

Client Alert **Employment & Labor**

New York State Employers Do Not Need to Distribute Annual Wage Rate Notices to Employees This Month

On December 29, 2014, Governor Cuomo signed a bill amending the New York Wage Theft Protection Act (the “WTPA”) to, among other things, eliminate the requirement that New York State employers provide annual wage rate notices to *existing* employees between January 1 and February 1 of each year. Although this part of the bill, like its other key provisions, does not formally take effect until February 27, 2015, the New York State Department of Labor (“DOL”) has announced on its website that New York employers need not provide annual wage rate notices in 2015.

The WTPA, as amended, will continue to require New York employers to provide a wage rate notice to each *newly-hired* employee within 10 days of the employee’s start date. Such notices must be issued both in English and, if the employee’s primary language is Spanish, Haitian-Creole, Russian, Polish, Chinese or Korean, in that language as well. Additionally, employers must continue to issue notices to any existing employee whose wage rate is reduced or whose other WTPA-required information changes.

The amendments to the WTPA, while mitigating the costs and administrative burdens to employers associated with issuing annual wage rate notices to *existing* employees, increase the exposure of employers to workplace liability. Specifically, the WTPA, as amended:

- » Increases the penalties for failure to provide wage rate notices to *newly-hired* employees from \$50 *per week* to \$50 *per day*, up to a maximum of \$5,000 (with additional penalties of up to \$20,000 for repeat offenders and construction contractors);

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- » Makes the ten members of a New York limited liability company (“LLC”) with the greatest percentage interest in the LLC *personally* liable for the debts, wages, and salaries due and owing to the LLC’s employees (the same rule already applies to the ten largest shareholders of a New York corporation);
- » Makes a successor entity engaged in the same operations, with the same ownership, and with the same employees liable for the predecessor entity’s WTPA violations;
- » Augments the New York State Commissioner of Labor’s authority to investigate allegations of retaliation against employees who report violations of the WTPA;
- » Obligates a contractor to notify its employees and its subcontractors’ employees of its violation of the WTPA; and
- » Creates a “Wage Theft Prevention Account,” to be funded by fines and penalties collected by the DOL, for the purpose of offsetting administrative and enforcement costs.

In sum, starting this year, New York State employers do not need to issue annual wage rate notices to *existing* employees, but must continue to give such notices to *new* employees. We can provide advice and guidance on how employers can best seek to comply cost-effectively with, and avoid liability under, the newly-amended WTPA.

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