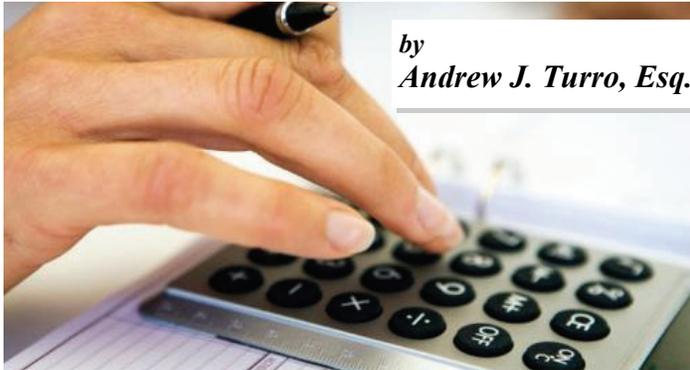


# THE NEW YORK STATE WAGE THEFT PREVENTION ACT



by  
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violations of the WTPA's requirement to provide accurate wage statements can result in damages calculated at \$100 a week for each week the violation occurs. More significantly, the new legislation also authorizes increased liquidated damages of up to 100% of the total amount of wages due (an increase from the 25% under the current Labor Law) where a violation is shown and the employer fails to prove that it had a good faith basis for believing it was complying with the law. The WTPA also imposes new criminal penalties against employers for non-payment of wages, as well as for minimum wage, overtime, and recordkeeping violations. Such violations are now misdemeanors (*and felonies for repeat offenders within a six year period!*) and subject violators to increased fines (ranging up to \$20,000 in certain instances).

## ANTI-RETALIATION PROVISIONS

The WTPA provides for penalties against employers found to have engaged in unlawful retaliation including liquidated damages of up to \$10,000, reinstatement with back-pay, and/or front-pay instead of reinstatement. Notably, the WTPA now designates retaliation as a class B misdemeanor and threats of retaliation are also expressly prohibited by this new statutory scheme. Moreover, under the WTPA, an employer who has either previously been found to have engaged in such retaliatory conduct or "whose violation is willful or egregious" may be subject to a civil penalty "not to exceed double the total amount of wages, benefits or wage supplements found to be due" *in addition to* compensatory damages.

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Simply put, in view of this new legislation, it is now more critical than ever for employers to keep accurate records, properly classify employees (as exempt/non-exempt), and ensure that all 1099 workers are truly independent contractors. Employers with questions regarding the requirements of the WTPA or their general recordkeeping, minimum wage and/or overtime pay obligations should be sure to consult with legal counsel.



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On December 13, 2010, New York State Governor David Paterson signed into law the Wage Theft Prevention Act (the "WTPA") which imposes significant and stricter record-keeping requirements for business owners. The WTPA also includes provisions requiring businesses to notify their employees on a regular basis as to details of their wages. Additionally, the WTPA, which takes effect on April 12, 2011, includes increased civil and criminal penalties for wage payment, notice and recordkeeping violations. The WTPA also includes new anti-retaliation provisions. Some of the key aspects of the WTPA are outlined below:

## NEW EMPLOYEE NOTICE REQUIREMENTS

The WTPA requires employers to notify employees in writing, when they are hired *and* on or before February 1 of each subsequent year, of the details of their compensation including pay rates, basis of pay rates, how the employee will be paid (*e.g.*, hour, shift, week, salary, etc.), and any allowances claimed as part of the minimum wage (such as tips, meals or lodging allowance, regular rate of pay, regular pay date and overtime rate of pay). Employers must provide this notice (and other documentation identifying the employer) in both English and in the employee's primary language and must further maintain accurate pay records for six years, along with proof that the notices were provided. The WTPA also requires that the employer obtain a signed and dated written acknowledgement from each employee that will confirm that this notice was issued in each relevant year. These records (including the employee's acknowledgment) must be maintained for the mandated six year period noted above.

The WTPA includes other notice requirements. Under this new legislation, covered employees must be provided an accurate wage statement that includes the dates that were covered by that payment, the rate and basis of pay and any allowances claimed as part of the minimum wage. For non-exempt employees, employers must also provide the employees' regular hourly rate, overtime rate, the number of regular hours worked, and the number of overtime hours worked.

## INCREASED PENALTIES

The WTPA also includes increased civil and criminal penalties. For example, failure to comply with the new hire/annual notice requirement discussed above allows the Commissioner of Labor or the employee to bring an action to recover the damages of \$50 for each work week the violation occurred, plus costs *and* reasonable attorneys' fees. Likewise,