

New York Labor Law Amended: The Wage Theft Prevention Act

On December 10, 2010, Governor Paterson signed into law the Wage Theft Prevention Act ("the WTPA"), which will take effect on April 9, 2011. The purpose of the WTPA is to address the failure of some employers to pay statutorily-mandated minimum wages and overtime by (1) expanding the wage-related information that employers must provide to their employees; (2) enhancing available remedies for wage law violations; (3) strengthening whistleblower protections; and (4) expanding the authority of the New York Commissioner of Labor to remedy wage law violations. The WTPA amends New York Labor Law ("Labor Law") §§ 195-99, 215-19, and 661-63. The following is a summary of the principal changes to existing law.

Employee Notification Requirements

Pre-Employment Notice of Wage Rates

The WTPA clarifies and adds to the disclosures already required by Labor Law § 195. Since October 2009, § 195 has required employers to provide written notice to newly-hired employees of:

- Their rate of pay
- Regular payday
- Overtime rate of pay (for nonexempt employees)

The new legislation amplifies the existing notice requirements. An employer will now also be required to provide written notice to newly-hired employees of:

- The basis of the rate of pay (e.g., by the hour, shift, day, salary, piece, etc.)
- Allowances, if any, claimed as part of the minimum wage (including tip, meal, or lodging allowances)
- Employer's name, any "doing business as" names used, physical address and mailing address of the main office, and telephone number

The notice must be provided not only in English but also in the language identified by each employee as his or her primary language. The State Department of Labor will be creating notices in a number of foreign languages. The previously required signed and dated written acknowledgment of receipt of this notice must now be in English *and* in the primary language of the employee.

As before, the notice must be provided at the time of hire, but it must now also be provided annually on or before February 1. Employees who do not receive the above notice within 10 days of hire can bring suit and recover \$50 for each work week in which the violation has occurred, up to \$2,500 (plus costs and reasonable attorney's fees). An employer establishes an affirmative defense if it proves that it has paid all legally required wages.

Payroll and Pay Stub Requirements

The WTPA brings the Labor Law's provisions in line with existing regulations concerning payroll and pay stub requirements. Labor Law § 195 had required employers to provide a statement with every paycheck showing gross wages, deductions, and net wages. Now, the statement must also list:

- Dates of work covered by the payment
- Name of employee
- Name, address, and phone number of employer
- Rate of pay and basis thereof (e.g., by the hour, shift, day, salary, piece, etc.)
- Allowances, if any, claimed as part of minimum wage (including tip, meal, or lodging allowances)

For non-exempt employees, the statement must also now include:

- Regular hourly rate of pay
- Overtime rate of pay
- Number of regular hours worked
- Number of overtime hours worked

The amendments also bring the statute in line with existing regulations by providing that employers must retain records reflecting this information for six years. Employees who do not receive these statements can bring suit and recover \$100 for each work week in which the violation has occurred, up to \$2,500 (plus costs and reasonable attorney's fees). An employer establishes an affirmative defense if it proves that it has paid all legally required wages.

Damages and Penalties

Liquidated Damages and Attorney's Fees

The WTPA increases the amount of liquidated damages an employee or the Commissioner of Labor can recover in a lawsuit alleging failure to pay wages due. The WTPA now permits liquidated damages of 100% of the wages owed, up from 25%; this is in addition to the lost wages themselves. The Commissioner also has the discretion to assess up to 100% liquidated damages in early investigation stages.

The employee or Commissioner now also has the right to collect costs, prejudgment interest, and all reasonable attorney's fees.

Criminal Penalties

The WTPA raises criminal penalties for failure to pay minimum wage or overtime to a fine of up to \$20,000 or a year in prison. Failure to keep proper records now comes with a fine of up to \$5,000 or a year in prison.

Whistleblower Protections

Labor Law § 215 had prohibited employers from discharging, penalizing, discriminating, or retaliating against employees who have complained to their employer or to the New York Commissioner of Labor about wage law violations. Section 215 authorized legal action by the employee or the Commissioner to enforce this provision. The WTPA now also explicitly prohibits *threats* of retaliation (in addition to actual retaliation). The WTPA also prohibits retaliation by persons who do not meet the technical definition of "employer" under the statute but who have retaliated against an employee because of conduct protected under the Labor Law. An employee is also protected from retaliation for complaining about conduct that the employee reasonably and in good faith believed violated the Labor Law, even if the allegation turns out not to be true. ♦

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