency, arbitrator award, court, or “any industry-specific regulatory or investigative body” that a person has committed wage theft or payroll fraud. If there has been an adverse determination, the employer or contractor is barred from bidding or working on city contracts unless and until any damages have been paid, and, even then, is generally barred from doing so for two years.

Further, an adverse determination allows the city to pursue any available legal, contractual or equitable remedies, which may include terminating the agreement; unilaterally reducing the incentive or benefit under the agreement by up to 100% of the yet to be paid or provided incentive or benefit; deeming the person ineligible for future

city contracts until all wage theft and payroll fraud penalties have been paid; debarring the person from future city contracts; and informing relevant authorities (such as the city prosecutor and tax commissioner) to determine whether future action is necessary.

The city manager is responsible for ensuring compliance and for investigating complaints of wage theft or payroll fraud and may forward those complaints to the appropriate state and federal agencies (such as the Ohio Department of Commerce and the U.S. Department of Labor). It's worth noting that, between 2012 and 2015, Cincinnati's Department of Economic Inclusion enforced 25 prevailing wage violations and five employee misclassification violations involving contractors on city contracts. In every case, the violations were resolved in the employees' favor.

Cincinnati's wage theft ordinance only applies to contractors with city contracts or agreements. However, Cincinnati's ordinance may be a harbinger of attempts by other Ohio municipalities to enact similar laws – as well as minimum wage, living wage, paid sick leave and retail scheduling laws – aimed at both city contractors and private employers, which are being enacted in other cities across the country. Contact your Vorys lawyer if you have questions about how local wage-hour legislation may impact your business.