

ALERTS AND UPDATES

New Labor Law Establishes Additional Notice and Recordkeeping Requirements for New York Employers

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The New York State Wage Theft Prevention Act (the "Act") contains stringent new requirements for all New York employers and sets forth stiff penalties for wage, notice and recordkeeping violations. To avert potential imposition of costly penalties, New York employers must review and update their pay practices by April 9, 2011.

New-hire / Annual Notice Requirements

The Act amends section 195 of the New York Labor Law with new requirements for employers on pay notices and wage statements issued to employees. Under the old law, section 195(1) required employers to notify new employees hired after October 26, 2009, in writing of their: (i) regular pay rate and, if applicable, rate of overtime pay; and (ii) regular pay date. Beginning April 9, 2011, however, the Act requires this written notice to be provided both at the time of hire and to all *existing employees* on or before February 1 of each subsequent year. The Act also expands the required content of such notice to include:

1. employee's regular rate of pay, overtime rate of pay if applicable and regular payday;
2. basis of the employee's pay—whether the employee is paid by the hour, shift, day, week, salary, piece, commission or other basis;
3. allowances, if any, claimed as part of the minimum wage (*i.e.*, tips, meals or lodging);
4. employer's name and any "doing business as" names used by the employer;
5. physical address of employer's main office or principal place of business and mailing address (if different);
6. employer's telephone number; and
7. any other information required by the New York state commissioner of labor.

This notice must be provided in English and the language identified by the employee as his or her primary language. In addition, employers are required to obtain a signed and dated written acknowledgement from the employee confirming receipt that contains an affirmation by the employee that he or she accurately identified his or her primary language and received the notice in that language. The acknowledgement must be maintained by the employer for six years. Finally, an employer has to provide an employee written notice of any change to the required information at least seven calendar days before such change takes effect.

Wage Statements

The Act also requires employers to provide to employees every pay period (and preserve for six years) a wage statement that includes the following information:

1. dates of work covered by that payment of wages;
2. name of the employee;
3. name, address and phone number of the employer;

4. rate or rates of pay and the basis thereof (whether paid by the hour, shift, day, week, salary, piece, commission or other basis);
5. deductions;
6. allowances, if any, claimed as part of the minimum wage;
7. net wages;
8. for nonexempt employees, the regular hourly rate of pay, the overtime rate of pay, the number of regular hours worked and the number of overtime hours worked;
9. for employees paid on a piece rate, the applicable piece rate or rates and the number of pieces completed at each piece rate; and
10. upon the request of an employee, a written explanation of how such wages were computed.

Penalties for Violations of Notice and Wage-statement Requirements

A new employee who does not receive the notice within 10 days of the start of employment may recover \$50 for each week it is not provided, up to \$2,500, together with costs and reasonable attorneys' fees and other relief that a court deems appropriate. The Act also allows the labor commissioner to bring an action on behalf of an employee who is not provided timely notice (either upon hire or annually thereafter) and may assess the employer damages of \$50 (with no cap) for each week the notice is not provided. If an employer does not provide an employee with a wage statement each pay period, he or she may recover \$100 per week, up to \$2,500, together with costs and attorneys' fees. The labor commissioner can also assess damages of \$100—with no cap—per week. In a proceeding to recover damages, an employer can assert an affirmative defense that it: (i) made complete and timely payment of all wages due or (ii) reasonably believed it was not required to provide the employee with such information.

Heightened Penalties for Wage Violations

The Act amends section 198 of the New York Labor Law to permit liquidated damages of up to 100 percent of the total amount of wages due (an increase from 25 percent), unless the employer can demonstrate it had a good-faith basis for believing it was in compliance with the wage-and-hour laws. The Act also expands criminal penalties for failure to pay wages. An employer who does not pay wages would be guilty of a class B misdemeanor, punishable by a fine not to exceed \$20,000 and imprisonment of up to one year. An employer's failure to maintain payroll records for six years could result in a misdemeanor conviction and a fine of up to \$5,000 or one year's imprisonment.

Enhanced Retaliation Provisions

If an employer retaliates against employees who make good-faith complaints about violations of the wage payment laws or who participate in an investigation, the labor commissioner may assess penalties up to \$10,000. Other remedies include reinstatement, back pay and front pay and liquidated damages (capped at \$10,000).

What This Means for Employers

In order to potentially avert liability, employers should take the following steps to ensure their payroll practices are in order:

1. Review and update the section 195 wage payment form;
2. Obtain signed and dated acknowledgements from each employee;

3. Review and update the company wage statements;
4. Review recordkeeping procedures to make sure documents are retained for six years; and
5. Review and revise employee handbooks to clarify that the company prohibits retaliation for the reporting of wage violations.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact any [member](#) of our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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