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New York Enacted Major Changes for Employers Regarding Wage and Payroll Information

By Gregory B. Gilmore, Esq.

If your company has employees who work in New York, you must heed recent amendments to the New York Labor Law (the "Labor Law") through the Wage Theft Prevention Act (the "WTPA"). Failure to do so could subject you to damages for each New York worker you employ.

Effective April 9, 2011, the WTPA amended the Labor Law by, among other things, imposing additional notice and recordkeeping obligations on employers and increasing the penalties for employers who violate the Labor Law.

The WTPA's Notice and Recordkeeping Mandates

Prior to the WTPA, the Labor Law required New York employers to provide new hires with written notice of the rate of pay and the regular payday (the "Notice"). After the enactment of the WTPA, in addition to informing new hires of the rate of pay and regular payday, the Notice must also include the following information:

- the basis of the rate of pay (*e.g.*, hourly, shift, day, week, salary, piece, commission, or other);
- any allowances claimed as part of the minimum wage (*e.g.*, tip, meal or lodging allowances);
- the employer's name;
- any "doing business as" names used by the employer;
- the physical address of the employer's main office or principal place of business, and a mailing address if different;

- the employer's telephone number; and
- such other information as the commission deems material and necessary.

The requirements for when to give the Notice have also changed. The WTPA requires employers to provide the Notice to an employee not only at the time of hire, but also on or before February 1st of each subsequent year of the employee's employment. Furthermore, each time the employer provides the Notice to an employee, the employer must obtain that employee's signed, dated, and written acknowledgment of receipt, which the employer must retain for six years. Moreover, the employer must notify the employee in writing of any changes in the Notice at least seven days prior to the effective date of the change (unless any changes are reflected on the employee's wage statement).

The WTPA also requires that employers provide the Notice in the employee's primary language. This requirement, however, is only applicable if the Department of Labor provides notice templates in that language. Otherwise, the Notice only needs to be provided in English. Currently, the Department of Labor provides notice templates, which can be found [here](#), in English, Spanish, Chinese, and Korean.

In addition to requiring new information in the Notice, the WTPA also requires new information on wage statements given to the employee. Before the WTPA, wage statements furnished to employees were only required to notify the employee of his or her gross wages, deductions, and net wages. After the WTPA, however, wage statements must also list:

- the dates of work covered;
- name of employee;
- name, address, and phone number of employer;
- rate of pay and basis thereof; and
- any allowances claimed as part of the minimum wage.

For non-exempt employees, the WTPA requires that the wage statement also include the regular and overtime rates of pay, the number of regular hours worked, and the number of overtime hours worked.

WTPA Allows for Stiffer Penalties

The WTPA also provides for new penalties for employers violating the notice and recordkeeping requirements, as well as for violating the Labor Law.

If an employer fails to supply an employee with the Notice within ten business days of the employee's first date of employment, then the employee may recover in a civil action \$50 for each work week for which the employer was in violation, up to a maximum of \$2,500, plus costs and attorney's fees. In addition, the WTPA allows the commissioner of the Department of Labor, on behalf of any employee not provided with a Notice, to bring a legal action, including an administrative action, and may assess against

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the employer damages of \$50 for each work week for which the employer was in violation. For an employer's failure to provide a WTPA compliant wage statement to an employee, the penalty is increased to \$100 per work week. Employers will have some affirmative defenses, also outlined in the WTPA.

The WTPA also provides for stiffer civil penalties for violations of the Labor Law, including an increase in the cap on liquidated damages and a requirement that the commissioner assess the full amount of any underpayment against the employer. The WTPA also allows for the recovery of attorney's fees.

Employers Must Review Payroll Processes to Ensure Compliance

The WTPA certainly increases the administrative burdens on New York employers. Employers who fail to comply with the additional obligations imposed upon them by the WTPA, as well as the wage and hour and wage payment laws, could find themselves dealing with significant damages and penalties. While an infraction with respect to a single employee will have relatively insignificant consequences, if an employer's payroll practices are such that the employer's violations encompass all New York employees, the damages and penalties, as a whole, could be significant.

To avoid the penalties that come with non-compliance, New York employers should review their payroll practices to ensure that they are in strict compliance with the expanded obligations imposed upon them by the WTPA and the wage and hour and wage payment laws.

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