

Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

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New York Employers Must Be Aware of Recent Amendments to State's Human Rights, Labor, and "Mini-Cobra" Laws

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New York employers should be aware that New York State recently amended both the New York Labor Law, which governs wage and hour issues, as well as the State's Human Rights Law.

Changes to the Labor Law

On July 28, 2009, the New York Labor Law was amended and now requires employers to provide all employees who are hired on or after October 26, 2009 with written notice of their rate of pay and the employer's regular pay dates. In addition, employers will now be required to notify new non-exempt employees who are eligible for overtime of their regular hourly rate and their overtime rate of pay. Employers will also be required to obtain acknowledgments from each new employee evidencing their receipt of this notice.

On August 27, 2009, Governor Paterson signed a bill into law that will increase the penalties for employers who retaliate against employees exercising their rights under the Labor Law. The minimum penalties will increase from \$200 to \$1,000 and the maximum penalties will increase from \$2,000 to \$10,000. In addition, the new law will make the State law consistent with the Federal Fair Labor Standards Act by permitting employees to automatically recover "liquidated damages" from their employers, unless the employer provides a "good faith basis" to show that it believed its wage underpayment was in compliance with the law.

Considering the Labor Law's six (6) year statute of limitations, liquidated damages at the New York statutory rate of 25% of the unpaid wages could be significant. The law will now impose liability on officers and agents of limited liability companies where such individuals retaliate against employees who exercise their rights. Finally, the law gives the Commissioner of Labor the power to bring an administrative action, in addition to a court action, where the Commissioner finds violations of wage payment laws.

The bill also expanded the Labor Law §215(1) to expand the statute's whistleblower protections to include those who have complained to their supervisor as opposed to filing a formal complaint. This way, New York law will be consistent with New Jersey's Conscientious Employee Protection Act.

Changes to the Human Rights Law

On July 7, 2009, the State Legislature also amended the State Human Rights Law to include victims of domestic violence as a protected category. As with other protected categories, employers may not refuse to hire or otherwise discriminate against an individual, in any aspect of employment, because the individual is a domestic violence victim. Pursuant to the statute, "domestic violence victim" is defined as, "an individual who is a victim of a family offense under New York's Family Court Act, including disorderly conduct, harassment, stalking, reckless endangerment or assault between spouses or former spouses, or between parent and child or between members of the same family or household." The New York State Human Rights Law was further amended to now provide for civil fines and penalties of up to \$50,000.00 for unlawful discriminatory acts that occur on or after July 6, 2009. In addition, the Act provides for penalties and fines of up to \$100,000.00 where the discrimination is willful, wanton or malicious.

Changes to New York's "Mini-COBRA" Law

On July 28, 2009, Governor Paterson also signed into law a bill that will extend an employee's right to continue his/her health insurance under New York's "Mini-COBRA" law. New York's "Mini-COBRA" applies to employers with less than twenty (20) employees while employers with

more than twenty (20) employees are subject to federal COBRA. Prior to this bill, those subject to Mini-COBRA were entitled to continuation coverage for eighteen (18) months from their separation in the event of termination, reduction in hours of employment, or loss of eligibility. Now, however, an employee may continue coverage for up to thirty-six (36) months. If the employee has exhausted his/her continuation coverage under COBRA, he/she is also permitted to maintain coverage for up to thirty-six (36) months.

Employers conducting business in New York should make note of these important changes to the State's employment laws.

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