

July 15, 2014

Amendments to New York Wage and Hour Law Enhance Potential Penalties but Reduce Employer Obligations

On June, 19 2014, the New York legislature passed amendments to New York's Wage Theft Prevention Act (the "Wage Theft Law") and Limited Liability Company Law. As a result of these amendments, employers are no longer required to provide annual notice to employees regarding their wage rate, but only upon hire and in the event of downward changes in pay. The amendments also increase potential monetary penalties under the Wage Theft Law, provide additional penalties for repeat offenders, and impose personal liability to major stakeholders in Limited Liability Companies ("LLCs") for violations of the Wage Theft Law, among other changes.

Annual Wage Notices to Employees Not Required

The amended Wage Theft Law removes the previous requirement that employers distribute notice of certain wage and salary information to their employees on or before February 1 every year. Employers will still, however, be required to provide employees with such notice upon hiring and upon downward changes in pay. Employees in the hospitality industry are entitled to notice upon increases to their rate of pay as well.

Enhanced Penalties under the Wage Theft Law

Previously, the Wage Theft Law provided that employers would be liable to employees for a failure to provide the aforementioned notice upon hire, and for failure to provide regular wage statements summarizing an employee's pay, at the rate of \$100 per week up to a maximum of \$2,500. The amendments increase the penalty for failure to provide such notices to \$50 per day, up to a maximum of \$5,000.

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Also, if the New York State Department of Labor (“DOL”) finds that an employer has repeatedly, willfully, or egregiously violated New York wage and hour laws, the employer will be required to provide summary wage and hour data regarding its employees for publication on the DOL website.

The amendments also impose enhanced penalties for repeat violations. Prior civil penalties of up to \$10,000 for infractions may be supplemented by additional fines of up to \$20,000 for additional infractions occurring within a six-year period. Liquidated damages of up to \$20,000 are also now available.

Personal Liability for LLC Owners

The amendment also revises the New York Limited Liability Company statute to subject the ten individuals with the greatest ownership interests in an LLC to personal liability for any unpaid wages or salary due under the New York law. This change conforms the LLC Law to the state Business Corporation Law, which already contains a similar provision.

Other Changes and Requirements

Another amendment to the Wage Theft Law limits the Commissioner of Labor’s discretion over the scope of an investigation; henceforth, all investigations must review the entire six-year statute of limitations period unless the Commissioner notifies all affected employees that the investigation will be limited. In addition, the Wage Theft Law was amended to prevent business owners from avoiding liability by dissolving and reforming companies, and requires construction contractors to report findings of wage violations to their employees.

When Does the New Law Take Effect?

The amendments to the Wage Theft Law and LLC Law will become effective sixty days after Governor Cuomo signs the bill, which he is expected to do.

In light of the Wage Theft Law's newly-enhanced penalties, employers are encouraged to review their wage payment practices to ensure compliance with New York state wage and hour law. If you have any questions or would like detailed information about the new law, please contact Nick Bauer at (212) 758-7793 or any other attorney at the Firm.

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