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LEGAL BRIEFING: New York Wage Theft Prevention Act Amendment Approved  
NYS Legislation

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January 5, 2015

On June 19, 2014 the New York State Assembly and Senate passed a bill that makes several amendments to the Wage Theft Prevention Act. The bill was signed by Governor Cuomo on December 29, 2014.

Most notably, the bill repeals the requirement that employers provide an annual wage notice to all employees between January 1 and February 1 of each year. While the new law typically would take effect sixty (60) days after enactment, the Governor's office and Department of Labor have made it clear that further legislative chapter amendments will accelerate the effective date of the notification rule to remove the annual notice requirements on employers for the 2015 (and subsequent) calendar years. Here are links to the Department of Labor notice as well as the Governor's accompanying legislative memorandum:

<http://www.labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm>

<http://www.labor.ny.gov/workerprotection/laborstandards/employer/8106-C.pdf>

However, the requirements that an employer provide new employees with a wage notice within ten (10) business days of being hired, and that an employer provide all employees with appropriate wage statements (i.e., pay stubs) each pay period remain in effect and unchanged. The penalties payable to the employee and/or to the Department of Labor for violating those notice requirements will be increased.

Specifically, if an employer does not provide a newly hired employee with a wage notice within ten (10) business days of being hired, the employer may be subject to a penalty of \$50 per work day, per worker to whom such notice was not given, with a maximum penalty of \$5,000. Prior to this bill, the penalty was \$50 per work week, with a maximum penalty of \$2,500.

In addition, if an employer does not provide appropriate wage statements each pay period, the employer may be subject to a penalty of \$250 per work day, per worker to whom such notice was not given, with a maximum penalty of \$5,000. Prior to this bill, the penalty was \$100 per work week, with a maximum penalty of \$2,500. Note, however, that in both instances the employer may avoid the penalties by proving that the employer actually made complete and timely payment of all wages due to the employee who did not receive the appropriate notice.

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With these amendments, the maximum civil penalty for repeat offenders under the Wage Theft Prevention Act within a six (6) year period will also be increased to \$20,000. Prior to this bill, the maximum civil penalty had been \$10,000. In addition, liability for the civil penalty, as well as under the Wage Theft Prevention Act generally, will now extend to an employer with similar operations or ownership to a prior employer who had violated the wage payment law. This provision prevents an employer who violates the Wage Theft Prevention Act from dissolving the current entity and creating a new entity with substantially the same operation, employees, products and customers in order to avoid potential liability.

Other than fines, if a violation is willful or egregious, the employer may be required to report wage data on the Department of Labor's website.

The bill will also add a provision to the Construction Industry Fair Play Act. This provision requires that contractors and subcontractors disclose wage violations to all employees at any and all worksites, even if the violation did not involve that employee or worksite. The violation, which must be disclosed as an attachment to the employee's paycheck, must summarize the nature of the violation.

The bill also adds a provision to the New York Limited Liability Company ("LLC") Law. The provision states that the ten (10) members with the largest percentage ownership in the LLC will be jointly and severally liable for any unpaid wages due to the LLC's employees. Before an employee can bring a claim against a covered LLC, he or she must give advance written notice to the LLC's members of his or her intent to hold such members liable. Such notice shall be given within one hundred eighty (180) days after termination of such services. A similar provision is already a part of the New York Business Corporation Law and applies to the ten (10) largest shareholders.

Lastly, the bill explicitly clarifies that the Department of Labor's ability to investigate a wage violation is subject to a six (6) year statute of limitations period. However, the limitations period may be otherwise if the Commissioner of the Department of Labor notifies the affected party.

This Legal Briefing is intended for general informational and educational purposes only and should not be considered legal advice or counsel. The substance of this Legal Briefing is not intended to cover all legal issues or developments regarding the matter. Please consult with an attorney to ascertain how these new developments may relate to you or your business.

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