

DECEMBER 21, 2010

Recent Amendments to the New York Labor Law Enhance Employer Wage Notice Requirements and Impose Steeper Penalties for Failure to Pay Wages

BY MICHAEL S. ARNOLD

Last week, with his term nearing a close, Governor Patterson signed the New York Wage Theft Prevention Act into law. This law, which becomes effective on April 12, 2011, amends the New York Labor Law by increasing its employee notification and recordkeeping requirements and by strengthening sanctions against employers who fail to pay their employees properly. This alert summarizes the key amendments.

Enhanced Notice and Recordkeeping Requirements

Before the amendments, Section 195 of the Labor Law required employers to provide each new employee with a written notice of his or her rate of pay, regular pay day, and, if overtime-eligible, the regular hourly rate of pay and overtime rate of pay. As a result of the amendments, Section 195 now requires employers to provide written notices not only to employees upon hire, but also to all existing employees no later than February 1, 2012 and each subsequent year thereafter. Each notice must be written in English and in the language identified by the employee as his or her primary language. In addition, each notice now must list substantially more information, including:

1. rate of pay; and, to the extent overtime-eligible, the hourly rate of pay and overtime rate of pay;
2. the basis for the rate of pay (whether the employer pays the employee by the hour, shift, day, or week, or by salary, piece, commission, or another method);
3. the existence of any allowances claimed as part of the minimum wage, including tip, meal, or lodging allowances;
4. the regular pay day;
5. the employer's name and any "doing business as" names the employer uses;
6. the physical address of the employer's main office or principal place of business, and a mailing address if different from the physical address; and
7. the employer's telephone number.

Any time the employer changes this information, the amendments require the employer to notify the employee at least seven calendar days before the change or notify the employee on his or her next earnings statement.

The Labor Law still requires employers to obtain a written acknowledgement of receipt of these notices

for new hires, and employers must now also obtain acknowledgements from existing employees each time after they issue a new notice. Each acknowledgment must also be in English and in the primary language of the employee, contain certain language as specified in Section 195(1)(a), and be maintained for six years.

In addition to the enhanced wage notice requirements, the amendments now require employers to provide additional information on employee earnings statements. Before the amendments, employers were required simply to list gross wages, deductions, and net wages on each earnings statement. Now, each earnings statement must include the dates of work covered by the pay period; the employee's name; the employer's name, address, and phone number; the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other method; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages. Further, to the extent the employee is overtime-eligible, each earnings statement must also list the hourly rate of pay and the overtime rate of pay, the number of regular hours worked, and the number of overtime hours worked, and to the extent the employer pays the employee on a piece rate, the earnings statement must include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. Finally, employers are now required to maintain these payroll records for a period of six years rather than the three years required previously.

Increased Penalties

Perhaps the biggest change in the Labor Law is a provision allowing employees to recover liquidated damage awards equal to 100% of unpaid wage amounts—a significant increase from the maximum of 25% previously permitted. In addition, employees now have the right to sue the employer for failing to comply with notice and recordkeeping requirements. While the maximum recovery in these civil actions is only \$2,500, attorneys' fees and costs are available, and the judgment amount will increase by 15% if the employer does not pay it within 90 days after the judgment or 90 days after expiration of the time to appeal and no appeal is pending, whichever is later.

The Labor Law was also amended to provide for new civil penalties for failure to comply with notice and recordkeeping requirements, and to extend potential liability not only to officers and agents of a corporation, but also to officers and agents of a partnership or limited liability company as well. The Labor Commission is also empowered to post notices of Labor Law violations at the offender's worksite, or, for willful offenders, before the general public.

Retaliation

Lastly, the amendments extend the Labor Law's anti-retaliation provision to reach *any person* who retaliates against another employee complaining about a Labor Law violation. It subjects that person to a liquidated damages penalty of up to \$10,000 and carries a class B misdemeanor criminal penalty.

* * *

Action Steps

Employers should seek the advice of employment counsel for assistance with the Wage Theft Prevention Act. Employers should also:

- Review existing document retention policies and procedures to ensure compliance with the Act's six-year document retention requirements;
- Revise existing Section 195 new hire wage notices and create new Section 195 existing employee wage notices to comply with the new information requirements;
- Review policies and procedures designed to properly notify employees of changes to information identified in Section 195;
- Review existing payroll practices to ensure that earnings statements identify all information outlined in Section 195; and

- Train employees to refrain from retaliating against any individual complaining of a Labor Law violation.

[Click here to view Mintz Levin's Employment, Labor and Benefits attorneys.](#)

Boston | London | Los Angeles | New York | Palo Alto | San Diego | Stamford | Washington www.mintz.com

Copyright © 2010 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

This communication may be considered attorney advertising under the rules of some states. The information and materials contained herein have been provided as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; however, the information and materials do not, and are not intended to, constitute legal advice. Neither transmission nor receipt of such information and materials will create an attorney-client relationship between the sender and receiver. The hiring of an attorney is an important decision that should not be based solely upon advertisements or solicitations. Users are advised not to take, or refrain from taking, any action based upon the information and materials contained herein without consulting legal counsel engaged for a particular matter. Furthermore, prior results do not guarantee a similar outcome.

The distribution list is maintained at Mintz Levin's main office, located at One Financial Center, Boston, Massachusetts 02111. If you no longer wish to receive electronic mailings from the firm, please visit <http://www.mintz.com/unsubscribe.cfm> to unsubscribe.

0830-1210-NAT-ELB