

Labor and Employment Alert

January 24, 2013

New York Wage Theft Prevention Act — REMINDER

In April 2011, New York enacted the Wage Theft Prevention Act (the “Act”), which significantly increases the wage rate notice requirements applicable to private sector employers in New York. As discussed in our April 25, 2011 and January 20, 2012 Labor and Employment Alerts regarding this law, the Act requires New York employers to provide employees with annual wage notices, **between January 1st and February 1st of each year**, as well as imposing other notice requirements. A summary of some of the Act’s key requirements is set forth below.

Notice Requirements

Under the Act, all private sector employers are required to provide each employee with a notice containing:

1. the employee’s rate or rates of pay
2. the overtime rate of pay for non-exempt employees subject to overtime regulations
3. the basis of wage payment (per hour, per shift, per week, piece rate, commission, etc.)
4. any allowances the employer intends to claim as part of the minimum wage – including tip, meal, and lodging allowances
5. the employee’s regular payday (at least weekly for manual workers, at least twice monthly for clerical and other workers, and at least monthly for commissioned salespeople)
6. the employer’s name and any names under which the employer does business (“doing business as” names)
7. the physical address of the employer’s main office or principal place of business and, if different, the employer’s mailing address
8. the employer’s telephone number
9. any other information that the Commissioner may deem necessary in the future.

The required information must be provided at the time of hire, within 7 days of any change not listed on the employee’s pay stub, and annually between January 1st and February 1st of each year. The original and updated notices must be provided both in English and, if applicable, in the employee’s primary language. To date, the Department of Labor has only issued template notices in Chinese, Haitian-Creole,

Korean, Polish, Russian, and Spanish. If the Department of Labor has not made a template notice available in a given employee's primary language, the employer may provide notice to that employee in English only. Additional notice requirements apply for commissioned sales employees, farm employees, and hospitality industry employees.

Wage Statement Requirements

With every payment of wages, employers must provide a statement, which will generally be in the form of a pay stub, listing the following information: the dates of work covered by that payment of wages; the employee's name; the employer's name, address, and telephone number; the rate or rates of pay and basis thereof (by the hour, shift, day, week, salary, piece, commission, or other); gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages. The wage statements for employees not exempt from overtime regulations must also include: the employee's regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the statement must include the applicable piece rate or rates of pay and number of pieces completed at each piece rate.

Recordkeeping Requirements

All employees must sign a statement acknowledging receipt of the required information in English and, if applicable, in the employee's primary language. The employer must keep a copy of the signed acknowledgment, along with accurate and complete payroll records, for a period of six years.

Expanded Penalties

In addition to creating more burdensome notice requirements, the Act also imposes increased penalties for noncompliance. Individual employees may bring claims for up to \$2,500, plus costs and attorneys' fees, if they are not provided with the required information. Moreover, the Commissioner may bring legal action, seeking various penalties, against employers. In cases of inadequate notice, for each work week in which a violation occurred, the Commissioner may seek fines of \$50 per work week on behalf of new hires and fines of \$100 per work week on behalf of existing employees. Unlike the \$2,500 cap for inadequate notice suits brought by individual employees, the Act does not explicitly place a cap on the amount of liability that may be collected by the Commissioner.

Further, the Act increases existing penalties for other types of wage violations. For example, in cases alleging underpayment of wages, the Commissioner may now seek liquidated damages equal to 100% of the total amount of wages found to be due. Liquidated damages previously were capped at 25%.

Employers who fail to comply with the wage laws may also face criminal penalties.

Anti-Retaliation Provisions

Employees who complain in good faith of suspected violations of the wage payment laws must not be retaliated against. If an employer violates the anti-retaliation provisions, the Commissioner may assess a civil penalty of up to \$10,000, and may order all other appropriate relief, including enjoining the conduct and ordering liquidated damages of up to \$10,000 be paid to the employee. The aggrieved employee may also bring a civil action against the employer directly.

Contact Information

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