**Section 300.620 Individual Liability of Officers, Agents, or Other Persons**

a) As a result of PA 96-1407, any person, including corporate officers, agents, or any person who acts directly or indirectly in the interest of an employer in relation to an employee is an employer under Section 2 of the Act and may be held individually liable for wages and final compensation. For example, any person, including corporate officers and agents, acting directly or indirectly in the interest of an employer, includes, but is not limited to, actions such as being a signatory to an employment or union contract, or otherwise maintaining a decision-making role with regards to employment decisions or payment of employees. In evaluating whether any person, including officers and agents, are individually liable under the Act, the "economic realities test" is the appropriate standard and, although no one factor is dispositive, the relevant inquiry is whether the person:

1) held a significant ownership interest in the corporation or entity;

2) exercised operational control over significant aspects of the corporation's or entity's day-to-day functions, including the compensation of employees, or had supervisory authority over employees and was responsible in whole or in part for the alleged violation; and

3) was personally involved in the decision to continue operations despite financial adversity during the period of nonpayment.

b) In addition to an individual who is deemed to be an employer under Section 2 of the Act, Section 13 of the Act allows for a separate and independent basis for liability for any agents of an employer who knowingly permit the employer to violate the provisions of the Act. Such a person may be deemed to be an employer of the employees of the corporation and shall be individually liable for an aggrieved employee's wages or final compensation. For example, individual liability would attach when an individual exercises sufficient control to allocate to whom or what entity the funds would be paid and in what amount (i.e., no paychecks, full paychecks, or partial paychecks) during the relevant period.

c) As used in subsection (b):

1) "Knowingly" means knowledge of the existence of facts constituting the alleged violation, rather than a knowledge of the unlawfulness of the act or omission.

2) "Permit" means to allow to happen or to fail to prevent, regardless of the corporation's ability to pay.

(Source: Amended at 47 Ill. Reg. 5406, effective March 31, 2023)