

Client Alert Employment & Labor

Employers Beware: Bold Changes to New York Wage and Hour Law

The New York Wage Theft Prevention Act (“WTPA” or the “Act”), which became effective April 9, 2011, has expanded employer requirements to notify new hires and current employees of certain wage information and to increase sanctions for non-compliance. The Act applies to all New York private sector employers.

New Hire and Annual Notices

The WTPA requires employers to provide written notice to both newly hired employees and annually to existing employees, on or before February 1st of each year (beginning February 1, 2012), containing information regarding the employee’s rates of pay; base pay; allowances, if any; regular pay day; and overtime rate. The annual notice also must provide information about the employer, such as its address, telephone number, and any “doing business as” names.

The notice must be provided in both English and the language identified by the employee as his or her primary language. The employer must obtain a written affirmation by the employee acknowledging receipt. If the employee refuses to sign, the employer should note the employee’s refusal to do so on its copy of the notice. The employer must retain the notice and acknowledgment for six years.

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Wage Statements

Employers must furnish employees with a wage statement with every payment of wages. The wage statement must include certain information, which is largely commensurate with the annual statements.

Moreover, if the employer changes any of its practices that are reflected in the annual notice, then it must provide its employees with notice of these changes seven days before the changes become effective, either using the notice form or in the employee's next wage statement.

Penalties and Anti-Retaliation Provision

Employers may not retaliate against any employee who makes a good-faith complaint about a potential violation of the wage payment laws. If the employer retaliates against an employee, the employee may be entitled to reinstatement, back pay, front pay, costs and reasonable attorneys' fees, and may also recover up to \$10,000 in liquidated damages.

The WTPA also establishes both civil and criminal penalties for non-compliance and generally increases the costs and remedies previously available under New York Labor Law.

Failure to provide the required notice within 10 business days of an employee's hire may result in a civil action by an employee for damages of \$50 per workweek, with a maximum penalty of \$2,500 plus costs, attorneys' fees and injunctive relief. Similar remedies are available where an employer fails to provide an employee with the required wage statement information. There is no cap on damages if the Commissioner of Labor brings the action, as opposed to a private action by an aggrieved employee.

In an action for unpaid wages, an employer may be liable for 100% of the underlying unpaid wages in liquidated damages. In addition, an employer may be liable for civil penalties of \$500 per week in penalties for each offense.

Additionally, the Act imposes new criminal penalties against employers that fail to pay the minimum wage or overtime compensation due. These criminal penalties apply to officers and agents of any partnership, limited liability company or corporation.

Employers may also be subject to criminal liability for failure to maintain the required records.

Record Keeping Requirements

The WTPA requires employers to maintain all payroll records, including wage statements, the new hire/annual notices and affirmations, for six years. An employer that fails to keep the required records may be convicted of a misdemeanor, which is punishable by fines or imprisonment.

The New York Department of Labor (“NYDOL”) has published several forms on its website, including Frequently Asked Questions, which can be accessed using the following link: <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm>.

For additional information concerning employer obligations under the Act, please feel free to contact the following attorneys from our Employment and Labor Practice Group.

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