
Wage Theft Prevention Act

May 17, 2011

New York State Requires New Employee Notifications, Record-Keeping, Increases Fines for Minimum Wage and Overtime Violations, and Strengthens Whistleblower Protections

On December 13, 2010, Governor Patterson signed the Wage Theft Prevention Act (the “Act”) into law. The Act attempts to address the problem of employers who fail to pay statutorily mandated minimum wage and overtime by requiring new notifications, enhancing remedies for violations, and strengthening whistleblower protections. The Act became effective April 12, 2011.

Recordkeeping and Employee Notifications

The Act requires employers to provide to all employees, both at the time of hiring, and on or before February 1 of each year (starting in 2012), an individual notice containing information regarding allowances claimed, the regular pay day, the name, “doing business as” name, address and phone number of the employer, and, for all non-exempt employees, the regular hourly rate (or rates) and overtime rate of pay. The notification must be provided both in English and the employee’s primary language. The Department of Labor has promulgated forms that employers can use for this purpose. The employer must obtain a signed and dated acknowledgement from the employee of receipt of notice.

In addition, beginning in February, 2011, employers will be required to furnish employees with pay statements (pay stubs), which specify the applicable dates the wages cover, the rate and basis of pay, gross wages, deductions, allowances, net wages, and other information. Nonexempt employees must be informed of their regular and overtime rates. Payroll records must also reflect this information. Employers must notify employees of any changes to this data in writing, seven days prior to the effective date of the change, unless the changes are reflected in the pay statement. In addition, employees are entitled, upon request, to a written explanation of how their wages were computed.

All records listed above, in addition to payroll records, must be kept for six years. Substantial monetary penalties await employers who fail to comply with these rules.

Anti-Retaliation

The Act provides for additional remedies in the event of retaliation, including issuing injunctions, ordering reinstatement, the payment of lost wages, front pay and liquidated damages of up to \$10,000, in addition to an award of costs and attorney's fees. Retaliation is defined as discharging, threatening, penalizing, or in any other manner discriminating or retaliating against any employee and constitutes a misdemeanor.

Wage Payment Discrimination

The Commissioner is now empowered to take "any legal action necessary, including administrative action or a civil action" to recover a fine of \$500 per violation of wage discrimination due to gender.

Notice of Employer Violations

An employer which has violated wage payment laws will be required to post a notice which explains these violations, for up to a year, in an area visible to employees.

Criminal Penalties

The Act extends criminal penalties to officers and agents of corporations, partnerships or limited liability companies who knowingly allow wage payment violations to occur, or who violate minimum wage or overtime requirements.

Award of Costs and Fees

The Act also greatly expands the circumstances under which an employer could be liable for an employee's costs and attorneys' fees if it violates the law.

Conclusion

The Wage Theft Prevention Act imposes significant new burdens on employers, and heavy penalties for failure to comply. Employers should examine their wage payment practices, including the determinations of exempt/non-exempt employees, to ensure that employees are paid correctly. In addition, employers must also plan to notify employees of all information required by this Act. Even if the workforce is unionized and the collective bargaining agreement already contains all applicable information, the employer should comply.