



Employer Services Advisory

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New Wage-Hour Recordkeeping and Notice Obligations, Increased Penalties Go Into Effect in New York This Weekend

This Saturday, April 9, 2011, the Wage Theft Prevention Act becomes effective in New York State. Signed on December 13, 2010, by outgoing Governor David Paterson (D), the Act amends the New York Labor Law to impose new recordkeeping and notice obligations on the majority of employers operating within the state; and increases penalties for non-compliance. The new law is certain to lead to increased regulatory activity by the state Department of Labor and increased litigation by attorneys, union representatives and individual employees. Employers must review their payroll reporting, recordkeeping and personnel policies to ensure compliance with the Act's requirements, briefly summarized below.

Employee Notice Requirements

The Act requires that employers provide employees with an annual notice before February 1 of each year setting forth their pay days, pay rates, overtime rates of pay (if applicable), the basis of the rate of pay, any allowances claimed as part of minimum wage, all identifying, affiliate and contact information for the employer, and additional information specified by the Commissioner of Labor. An employer will further be required to retain copies of these notices and a signed, dated acknowledgment of receipt from each employee for six years.

Any time the employer changes any of the terms contained in an employee notice, the employer must provide notice of the changes to the affected employee either in a separate written notice seven days in advance or in the detailed wage statement accompanying payment of wages. That detailed wage statement accompanying employee pay must now include: the employee's name, the employer's name and contact information, gross wages, deductions, net wages, dates of work covered, the rate of pay, the basis of the rate of pay, the overtime rate of pay (if applicable), regular and overtime hours worked, and any allowances claimed as part of the minimum wage. Finally, the Act will require the employer, upon employee request, to provide a written explanation of how the employee's wages were calculated.

Recordkeeping Requirements

Under the Act, employers must retain payroll records for six years showing for each work week a significantly increased amount of information including for all employees: hours worked, rates of pay, the basis for the rates of pay, gross wages, deductions, any allowances claimed as part of minimum wage, net wages, overtime rates of pay (if applicable) and the number of regular and

overtime hours worked.

Increased Penalties

The Act increases mandatory liquidated damages four-fold for wage-hour violations, to 100% of unpaid wages (now identical to the federal Fair Labor Standards Act's provisions). It provides interest from the date of underpayment and additional civil penalties for failure to comply with final judgments within 90 days. The Act provides for individual recovery of civil damages for each workweek in which the employer fails to comply with its new notice requirements. It increases criminal penalties and fines; and authorizes the Commissioner of Labor to require employers to post notices of violations in areas visible to employees and/or the public. Finally, it increases an employee's right of recovery for an employer's retaliation in response to an employee's claim under the Act – or the employer's belief, even mistaken, that the employee has filed a claim.

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