

### **New York Wage Theft Prevention Act Amended – Annual Wage Notices No Longer Required**

On December 29, Governor Andrew Cuomo signed into law amendments to the New York Wage Theft Prevention Act (the "WTPA"). Bill A08106C (Assembly), S05885-B (Senate). Most notably, the amendments eliminate the WTPA's annual wage notice requirement and increase the penalties associated with violations of the WTPA. The New York State Department of Labor has announced that the elimination of the annual notice requirement will take effect immediately, meaning that **employers need not provide employees with annual notices in 2015**. For general background on the WTPA's requirements, see our December 2010 client alert, available [here](#).

#### **Key Amendments to the WTPA**

Notable amendments to the WTPA include:

- 1) **Elimination of the annual wage notice requirement.** Employers are no longer required to provide all employees with a wage rate notice on or before February 1 of each year. Employers are still required to provide **new** employees with the notice. As noted above, the Department of Labor has stated that it "will not require annual statements in 2015."
- 2) **Increased penalties for failure to provide a wage notice upon hire and failure to provide a wage statement with each wage payment.** The available damages for each failure are increasing from a maximum of \$2,500 per employee to a maximum of \$5,000 per employee. The Commissioner may impose an additional penalty of up to \$5,000 per employee against the employer.
- 3) **Increased investigation scope.** By default, the Department of Labor's investigation of a complaint will now cover the full six-year statute of limitations period for wage and retaliation claims unless the Commissioner notifies all affected employees of a shortened period.
- 4) **New requirements for repeat offenders and for willful or egregious violations.** Employers with repeat labor law violations, or whose violations are found to be willful or egregious by the Commissioner, will be required to report certain wage and employee information to the Department of Labor. The data will be posted on the Department's website and will include the employer's total headcount, the respective hourly rates of its employees, and the number of hours worked by its employees.
- 5) **Establishment of a civil penalty for repeat offenders.** Employers with a previous wage violation within the previous six years and who commit a new violation will be subject to a civil penalty of not less than \$1,000 but not more than \$20,000.
- 6) **Increase in maximum liquidated damages for employees.** The maximum amount of liquidated damages that can be awarded to an aggrieved employee has doubled from \$10,000 to \$20,000.
- 7) **The creation of individual liability for LLC members.** The 10 members with the largest percentage of ownership shares in an LLC will be jointly and severally personally liable for all debts, unpaid wages, or salaries due to employees of the LLC.

- 8) **Establishment of the Wage Theft Prevention Enforcement Account.** The account, which will be in the custody of the state comptroller, will be funded by monies collected from employers who violate the WTPA and used to offset the costs incurred by the administration and enforcement of the WTPA.

### **Actions for Employers**

These amendments will take effect on February 27, 2015. New York employers should:

- 1) Review their wage payment practices to ensure continued compliance with the WTPA.
- 2) Continue to provide a wage notice to all newly-hired employees in English and, if applicable, in their primary language within 10 days of hire.
- 3) Keep in mind that the WTPA's document retention requirements remain unchanged. All previously obtained acknowledgements and notices as well as signed certifications from newly-hired employees must be kept on file for at least 6 years.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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