

Legislation will end employers' annual wage-notice scramble

On June 19, 2014, New York Assembly and Senate passed legislation eliminating a Wage Theft Prevention Act requirement that employers must provide wage notices to all employees by Feb. 1 each year.

Gov. Andrew Cuomo was expected to sign the bill, making 2014 the last year employers had to provide the notice.

This is certainly a welcome development for employers in New York, that found the annual wage notice requirement to be extremely burdensome and costly.

Penalties for other violations

However, the news isn't all positive. The bill also increases the penalties for an employer's failure to provide a wage notice upon *hiring* a new employee and for failing to provide appropriate wage statements to employees.

It also imposes significant consequences for employers that are found to be repeat offenders.

If Cuomo signs the bill, the additional provisions will take effect 60 days after it is signed.

What doesn't change

The bill does not change the existing requirement that employers must provide a wage notice when a new employee is hired.

The New York State Department of Labor (NYSDOL) has issued templates for wage notices that employers can use for this purpose.

You can find sample notice forms in several languages at labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm.

The bill increases the total damages that can be recovered for an employer's failure to provide the initial wage notice within 10 business days of an employee's first day of employment. The penalty is \$50 per workday that the violation

occurred, up to a maximum of \$5,000. The previous maximum was \$2,500.

The bill also increases the damages that can be recovered for an employer's failure to provide regular wage statements to employees. The penalty is now \$250 per workday that the violation occurred up to a maximum of \$5,000. That's an increase from the previous \$100 per *workweek* up to a maximum of \$2,500.

However, new-hire and regular wage statement requirements remain.

An employer faced with a claim that it failed to provide the required wage notice or wage statement can still avoid liability by establishing that it made complete and timely payment of all wages due to the employee who was not provided the wage notice or wage statement.

Willful violations

If an order to comply has been issued to an employer that has previously been found to have violated the wage payment laws or to an employer whose violation is found to be willful or egregious, the employer will be required to report certain data regarding the wages paid to employees and the hours worked by employees (without employee identifying information). NYSDOL will publish that information on its website.

Employers found to have committed a wage payment violation for the second time in a six-year period could be liable for a maximum civil penalty of \$20,000, which is double the previous maximum civil penalty that can be imposed for a first violation in a six-year period.

Preventing legal runarounds

The bill also provides that an employer similar in operation or ownership to a prior employer that has been found to have violated the wage payment laws will be liable for the prior employer's violations. This provision prevents an owner (or owners) of a business entity from avoiding liability by dissolving the business entity and creating a new one that has essentially the same business purpose.

The bill adds a provision to the Limited Liability Company Law providing that the 10 members of a limited liability company (LLC) with the largest percentage ownership will be personally liable for all wages and salaries due to employees of the LLC. This new provision is similar to Section 630 of the Business Corporation Law, which provides that the 10 largest shareholders of a corporation are personally liable for all wages and salaries due to employees of the corporation.

The bill also adds a provision to the Construction Industry Fair Play Act requiring construction contractors and subcontractors that have been found to be in violation of the wage payment laws to notify all employees regarding the nature of the violations. The notification must be made by an attachment to the paychecks of all employees at all work sites.

On the whole, this legislation will be a positive development for employers in New York. They will no longer have to engage in the costly and time-consuming process of issuing wage notices to all employees between Jan. 1 and Feb. 1 each year.

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