

Amendment to New York Wage Law to Take Effect April 12, 2011

On December 13, New York Governor Paterson signed into law the Wage Theft Prevention Act.¹ The Act, which amends the New York Labor Law, takes effect April 12, 2011. The Act creates more stringent employer notice and recordkeeping requirements, increases the penalties for non-compliance with wage requirements, strengthens employee anti-retaliation protections, and enhances the Department of Labor's enforcement powers.

Changes to Notice and Recordkeeping Requirements

The Act changes and expands employer notice and recordkeeping requirements. Under the Act, employers are required to provide all newly hired employees at the time of their hire and by February 1 of every year thereafter with written notice of their regular rate of pay, regular pay day, overtime rate of pay (if overtime eligible), basis of pay (e.g., whether the employee will be paid by the shift, hour, day, week, salary, piece, commission, or by another basis), any allowances (like tips) claimed as part of the minimum wage, the employer's main address and phone number and any other information that the commissioner of labor deems material and necessary. The commissioner is required to issue template notices that comply with these requirements. Employers must provide this notice in both English and the employee's main language (if other than English) and obtain a signed and dated written acknowledgment confirming receipt of the notice.

The Act also amends the New York Labor Law Section 195 to require employers to provide pay statements at the time wages are paid that include the period that the wages cover, the rate and basis of pay, and other information. Pay statements for nonexempt employees must also contain the regular and overtime rates of pay and the number of regular and overtime hours worked in the pay period.

Under the Act, employers are required to preserve and maintain all payroll records, including the written acknowledgments described above, for six years (as opposed to the current three-year requirement).

Increased Penalties

The Act provides new civil penalties for employers who do not adhere to the notice requirements. An employee who does not receive required pay information may bring a civil action to receive a notice of wages or pay statement. The employee may be entitled to damages plus costs and reasonable attorneys' fees. The employee may recover damages of \$50 for every work week that the employee works without receipt of a notice of wages up to a maximum of \$2500 and may recover damages of \$100 for every work week that the employee works without receipt of a compliant pay statement up to a maximum of \$2500. The labor commissioner may bring civil or administrative action on behalf of the employee to collect or assess the damages from the employer.

The Act amends New York State Labor Law Section 198(1)(a) to permit an employee who prevails on a claim of underpayment of wages (including not paying minimum wage or overtime) to recover increased liquidated damages, prejudgment interest, and reasonable attorneys' fees. The Act increases the amount of recoverable liquidated damages from 25% of the underpayment of wages to 100% of the underpayment for each violation unless the employer can offer a good faith basis for believing that the underpayment was lawful. The Act also imposes new criminal penalties for nonpayment of wages.

¹ ReadMedia, Inc. release by the New York State Office of the Governor, <http://readme.readmedia.com/Governor-Paterson-Signs-Wage-Theft-Prevention-Act/1795638>.



Enhanced Anti-Retaliation Protections

The Act enhances the anti-retaliation protections for employees who complain of conduct that they reasonably and in good faith believe violates the New York Labor Law. An employee may bring an action in court or file a complaint with the labor commissioner. In either forum, any person found to have engaged in unlawful retaliation can be ordered to pay a civil penalty of up to \$10,000, liquidated damages up to \$10,000, compensatory damages, and costs and attorneys' fees and to provide injunctive relief, such as reinstatement. There is a two-year statute of limitations for commencing a retaliation action in court, which is tolled if the employee files a complaint with the labor commissioner.

Expansion of the Department of Labor's Enforcement Powers

The Act grants the labor commissioner the authority to institute administrative actions to recover penalties and collect claims. The labor commissioner may also order additional payments against an employer for willful or egregious violations, including up to two times the total amount found to be due, plus a 100% liquidated damages payment.

Conclusion

In enacting the Wage Theft Prevention Act, New York follows a host of other states that have already enacted similar legislation. The impact of the legislation in those states suggests that New York's Act may lead to an increase in administrative enforcement and individual and class action litigation. Employers in New York should become familiar with the requirements of this new law and begin reviewing their payroll practices to ensure that they are compliant with the Act by April 12, 2011.