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Labor and Employment

New "Wage Theft Prevention Act" Toughens Penalties for Employers and Expands Anti-Retaliation Protection for Employees

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February 2011

The new "**Wage Theft Prevention Act**" provides a major overhaul to the New York Labor Law by toughening penalties for employers that breach the Labor Law, and by expanding anti-retaliation protections for employees. The changes will take effect in **April, 2011**, and will likely increase the amount of employment litigation from plaintiff's lawyers.

A general summary of the Act's most noteworthy provisions include:

Tougher Penalties for Violations of the Labor Law

- The Act increases liquidated damages to 100% of the total amount of wages found to be due, increased from 25% under the current law.
- The Act provides, for the first time, recovery of reasonable attorneys' fees in any action to recover unpaid wages.
- The Act adds civil penalties for employers who fail to provide pre-employment notice of wages (discussed further below) or fail to provide pay statements with the required information (also discussed below).
- The Act exposes employers to criminal penalties for failure to pay minimum wage or overtime compensation due. The first violation is deemed a misdemeanor and the second violation, if occurring within six years, will be a felony.
- The Act expands the type of businesses subject to criminal penalties for non-payment of wages to include the officers and agents of partnerships and limited liability companies. Previously, criminal penalties only applied to officers and agents of corporations.

Anti-Retaliation Protection Expanded for Employees

- The Act expands the anti-retaliation provisions of the Labor Law to protect employees who complain that their employer's conduct is in violation of the New York Labor Law. The employee need only have a reasonable good faith belief that the employer's actions constitute a violation of the Labor Law, whether or not a violation has actually occurred. If successful in proving retaliation, the employee can receive compensatory damages, liquidated damages, and other injunctive relief including reinstatement or front pay in lieu of reinstatement.

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New Notice and Recordkeeping Requirements

- The Act adds notice requirements to employees, expanding on the 2009 amendment to the Labor Law. The 2009 amendments required employers to notify all newly hired employees, in writing, of their regular rate of pay, regular pay date, and overtime rate. The Act amends this requirement to provide written notice to employees not only at the time of hire, but on or before February 1 of each subsequent year, and expands the information required in each notice. The Act further requires that the written notice be updated and provided to employees at least 7 calendar days prior to any change in their pay.
- The Act now requires that employers keep payroll records and employee acknowledgements of notices for 6 years, increased from 3 years under the current law.

Employer Responsibilities

Given that the Act substantially increases the burden on and liability of employers, businesses large and small should start taking steps to ensure that they are in compliance with the law before **April, 2011**.

The Labor & Employment Practice Group at **Green & Seifter, Attorneys, PLLC** provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

If Green & Seifter, Attorneys, PLLC can provide you with additional insight and information regarding the new *Wage Theft Protection Act*, please contact **John L. Valentino**. John Valentino is a Managing Member of **Green & Seifter Attorneys, PLLC**, (www.gslaw.com) and concentrates his practice in the areas of Business Transactions and Employment Law. He can be reached at jvalentino@gslaw.com or at **315.701.6308**.



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