

## **New York Wage Theft Prevention Act**

The Act attempts to address the problem of employers who fail to pay statutorily mandated minimum wage and overtime by requiring new notifications, enhancing remedies for violations, and strengthening whistleblower protections. The Act imposes significant new obligations on employers and providers for severe penalties for those who fail to comply. Although the Act went into effect in 2011, its main notification requirements become effective starting in 2012.

### **Recordkeeping and Employee Notifications**

Under the Act, all employers are now required to provide to all employees, **both** *at the time of hiring and on or before February 1 of each year (starting in 2012)*, an individual notice containing the following information:

- Rate (or rates) of pay and basis therefore (whether hourly, shift, salary, piece, etc.);
- Allowances taken as part of the minimum wage (tips, meal and lodging deductions);
- Regular pay day;
- Official name of the employer, and any “doing business as” name, including address and phone number of the employer’s main office or principal location;
- For all non-exempt employees, the regular hourly rate and overtime rate of pay.

The annual notification must be provided both in English and the employee’s primary language (the Commissioner of Labor is responsible for supplying dual-language notices, and the employer is only responsible for an English language notice if the Commissioner does not supply a version in the employee’s primary language).

The employer **must** obtain a signed and dated acknowledgement from the employee of receipt of notice. These acknowledgement forms must be maintained along with payroll records for 6 six years.

### **Pay Statements Required**

The new law also requires employers to furnish employees with pay statements (pay stubs), which specify the applicable dates the wages cover, the rate and basis of pay, gross wages, deductions, allowances, net wages, and other information. Non-exempt employees must be informed of their regular and overtime rates. Those who are paid a piece rate are entitled to additional information. Payroll records must also reflect this information and be kept on an ongoing basis. All payroll records must be maintained for 6 years.

### **Changes must be in Writing**

Employers must notify employees of any changes to their wages in writing, seven days prior to the effective date of the change, unless the changes are reflected in the pay statement. In addition, employees are entitled, upon request, to a written explanation of how their wages were computed.

### **Penalties**

Violations of the initial notification requirement are punishable by a fine of \$50 per workweek, up to \$2,500, in addition to costs and attorney's fees. Violations of the wage statement requirement are punishable by a fine of \$100 per workweek, up to \$2,500, plus costs and attorney's fees.

### **Anti-Retaliation**

The Act amends Section 215 of the Labor Law to allow the Commissioner to order additional remedies in the event of retaliation against an employee who makes a complaint under the Act, including issuing injunctions, ordering reinstatement, the payment of lost wages, front pay and liquidated damages of up to \$10,000, in addition to an award of costs and attorney's fees. Retaliation is defined as discharging, threatening, penalizing, or in any other manner discriminating or retaliating against any employee and constitutes a misdemeanor.

### **Criminal Penalties**

An amendment of Section 198-a of the Labor Law provides for an extension of criminal penalties to officers and agents of corporations, partnerships or limited liability companies who knowingly allow wage payment violations to occur. A first offense is a misdemeanor, and subsequent offenses occurring within six years are felonies.

Section 622 of the Labor Law was amended to impose new criminal and monetary penalties against employers who violate the minimum wage or overtime requirements. A first violation is considered a misdemeanor and is subject to a fine or imprisonment for up to one year. Subsequent violations which occur within six years constitute felonies and are punishable by a fine or imprisonment for one year plus one day, or both.

A failure to keep records is also a misdemeanor, punishable by a fine or imprisonment for up to one year. Subsequent recordkeeping violations occurring within six years are felonies, and are punishable by a fine or imprisonment for one year plus one day, or both.

### **Award of Costs and Fees**

The Act also amends Section 663 of the Labor Law to allow a court to award all reasonable attorney's fees, prejudgment interest, and liquidated damages **equal to 100% of the unpaid wages**, in the case of unpaid wages.