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## New York's New Wage Theft Prevention Act

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*On December 13, 2010, New York State Governor David Paterson signed into law the Wage Theft Prevention Act. The Act significantly increases employee protections, and the penalties for violations, while expanding the authority of the New York Commissioner of Labor. It will go into effect on April 12, 2011.*

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A summary of some of the key provisions of the Act is provided below.

### Notice Requirements

The Act significantly expands the notice requirements of Section 195 of the New York Labor Law. For example, employers are currently required to:

- Notify their employees, at the time of hire and in writing, of the rate of pay and of the regular pay day. For employees eligible for overtime, the notice must state the regular hourly and overtime rate of pay.
- Obtain a written acknowledgment from each employee of receipt of this notice.
- Notify employees of any changes in the pay days prior to the time of such changes.
- Furnish each employee with a statement with every payment of wages, listing gross wages, deductions, and net wages.
- Preserve for not less than three years payroll records showing the hours worked, gross wages, deductions, and net wages for each employee.

As of April 12, 2011, however, employers will now be required to:

- Provide their employees, at the time of hire and on or before February first of each subsequent year, in writing in English and in the language identified by the employees as their primary language, a notice containing: the rate of pay, the regular pay day, the basis of the rate of pay, how the employee will be paid (hour, shift, week, etc.); allowances claimed as part of the minimum wage; the employer's name; any "doing business as" names used by the employer; the employer's address and telephone number; and "other information as the commissioner deems material." (The Act provides that the Commissioner

is to prepare templates complying with these requirements.) The notice must also still state the regular hourly and overtime rate of pay for employees eligible for overtime.

- Obtain a signed and dated written acknowledgement in English and in the employee's primary language of receipt of this notice each time the employer provides such notice. These written acknowledgements are to be maintained for six years.
- Notify employees in writing of any changes in the information provided to the employees in the notice at least seven calendar days prior to making such change.
- Furnish each employee with a statement with every payment of wages, listing the following information: dates of work covered by that payment of wages; the employer's name, address and phone number; rate or rates of pay and basis thereof; how the employee is paid (hour, shift, week, etc.); gross wages; deductions; allowances claimed as part of the minimum wage; and net pay. For employees eligible for overtime, the statement also must include the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.
- Preserve for not less than six years payroll records with the above information.

### Remedies for Violations

The Act also significantly expands the remedies allowed for successful wage claims under Section 198 of the N.Y. Labor Law. Currently:

- An employee may recover in court reasonable attorney's fees and, unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, liquidated damages equal to 25% of the total amount of wages due.

Under the Act:

- An employee may recover in court the full amount of any underpayment in wages, all reasonable attorney's fees, prejudgment interest, and unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, liquidated damages equal to 100% of the total amount of wages due.
- If an employee is not provided the notice required by the amended Section 195, he or she may recover in a civil action \$50 for each work week that the violations occurred or continue to occur not to exceed \$2,500, with costs and reasonable attorney's fees.
- If an employee is not provided the statement required by the amended Section 195, he or she shall recover in a civil action damages of \$100 for each work week that the violations occurred or continue to occur, but not to exceed a total of \$2,500, together with costs and reasonable attorney's fees.
- The Commissioner may bring any legal action necessary on behalf of employees who have not received the required notice or statement.
- In any civil action by an employee or by the Commissioner, the employee or Commissioner shall have the right to collect attorney's fees and costs incurred in enforcing any court judgment.

The Act also revises Section 663 of the N.Y. Minimum Wage Act to require a court to award all reasonable attorney's fees, prejudgment interest, and unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, liquidated damages equal to 100% of the unpaid wages, thereby eliminating the court's discretion.

Further, the Act revises Section 662 of the N.Y. Minimum Wage Act to impose criminal penalties for violations. An employer failing to pay minimum wage or overtime compensation will now be guilty of a misdemeanor and if convicted will be fined a minimum of \$500 and a maximum of \$20,000 or imprisoned for up to one year. Subsequent violation and conviction within six years results in either a fine of \$500 to \$20,000 or imprisonment for a period not to exceed one year and a day, or both.

### Retaliation Provisions

The Act makes several changes to N.Y. Labor Law's anti-retaliation protections found in Section 215. For example, any person found to have engaged in unlawful retaliation must pay liquidated damages up to \$10,000. The Act also lists retaliation as a class B misdemeanor.

### Posting Requirements

The Act adds a new Section, 219-c, providing that the Commissioner has the power to require employers found to have violated the wage payment laws to post a notice of the violation for a period not to exceed one year in an area visible to employees, summarizing the violations found. If the violation was willful, the Commissioner can require the employer to post such a notice in an area visible to the general public for a period not to exceed 90 days.

### Conclusion

The Wage Theft Prevention Act's dramatic increases in the penalties and notification requirements of the New York Labor Law make it essential that New York employers review and update their wage payment policies, practices and forms prior to April 12, 2011.

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