Employers Should Remember The New York Wage Theft Prevention Act's February 1st Deadline

January 27, 2012 by Kathryn Dugan

As readers of this blog may recall, in 2011 New York implemented the New York Wage Theft Prevent Act (the "Act"), which amended the New York Labor Law to impose new recordkeeping and notice obligations on the majority of employers operating within New York State, as well as expanding the civil and criminal remedies available when employers fail to comply with these provisions. Specifically, the Act requires that by February 1st of each year, employers provide notice to employees of their rate(s) of pay, designated pay day, the employer's intent to claim allowances as part of minimum wage, all identifying, affiliate and contact information for the employer, which includes the name of the employer and any "doing business as" names used by the employer and additional information that may be specified by the Commissioner of Labor.

The notice must be provided in the employee's primary language, as identified by the employee, through translated notices provided by the Department of Labor. These notices are required at the time of hire, as well as yearly between January 1 and February 1, and when there are changes in the information on the pay notices. With respect to changes in the terms of an employee's notice, the employer must provide notice of changes to the affected employees either in a separate written notice seven days in advance of the change or in the detailed wage statement accompanying payment of wages. The employer is required to retain copies of these notices and a signed, dated acknowledgement of receipt from each employee for six years. The notices must be made available to the Department of Labor upon request.

Employers should also be aware of changes in the Act that expand the Department of Labor's authority to enforce the Labor Law. For example, the Act increases the mandatory liquidated damages for wage violations to 100% of unpaid wages. In addition, the Act provides for interest from the date of any underpayment and additional civil penalties for failure to comply with final judgments within 90 days. The Act also provides for individual recovery of civil damages for each

workweek in which the employer fails to comply with its new notice requirements. Finally, the Act expands an employee's ability to bring complaints and private actions for such violations, while also strengthening an employee's protections against any prohibited retaliation by an employer. Prohibited retaliation includes, among other things, any action that negatively affects workers such as discharge, suspension, transfer to another shift or reduction in wages or hours, which is done because a worker has engaged in a protected activity. A protected activity includes any of the following: an employee's right to complain to their employer, the Department of Labor or the Attorney General about possible violations of the Labor Law and regulations issued under it; an employee's right to file a complaint about these possible violations and give information about their conditions of employment to the Department of Labor or Attorney General; and an employee's right to testify at hearings or other proceedings. The penalties for retaliation can include fines up to $10,000, as well as an additional $10,000 in liquidated damages. The Department of Labor can also request reinstatement of the worker and/or compensation for lost wages.

With February 1, 2012, the deadline for compliance quickly approaching, New York employers should take steps to ensure compliance with these necessary obligations.

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