



New York Wage Theft Prevention Act to Take Effect April 12, 2011

The Wage Theft Prevention Act (the "Act"), recently signed into law by Gov. David Paterson, makes significant changes to the New York Labor Law. The Act increases the authority and remedies available to the New York Commissioner of Labor for violations of the Labor Law. It also increases employee protections and creates harsher penalties for employers that violate the law.

A summary of the Act's key provisions, which take effect on April 12, 2011 are below. Keep in mind that there are existing provisions of the Labor Law that must still be complied with in addition to the amendments under the Act.

◆ Notice and Language Requirements

Currently, New York Labor Law §195(1) requires **all** employers to furnish written notification to newly hired employees (at the time of hiring) of their regular rate of pay, regular pay day, and overtime rate of pay if they will be eligible for overtime. The Act amends §195 to require that employers provide **all** newly hired employees and **all existing** employees on or before February 1 of each year, the following information on the written notice:

- ◆ The rate or rates of pay and basis of the payment (e.g., whether the employee will be paid by the hour, shift, day, week, salary, piece, commission, or other basis);
- ◆ Allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- ◆ The regular pay day designated by the employer;
- ◆ The name of the employer and any "doing business as" names used by the employer;
- ◆ The physical address of the employer's main office or principal place of business, and a mailing address if different;
- ◆ The telephone number of the employer; and

- ◆ The overtime rate (for all employees who are not exempt from overtime compensation).

The notice must be updated and given to the employee again at least seven calendar days prior to any changes to the employee's pay or other terms contained in the notice (unless such changes are reflected in the employee's wage statement).

The notice must also be provided to the employee both in English and in the language identified by the employee as his or her primary language. Employers must obtain signed and dated written acknowledgements from employees (in English and the employee's primary language) confirming receipt of the notice.

The Act obligates the Commissioner of Labor to prepare dual-language-based templates to be used as guidance for such notification.

If an employer does not provide the appropriate documentation within ten business days of the employee's first day of employment, the employee may recover \$50 a week until the violation is remedied, up to \$2,500, in addition to costs and attorney's fees.

◆ Pay Statement

Employers must provide employees with pay statements that include the following:

- ◆ Dates of work covered by that payment of wages;
- ◆ Name of employee;
- ◆ Name, address and phone number of employer;
- ◆ Rate or rates of pay and basis thereof (e.g., whether paid by the hour, shift, day, week, salary, piece, commission, or other);
- ◆ Gross wages, deductions and allowances, if any, claimed as part of the minimum wage; and
- ◆ Net wages

For all employees who are not exempt from overtime compensation, the statement shall include the 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.

Violations of these requirements can result in damages in the amount of \$100 per week for the duration of the violation, up to \$2,500, plus costs and attorney's fees.

◆ Recordkeeping Requirements

As a result of the Act, employers are required to preserve and maintain all payroll records and signed employee acknowledgments of the notice described above for a period of six years.

◆ Civil and Criminal Penalties

The Act increases the penalties that may be imposed upon employers for failure to comply with the Act's requirements and the improper payment of wages. These include the following:

- ◆ An increase in the amount of liquidated damages to up to 100% of the total amount of wages due, from 25% under the current Labor Law, in connection with an employer's payment of a wage amount that is less than the employee is entitled (unless employer proves that it had a good-faith basis for believing it was acting in compliance with the law).
- ◆ Payment of prejudgment interest and all reasonable attorneys' fees.
- ◆ Criminal and monetary penalties against employers that fail to pay minimum wage or overtime compensation due. An employer that pays less than the amount owed may 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 a year. The occurrence of a second violation within a six year period of the first conviction will be a felony.
- ◆ Fines between \$500 and \$5,000 or imprisonment for up to one year for failure to maintain records. The occurrence of a second violation within a six year period of the first conviction will result in either a fine between \$500 and \$20,000 or imprisonment for a period not to exceed one year and a day, or both.

In addition to corporations, the Act has expanded the range of employers subject to criminal penalties to include partnerships and limited liability companies and the officers and agents of any corporation, partnership or limited liability company who knowingly permit wage payment violations to occur.

◆ Anti-Retaliation Provisions

The Act also increases penalties against employers, their agents, or the officers or agent of any corporation, partnership, or limited liability company for retaliation against employees who make complaints regarding conduct the employee reasonably and in good faith believes is in violation of the wage payment laws. If retaliation is found, labor commissioner may

- ◆ Assess a civil penalty of between \$1,000 and \$10,000;

- ◆ Order payment of liquidated damages to the employee order that the employee be rehired or reinstated to their former position or an equivalent position; and/or
- ◆ Order payment of lost compensation or an award of front pay in lieu of reinstatement and an award of lost compensation.
- ◆ **Posting Requirement**

Under the amended Labor Law, employers who are found to have committed Labor Law violations may be required to post a notice explaining the violation for up to a year in an area visible to employees. If the violation involves the willful failure to pay wages, the employer may be required to post the notice in an area visible to the general public for up to 90 days.

- ◆ **What to Do**

Employers should start taking steps to ensure they are in compliance with Labor Law requirements before April 12, 2011. Among the actions that may be taken, we suggest that employers:

- ◆ Review and update your new hire forms;
- ◆ Update wage statement forms (if not already in compliance);
- ◆ Make sure you have a system in place that accurately records and maintains payroll records for a minimum of six years; and
- ◆ Inform and train officers and agents on the requirements under the Act (including, but not limited to new employee notification, wage payment requirements, record keeping requirements and retaliation restrictions), as agents of the employer can, in certain circumstances, be held both civilly and criminally liable under the Act.

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