



The New York Wage Theft Prevention Act Effective April 9, 2011, Increases Both Employer Disclosure Obligations and Penalties for Non-Compliance

By: Gregory T. Casamento, Richard I. Scharlat and Jeffrey Kramer

The Wage Theft Prevention Act (the "Act") (SB 8380/AB 11726), which was signed into law on December 13, 2010, becomes effective on April 9, 2011. The Act protects workers from employers who paid less than minimum wage, failed to pay earned overtime, and committed other such employment practices prohibited by the Act. It also requires that employers disclose more information to employees at the inception of employment, thereafter provide such disclosures to employees on an annual basis, and obtain acknowledgements from employees that such notices were given. The Act also protects employees from retaliation for reporting violations and substantially increased both civil and criminal penalties.

New Notice and Language Requirements

The Act updates New York Labor Law, requiring employers to provide to all employees, both at the time of hiring and on or before February 1, for each year thereafter, notice regarding their rate of pay, the day on which they are typically paid, and any overtime rate to which an employee is entitled if he or she works overtime. Moreover, at least seven (7) calendar days notice of change must be given if there are any changes to the employee's pay or other terms of the original notice, if such changes are not shown in the wage statements. New disclosures required by the Act include: the regular per diem; the rate or rates of pay and the basis for that rate; all allowances claimed as part of minimum wage (such as tip, meal or lodging allowances); all company names and aliases (including "doing business as" names); the employer's address and telephone number; and any other information the Commissioner of the New York Department of Labor considers material and necessary.

These disclosures must now be provided to the employee in both English and the employee's primary language. The Commissioner's office will provide dual-language template notices. If the employee's language is not covered by these notices, the employer may satisfy the Act by delivering the disclosures in English only.

New Changes to Wage Statements

Wage statements, which must be provided with every payment of wages, must now specify the applicable dates the wages cover, the rate and basis of pay, and other data required by the Act. Employees who are non-exempt must receive wage statements that include regular hourly rates, overtime rates, and the number of regular and overtime hours worked. If the employee is paid on a "piecemeal" basis, the wage statement must include the piece rate and the number of pieces completed at each rate.



Heightened Civil and Criminal Penalties

The Act increases the Commissioner's enforcement powers considerably, also while bulking up the civil and criminal penalties for violators.

Civil Penalties

The Act increases the amount of liquidated damages an employee can recover in cases where the employer does not prove a good-faith basis for believing it was acting in compliance with the law. The Act permits liquidated damages of up to 100 percent of the total amount of wages due, compared to the 25 percent allowed under the current law. Willful or outrageous violations could expose employers to damages of up to three times the amount of due wages. The Act further allows employees to recover prejudgment interest and attorney's fees in a civil action brought to recover unpaid wages.

Employers who do not provide the requisite notice within ten days of an employee's start date could face an action for damages of \$50 per week for each week the violation continues, up to \$2,500. Failure to provide a correct wage statement may expose the employer to an action for damages of \$100 per week, up to \$2,500. Employers may assert certain affirmative defenses to alleged violations, but will have the burden of proving such defenses.

Criminal Penalties

Employers who fail to pay minimum wage or overtime compensation will face criminal penalties. Any employer found to have paid less than the owed amount has committed a misdemeanor and can be fined between \$500 and \$5,000, or face imprisonment up to one year. A second violation and conviction within six (6) years will result in either a fine of \$500 to \$20,000 or imprisonment of up to one year and a day.

These criminal provisions now apply to officers and agents of any partnership, limited liability company or corporation.

Further, the new Act grants aggrieved employees additional remedies in the event of employer retaliation, including: enjoining conduct; liquidated damages not to exceed \$10,000; reinstatement with back pay; and front pay instead of reinstatement. Unlawful retaliation is considered a Class B misdemeanor.

In sum, the Act will significantly change New York labor law with respect to how and how often employers notify employees about wage and pay issues, how employers respond to alleged violations of the Act, as well as change the potential penalties, both civil and criminal, employers will face for infractions of the law.

For more information on the matters discussed in this *Locke Lord's QuickStudy*, please contact the authors:

Gregory T. Casamento | T: 212-812-8325 | gcasamento@lockelord.com

Richard I. Scharlat | T: 212-415-8510 | rscharlat@lockelord.com

Jeffrey Kramer | T: 646-217-7722 | jkramer@lockelord.com