

Criminal Conviction Upheld for Failure to Pay Wages

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The Connecticut Supreme Court upheld the criminal conviction of an employer who failed to pay wages, even though the affected employees agreed to defer payment of their accrued earnings. *State v. Lynch*, 287 Conn. 464 (2008). The employer began missing its biweekly payroll when it experienced cash flow problems. The owner met with his employees and obtained their implied agreement to delay payment of both past and future wages until the company acquired sufficient revenue to pay them. Some time later, each employee quit and then filed claims with the Connecticut Department of Labor for unpaid wages of more than \$250,000. The Labor Department asked the Attorney General to criminally prosecute the owner.

Following a trial, the jury convicted the owner who appealed the decision. The Supreme Court affirmed the jury's decision and drew a distinction between agreements to defer future wages as opposed to wages already earned. The Court noted that prior rulings permitted the deferral of future earnings, provided the employee agrees. Even in such cases, the Court indicated they were more likely to enforce an agreement deferring future wages where the employees are experienced business people and members of management who choose to continue working in the hope that their services will improve the financial status of the company, particularly when the financial hardship is short-lived and the financial status of the company ultimately improves. In contrast, agreements to defer the payment of already earned wages are not valid as they violate public policy.

The ruling makes clear that employers may not seek an employee's agreement to defer payment of already earned wages, and such agreement is void as a matter of public policy. Also, senior managers should note that the individual responsible for paying wages can be criminally prosecuted for failing to do so. Poor cash flow is not a defense. Even when cash is tight wages must be paid ahead of most other financial obligations. Given the harsh penalties that may stem from a poorly drafted wage deferral agreement, employers should obtain counsel before approaching employees on any deferral matter.

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