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[New York Enacts The Wage Theft Prevention Act](#)

On December 13, 2010, Governor David Patterson signed the Wage Theft Prevention Act (“WTPA”). The WTPA will take effect on April 12, 2011. As set forth in more detail below, the WTPA amends the New York Labor Law (“NYLL”) in a number of ways by providing additional protections for employees while subjecting employers who fail to comply with the WTPA’s requirements to more severe penalties.

Wage Rate Notices

The WTPA amends Section 195 of the NYLL 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), and the basis thereof; (2) whether the employee will be paid 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); and (4) the employer’s regular pay day.

Employers must provide employees with this written notice at the time of their hire and on or before February 1st of each subsequent year of the employee’s employment. Moreover, employers must provide the notice to employees in English and in the language identified by each employee as his/her primary language. Employers are required to preserve and maintain this documentation for six years.

If an employer fails to provide an employee with the above notice within ten business days of his/her first day of employment, then the employee may recover \$50 for each work week during which the violation occurred or continues to occur up to a maximum of \$2,500 together with attorneys’ fees and costs.

The WTPA has instructed the Commissioner of Labor to prepare template notices that comply with the WTPA’s requirements, but the Commissioner of Labor has not yet issued such templates.

Wage Statements and Payroll Records

The WTPA further requires employers to provide employees with a statement in connection with the payment of wages that lists certain information including: (1) the dates of work covered by that payment of wages; (2) the employee’s rate or rates of pay and the basis thereof; (3) whether the employee is being paid by the hour, shift, day, week, salary, piece, commission or otherwise; and (4) allowances, if any, that the employer claimed as part of the minimum wage; (5) the employee’s gross wages; (6) deductions from such wages; and (7) the employee’s net wages. Moreover, for non-exempt employees, the statements must also include the employee’s overtime pay rate and the number of regular and overtime hours that the employee worked.

If an employer violates this section of the WTPA, then the employee may recover \$100 for each work week during which the violations occurred or continues to occur up to a maximum of \$2,500, together with attorneys’ fees and costs.

Employers are also required to maintain payroll records for each employee for each week worked containing the above information. These records must be maintained for six years.

Anti-Retaliation Provisions

If an employer is found to have retaliated against an employee because the employee complained that the employer engaged in conduct that the employee, reasonably and in good faith, believed violated any provision of the NYLL, then the employee may be entitled to reinstatement, back pay and front pay. The employee may also recover up to \$10,000 in liquidated damages.

Posting Requirements

The WTPA further provides that if an employer is found to have violated New York's wage payment laws, such employer may be required to post a notice of the violation for up to one year in an area visible to employees. If the employer's violation is deemed to have been willful, then the employer must post the notice in an area that is visible to the general public for up to ninety days.

Criminal Penalties

Employers who fail to pay employees minimum wage or overtime compensation shall be guilty of a class B misdemeanor and upon conviction shall be fined an amount between \$500 and \$20,000 or imprisoned for up to one year. If the employer is convicted of a subsequent offense within six years of the prior offense, then such employer shall be guilty of a felony and upon conviction shall be fined an amount between \$500 and \$20,000 or imprisoned for up to one year and one day. The WTPA further expands the definition of covered employers to include partnerships and limited liability corporations.

Conclusion

The WTPA imposes new requirements upon New York employers and subjects employers who fail to abide by such requirements to severe penalties. We anticipate that the WTPA will be used by plaintiffs' counsel throughout the state as a new tool with which to challenge the pay practices of New York employers. Accordingly, it is imperative that employers review their employee notification and payroll practices to ensure compliance with the WTPA and other portions of the NYLL.