

NYS WAGE THEFT PREVENTION ACT: WHAT WILL IT MEAN TO EMPLOYERS?

Labor & Employment Alert
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Labor & Employment

On December 13, 2010, David A. Paterson signed into law sweeping changes to the New York Labor Law. The Wage Theft Prevention Act, which will become effective on April 12, 2011, introduces important new notice and record-keeping requirements, whistleblower protections, and significant liability provisions.

New Annual and New-Hire Notice Requirements

The act expands the laundry list of information required for new hires under 2009 amendments to the labor law. But more importantly, the legislation requires that employers issue an entirely new notice to each employee on or before February 1 of each year. These new and expanded notices need to be provided in English and in the language identified by each employee as his or her primary language, and must include:

- the pay rate and basis thereof;
- whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or another measure;
- allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- the regular payday;
- the name of the employer and any DBA names used by the employer;
- the physical address of the employer's main office or principal place of business and the mailing address if different;
- the telephone number of the employer; and
- other information "as the commissioner deems material and necessary."

In addition, employers must obtain signed and dated written acknowledgements of such notices from each employee. As with the notice, acknowledgements must be in English and in the language identified by each employee as his or her primary language. These notice requirements apply to all employees, including executives. The act directs the commissioner to provide templates to assist employers in complying with the new notice requirements. Each employee who does not receive

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an appropriate new-hire or annual notice may recover \$50 for each workweek that he or she did not receive such notice, up to \$2,500, together with attorneys' fees. If the commissioner brings an action on behalf of an employee who has not received such notice, she may also assess a \$50 penalty per workweek that the employee did not receive the requisite notice, with no cap on total liability. An employer that does not provide appropriate new-hire or annual notice may avoid liability if it can establish that it either made complete and timely payment of all wages due to the employee(s) at issue or reasonably believed in good faith that it was not required to provide the employee(s) at issue with new hire and/or annual notices.

Notice of Changes in Wage and Hour Information

Employers must also now provide written notification to their employees of any changes to the information that is contained in their new-hire or annual notices at least seven calendar days before the changes become effective. This notice need not be provided to employees if all such changes are reflected on the employee's regular pay stub (see next section).

Additional Information on Pay Stubs

The act requires that employers provide their employees with the following information each payday:

- The dates of work covered by the payment of wages;
- Employee's name;
- Employer's name;
- Address and phone number of employer
- The pay rate(s) and basis of pay (e.g., hourly, salary, commission, etc.);
- Gross wages;
- Deductions;
- Allowances, if any, claimed as part of the minimum wage;
- Net wages;
- For non-exempt employees, their regular hourly and overtime rates of pay, and the number of regular and overtime hours worked; and
- For piece-rate workers, the applicable piece rate(s) of pay and the number of pieces completed at each piece rate.

Employers must also provide any employee with a written explanation of how his or her wages were computed upon request. Employers must maintain all of this information for each of their employees along with their signed notice acknowledgement forms for six years.

If an employer does not provide its employees with this information each payday, each of its employees may recover \$100 for each workweek that he or she did not receive such information, up to \$2,500 with attorneys' fees. If the commissioner brings an action on behalf of an employee who has not received such wage information, she may also assess a \$100 penalty for each workweek that the employee did not receive the requisite information, with no cap on total liability. An employer

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that fails to provide the required information with each payment of wages may nevertheless avoid liability if it can establish that it either made complete and timely payment of all wages due to the employee(s) at issue or reasonably believed in good faith that it was not required to provide the employee(s) at issue with wage statements.

Increased Liability for Wage and Hour Violations and Retaliation

The act also increases the potential liquidated damages available if an employee is not paid in accordance with the New York law from 25 percent to 100 percent of the unpaid wages. Since the commissioner already has the authority to assess a civil penalty of up to 200 percent of the unpaid wages and interest, an employer's total liability for a wage violation could ultimately be many times greater than the actual amount of unpaid wages. The act also requires employers who violate New York wage payment and minimum wage provisions to post a notice summarizing the violations in an area visible to employees. And if the commissioner determines that an employer's violation was willful, the commissioner may order that the notice be posted in an area visible to the general public for up to 90 days.

Finally, the act increases the penalties for retaliating against employees who reasonably and in good faith engage in protected conduct under New York wage and hour law (e.g., complain about wage and hour violations to his or her employer, the commissioner, the attorney general, or anyone else or provide information to the commissioner or attorney general). In such instances, the commissioner may assess a \$10,000 civil penalty against the employer. The employee at issue may also recover liquidated damages of up to \$10,000, lost compensation, and reinstatement. Alternatively, the employee may recover front pay in lieu of reinstatement and lost compensation.

Bottom Line for Employers

The Wage Theft Prevention Act imposes a number of new burdensome notice and recordkeeping obligations on New York employers and punishes violations of these requirements harshly. The act also significantly increases the potential liability of employers who violate New York wage and hour laws. Accordingly, New York employers should carefully review their pay practices before April 12, 2011, to ensure they are compliant with the act.