Sills Cummis & Gross P.C.

# Client Alert Employment & Labor

## *Notices for the New Year and Good News for Employers: Update on Wage and Hour Class Actions*

### Required Notices

With the holiday season upon us, employers should be careful not to lose sight of important notice, posting and distribution obligations commencing early in the new year. Below is a summary of the upcoming requirements, some old and some new, with which employers with employees in New York City, New York State and/or New Jersey must comply:

- **New York City:** As a result of the recently enacted Pregnant Workers Fairness Act, employers with four or more employees are required to provide a written notice, regarding the right to be free from discrimination related to pregnancy, childbirth, and related medical conditions, to all current employees **by January 30, 2014** and, thereafter, to new employees upon commencement of employment. The New York City Commission on Human Rights has released a model written notice. The notice should also be conspicuously posted in the workplace. For more information about the impact of the Pregnant Workers Fairness Act see our October 2013 Legislative Update. Covered employers also should review their policies and manuals to ensure compliance with the new law.

- **New York State:** The New York Wage Theft Prevention Act ("WTPA") requires all private sector employers to provide all New York employees with an annual

notice regarding their compensation and other terms of employment. The notice must be provided to all employees **between January 1 and February 1 of each year**, regardless of length of employment or whether compensation has changed. Accordingly, all employees must receive a written WTPA notice on or before February 1. For additional information regarding notice requirements, see our prior annual WTPA reminder. Employers should be reminded that, in addition to annual notices, WTPA notices must be provided at the time of hire and to current employees in advance of a reduction in pay.

- **New Jersey:** New Jersey's new pay equality notice law, which became effective on November 19, 2012, requires every employer in New Jersey with 50 or more employees to post a notice advising employees of their right to be free from gender inequity in pay, compensation, benefits, or other terms or conditions of employment. Commencing **January 6, 2014,** covered employers are required to: (1) post the notice in a conspicuous place (or places); (2) provide a written copy of the notice by February 5, 2014 to all employees hired on or before January 6, 2014; (3) provide a written copy of the notice at the time of hiring, for employees hired after January 6, 2014; (4) provide all employees with a written copy of the notice on or before December 31 of each year; and (5) provide all employees with a written copy of the notice upon request of the employee. Notice under (2) through (5) may be provided through hard copy, e-mail, or, in certain circumstances, via employer intranet/internet sites and must be accompanied by an acknowledgement that the employee received, read and understood its terms. The acknowledgment must be signed and returned to the employer within 30 days.

## D. R. Horton Decision

In our March 2013 Alert, we advised you of the NLRB decision in *D.R. Horton*, 2012 NLRB LEXIS 11, 357 NLRB No. 184 (N.L.R.B. Jan. 6, 2012), invalidating FLSA class action waivers in employment arbitration agreements as violations of the NLRA. In a victory for employers, on December 4, 2013, the Fifth Circuit Court of Appeals overturned that decision and found that the Board's decision did not "give proper weight to the Federal Arbitration Act (FAA)." The Court further held that while the NLRA protects collective suit filing as concerted activity, the FAA mandated the enforcement of arbitration agreements according to their terms, and the effect of the Board's interpretation would be to disfavor arbitration. Because there is no text or legislative history in the NLRA that demonstrates a "congressional intent to override the FAA", and to avoid creating a split in the circuits, the Fifth Circuit found that arbitration agreements containing class action waivers are enforceable even taking into account the NLRA.

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**Practice Tip**

Until and unless the Supreme Court weighs in on this issue, employers can feel relatively safe in deciding to include class action waivers in employment agreements containing arbitration provisions. The one caution that can be derived from the case is that the language of the waiver must make clear that the employer is not attempting to interfere with any rights under the NLRA.

If you have any questions regarding any of the foregoing developments or would like assistance or guidance on implementing changes to policies, notices, forms or employment contracts impacted by same, please contact any of the following Sills Cummis & Gross attorneys.

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