



## NEW YORK WAGE THEFT PREVENTION ACT

Effective April 12, 2011

The Wage Theft Prevention Act (“Act”) was recently signed into law and becomes effective April 11, 2011. The Act significantly modifies employer requirements regarding wage notices, wage statements and payroll records, and posting requirements. Additionally, the Act includes more stringent anti-retaliation provisions and criminal and civil penalties against non-cooperating employers. Below, we highlight some of the new changes and expectations.

First, there are considerable changes to wage notice requirements to new and current employees. Prior to this act the law required that employers provide every new hire a written notice that included information such as regular wage rate, the overtime rate, and regular pay day. This act will require, in addition to existing new hire notice requirements, that the new notice must contain information such as classification of pay (i.e. hourly, shift, day, week, etc.), and permitted allowances claimed as minimum wage. Additionally, the notices must be provided not only to new hires, but to each employee annually, as well as seven days before any wage change takes effect. All notices described here must be provided in the employee’s primary language, if not English. Employers must obtain and retain notice receipt acknowledgements from each employee.

Second, the Act modifies the records retention requirements. Employers must maintain copies of payroll records for six years. The Act provides the NY Department of Labor with discretion to require employers to provide an accounting of all assets upon the employers default on administrative order to pay wages, damages, and penalties.

Third, the Act increases civil penalties for labor law violations. Liquidated damages on unpaid wages (most commonly for unpaid overtime) are increased from 25% to 100% in court actions. Where an employer fails to provide disclosures of wage rates and paystubs, the Act provides for both statutory damages and a private right of action. Any employer who fails to pay wages shall pay \$500 per failure. Statutory damages available for employees are capped at \$2,500. It is an affirmative defense if either the employer made complete and timely payment of all wages due or the employer reasonably believed in good faith that it was not required to provide the employee with the required notice.

In addition to civil penalties, the Act increases the criminal penalties for an employer’s violation of the NY Labor Law. Any employer as well as officers and principals of the corporation, partnership, or limited liability company, who knowingly permits the violation of the Act by failure to pay wages shall be guilty of a misdemeanor and upon conviction shall be fined between \$500 and \$20,000 or imprisoned for no more than a year. In the event of a second or subsequent offense within six years of the date of prior conviction, the employer or its principals shall be guilty of a felony.



The Act also provides for more stringent anti-retaliation protections for employees. No employer or other person (closing the loop hole on the definition of employer) shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because the employee filed a complaint or is in some other way involved with a complaint filed against the employer. There is a two year statute of limitations for filing a retaliation claim running from the date of the retaliation itself. If the NY Department of Labor finds a violation, in addition to other penalties, it may assess a civil penalty up to \$10,000. The NY Department of Labor may also order an injunction of conduct of any person or employer or a reinstatement of employment to the former position or its equivalent.

It is imperative that employers review and update employee notification and payroll practices to ensure compliance with the Act and all other NY and federal labor laws.



*Clients who have any further questions or concerns about the information contained in this Advisory should not hesitate to contact us.*

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