



Alert

Labor & Employment Client Service Group

To: Our Clients and Friends

March 25, 2011

Effective April 9, 2011 – New York Wage Theft Prevention Act

Effective April 9, 2011, the New York Wage Theft Prevention Act (the “Act”) creates new obligations that will require revisions to employers’ current hiring and notification practices. Employers must now provide employees with additional information regarding the payment of wages, and there are increased penalties for violations of New York’s wage payment law.

Notice Requirements

The Act amends Section 195 of the New York Labor Law to require that employers provide employees with a written notice containing certain information including: (1) the employee’s rate or rates of pay (including the overtime rate of pay for non-exempt employees); (2) the basis for payment (by the hour, shift, day, week, salary, piece, commission or otherwise); (3) whether the employer will claim any allowances as part of the minimum wage (e.g., tip, meal or lodging allowances); (4) the employer’s regular pay day; and (5) the employer’s name, and any “doing business” names, and the physical and mailing address, and phone number, of the employer’s main office. (For employees paid on a commission basis, the current law also requires a signed written statement of all factors used in calculating commissions).

Employers must provide new employees with this written notice at the time of their hire and must provide this notice to *all* employees annually beginning on or before February 1st of 2012. Employers must provide the notice to employees in English and in the language identified by each employee as his/her primary language. When providing written notice to employees, employers must obtain a signed and dated acknowledgement of each notice, which includes confirmation that notice has been provided in the Employee’s primary language. (The New York Department of Labor (“DOL”) will provide a template form on its website in English before April 9, and will provide a template in certain other languages; if there is no DOL template in a language other than English, then an English language notice is sufficient.)

This Client Alert is published for the clients and friends of Bryan Cave LLP. Information contained herein is not to be considered as legal advice. This Client Alert may be construed as an advertisement or solicitation. © 2011 Bryan Cave LLP. All Rights Reserved.

Employers must provide written notice of any change in this information at least 7 days before implementation (unless such information is provided on wage statements).

Wage Statement Requirements

The Act also amends Labor Law Section 195 to require that employers provide pay statements that specify: (1) the dates of work covered by the payment of wages; (2) name of employee; (3) name of employer; (4) address and phone number of employer; (5) rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; (6) gross wages; (7) deductions; (8) allowances, if any, claimed as part of the minimum wage; and (9) net wages. For all employees who are not exempt from overtime compensation, the statement must 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.

Upon the request of an employee, an employer must furnish an explanation in writing of how such wages were computed.

All payroll records must be maintained for a minimum of six years (rather than three years).

Violations

The Act provides stiff penalties for violations: failure to provide the required notice within ten business days of an employee's hire date subjects the employer to an action for damages of \$50 per workweek, to a maximum of \$2,500, plus costs, attorney's fees and injunctive relief. Employers who fail to provide employees with the wage information in each payroll statement are subject to penalties of \$100 for each week, up to \$2,500, plus costs, attorney's fees and injunctive relief.

Tougher Civil Penalties

The Act also increases the amount of liquidated damages an employee can recover in cases where any violation of the wage laws is proved and the employer fails to prove that it had a good-faith basis for believing it was acting in compliance with the law. The Act now permits liquidated damages of up to 100% of the total amount of wages due, an increase from 25% under the existing law. As a result, employees may be entitled to recover twice what they are owed in wages or overtime.

The Act also provides for the recovery of prejudgment interest (at the rate of 9% per year) and attorneys' fees in any civil action to recover unpaid wages brought by an employee.

The Act also gives employees expanded protections against employers who have been found to have violated the law, but still fail to pay. If an employer loses in court and still fails to pay within ninety (90) days, the employee can now collect an extra 15% of the judgment owed, as well as attorneys' fees and costs for enforcing the judgment. The Act also gives the labor commissioner expanded powers in enforcing judgments against employers.

If any employer retaliates against employees who make good-faith complaints about violations of the wage payment laws or who participate in an investigation, the labor commissioner may assess penalties

of up to \$10,000, and the employee may bring a civil action for reinstatement, back pay and front pay and liquidated damages (capped at \$10,000). Unlawful retaliation is also a Class B misdemeanor.

Recommendations for Employers

Employers should review their payroll practices to see what additional information they will need to provide employees; review and update New York Labor Law § 195.1 new hire forms; update wage statement forms; and make sure that there is a system in place that accurately records and maintains payroll records for a minimum of six years. For companies that use payroll services, the company should confirm with the payroll service that it is in compliance with the new wage statement requirements. Strict adherence with the Act is essential to avoid the significant penalties that can result from non-compliance. If you have questions about this new law, we suggest that you consult your Bryan Cave attorney for further information.

* * *

For further information, contact Bryan Cave LLP's [Labor and Employment Client Service Group](#).