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2015 Changes to Laws Affecting New York Employers

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New York Governor Andrew Cuomo, on December 29, 2014, signed legislation amending two laws of interest to employers in the state: New York's Labor Law (the "Labor Law") and Limited Liability Company Law (the "LLC Law"). The amendments to the Labor Law include changes to the Wage Theft Prevention Act (the "WTPA"), which originally amended various sections of the Labor Law in April 2011. The recent revisions to the WTPA include some notable changes that eliminate certain administrative burdens for employers with respect to providing employees with annual wage notices, increase penalties for employers' failure to comply with the WTPA, hold successor companies liable for the acts of wage theft of the prior employer, and impose notice requirements on construction companies that have committed wage theft. The amendments to the LLC Law, which were enacted by the same legislation that amended the WTPA, establish personal liability for certain members of limited liability companies for debts, wages, or salaries owed to their employees.

Annual Notice of Wage Rates Requirement Eliminated

When the WTPA was originally enacted in 2011, it required employers to provide to all employees, by February 1st of each year, a written notice containing the rate of pay, basis of pay (e.g., hourly, daily, weekly, salary, commission), allowances claimed as part of the minimum wage (e.g., tip, meal, lodging), regular pay day, and name, address, and telephone number of the employer. The new

amendments to the WTPA relieve employers from the obligation of providing that notice to all employees on an annual basis, though employers in the hospitality industry must still provide new pay notices to employees earning minimum wage when the employee's rate of pay changes. Additionally, while most employers no longer need to provide the annual notices, employers must still provide notices to all employees at the time of hiring, as well as seven days prior to any changes to the information contained in the notice, unless such changes are reflected on the pay stub furnished to the employee. In addition, employers must notify employees of any reduction in wage rates prior to the implementation of the reduction.

Although the WTPA amendments are set to go into effect on February 27, 2015, the New York Department of Labor has announced that employers will not need to provide annual notices in 2015, thereby relieving employers of the need to meet the previous February 1, 2015, deadline.

Increased Penalties

Though the revisions to the WTPA reduce administrative burdens on employers by eliminating the requirement that employers provide wage rate notices to employees on an annual basis, the new amendments increase the penalties for employers' non-compliance with the WTPA.

Prior to the amendments, employees who were not provided wage notices within ten days of their employment could recover from the employer damages of \$50 for every week the notice was not provided, not to exceed a total of \$2,500, plus costs and reasonable attorney's fees. The amendments to the WTPA permit an employee to recover damages of \$50 for every *workday*, not to exceed \$5,000, plus costs and reasonable attorney's fees.

The amended WTPA also increases the penalties for employers' failure to provide employees with WTPA-compliant wage statements (i.e., pay stubs). The amendments increase the penalties associated with a violation of this nature from \$100 per week to \$250 per *day*, to a maximum of \$5,000, up from a maximum of \$2,500.

Liability of Successor Companies

The recent amendments also added to the WTPA a new section that, under certain circumstances, holds a successor company liable for the acts of a prior employer found to be in violation of the payment of wages and minimum-wage provisions of the Labor Law. Under the newly amended WTPA, a successor company will be liable for acts of a prior employer found to be in violation of the payment of wages and minimum-wage sections of the Labor Law if the

successor company is "similar in operation and ownership" to the prior employer and if the employees of the successor company engage in "substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the new entity has substantially the same production process, produces substantially the same products and has substantially the same customers."

Notice Requirements Unique to Construction Contractors

The amended WTPA also includes a new section that is unique to construction contractors. According to this new section, construction contractors or sub-contractors found to have failed to pay all wages required by the payment-of-wages or minimum-wage sections of the Labor Law must notify all employees, by way of paycheck attachment, of the nature of any such violations.

Personal Liability of Certain Limited Liability Company Members

In addition to amending the WTPA, the legislation signed by Governor Cuomo also amended the LLC Law to add a section providing that the ten members with the largest percentage ownership interest in an LLC shall jointly and severally be personally liable for the debts, wages, and salaries due and owing to the LLC's employees. For an employee to take advantage of this provision, however, the employee must provide written notice to any such LLC members within 180 days of the employee's termination.

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