

## NEW YORK EMPLOYERS ON NOTICE: *The Labor Law Imposes New Notice Requirements*

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New York employers must now comply with new notice obligations owed to employees, and also must now consider tougher penalty provisions for violations of New York's wage and hour laws.

First, New York Labor Law § 195 has been amended effective October 26, 2009 to require that employers notify all new employees of the following information at the time of hire:

1. The rate of pay and the regular payday that has been designated by the employer.
2. For all employees eligible to receive overtime pay (i.e., non-exempt employees), the regular hourly rate and overtime rate of pay.

Employers are required to provide this notice in writing and obtain a written acknowledgement from the employee that he or she has received the required notice. Penalties for failure to comply with this new law range from \$1,000 for a first violation to \$3,000 for a third and each subsequent violation. The new law is not retroactive, and therefore employers are required to provide this notice for, and obtain the written acknowledgement from, employees hired on or after October 26, 2009.

It is worth noting the other "forgotten" notice obligations that already exist in Labor Law § 195. Thus, New York employers continue to be required to:

- Notify employees of any changes in the company's regular paydays prior to instituting such changes.
- Notify employees in writing (or by posting publicly) the company's policy on sick leave, vacation, personal leave, holidays and business hours. The law does not require that an employer maintain any particular policy on such issues, but does require that the employer provide notice of what the policy is.

- Notify any terminated employee in writing, and no more than five working days after the date of termination, of the exact date of termination and the exact date of cancellation of employee benefits attendant to the termination of employment.
- Provide each employee with a statement accompanying the wage payment that sets forth the employee's gross wages, deductions and net wages, and, if requested by an employee, an explanation of how his or wages were computed.

Second, New York Labor Law § 198 has been amended effective November 25, 2009 to increase the monetary penalties for employers who violate the state wage and hour laws, and also to broaden liability in certain retaliation cases. Thus, the new law:

- Provides that the Department of Labor, in addition to any other remedy and penalty, may assess an additional amount of liquidated damages against an employer for failure to pay wages to an employee in an amount equal to 25% of the wage amount that is due, unless the employer proves there was a good faith basis to believe that any underpayment complied with the law. The Labor Law previously permitted an employee to recover such liquidated damages in a civil action brought against an employer, though the good faith defense has been added to such civil actions as well.
- Extends liability for retaliation against employees to officers or agents of any partnership or limited liability company.

While the federal Fair Labor Standards Act contains many of the more well-known employer obligations in the area of wages and hours, it is imperative that employers in New York also keep in mind the various obligations also imposed by New York's wage and hour provisions.

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