

LABOR & EMPLOYMENT

>>ALERT

CALIFORNIA ENACTS ITS OWN WAGE THEFT PREVENTION ACT

California has recently enacted a law called the Wage Theft Prevention Act (WTPA), which goes into effect on January 1, 2012.

The California WTPA, which is in many ways similar to a law recently enacted by New York, increases employer obligations to provide information to employees regarding their pay. The California WTPA also adds and increases a number of California Labor Code penalties.

NOTICE REQUIREMENTS

Specifically, the California WTPA requires employers to provide written notice to non-exempt employees of:

- >> The employee's rate or rate of pay and basis thereof, whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or otherwise;
- >> Rates for overtime, as applicable;
- >> Allowances, if any, that the employer claims as part of the minimum wage, including meal or lodging allowances;
- >> The employee's regular payday;
- >> The employer's name (including any "doing business as" names);

- >> The physical address of the employer's main office or principal place of business, and a mailing address (if different);
- >> The employer's telephone number;
- >> The name, address, and telephone number of the employer's workers' compensation insurance carrier; and
- >> Any other information the Labor Commissioner deems material.

These notices need to be provided to all new hires as well as any other non-exempt employees within seven days of any change to the included information.

The California Labor Commissioner is currently drafting a template for the notice as well as additional details in the form of an FAQ and expects to have these available by mid-December 2011. While the notice obligations in New York and California seem to be nearly identical, leaving open the possibility that employers with employees in New York and California can use the same form notice in both states, the California WTPA requires inclusion of information about the company's workers' compensation

THE BOTTOM LINE

California employers should be on alert for the release of form WTPA notices and should be prepared to start using the notice (or similar versions) starting January 1, 2012. California employers should also review their record-keeping systems and ensure that they have protocols in place to maintain the required records, and new notices, for at least three years.

insurance carrier. Such requirement is not part of the New York WTPA.

Moreover, the California WTPA only requires notices for non-exempt employees and exempts certain non-exempt employees covered by a collective bargaining agreement, while the New York WTPA requires notices for all employees. Additionally, New York requires annual notices for all employees, while California only requires post-hire notices when there is a change to the relevant information.

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LANGUAGE REQUIREMENTS

The notice must be provided in the language the employer normally uses to communicate employment-related information to the employee. Note, this differs from New York's WTPA, which requires the notice to be provided in English and the employee's primary language.

PENALTIES AND RECORDKEEPING

The new and additional penalties created by the California WTPA include, but are not limited to:

- >> Employers who fail to pay minimum wage must, in addition to a civil penalty, pay restitution for unpaid wages to the employee;
- >> Employees may recover liquidated damages in a Labor Commission

hearing for failure to pay minimum wage. Liquidated damages were previously only available in court; and

- >> Employees may recover attorney's fees and costs incurred in enforcing a judgment for unpaid wages.

In addition, while the California WTPA does not include a requirement that employees sign the required notices as required in New York (but that may change when the Labor Commissioner releases its templates), California employers must now maintain payroll records for three years. Previously, employers only needed to maintain them for two years.

FOR MORE INFORMATION

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NOTE TO ALL NEW YORK EMPLOYERS:

Pursuant to the New York WTPA, all employers must provide all New York employees (exempt and non-exempt) with a WTPA-complaint wage notice and acknowledgement in January 2012 (and January of each year). New York employers should be taking steps now to have the required notices ready after the new year.