

THE NEW YORK WAGE THEFT PREVENTION ACT: NEW EMPLOYER OBLIGATIONS BEGINNING IN APRIL 2011

Michael C. Schmidt • 212.453.3937 • 631.694.8004 • mschmidt@cozen.com

Effective next week (April 9, 2011), employers must comply with significant, substantive, and procedural obligations in New York's new Wage Theft Prevention Act (Act). This alert highlights the new requirements, which apply to virtually every company that employs individuals in New York. While many of these new obligations will cause administrative and logistical headaches, the potential consequences for failing to comply have increased as well.

New Notification – Time of Hire and Annually

Employers are required to provide every employee with the following information in writing at the time of hire and on or before February 1 of each subsequent year of the employee's employment:

- Rate or rates of pay, and the basis for calculating.
- Whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other form.
- Where applicable, any allowances claimed by the employer as part of the minimum wage.
- The regular payday designated by the employer.
- The full name of the employer and any "doing business as" names used by the employer.
- The physical address of the employer's main office or principal place of business, mailing address if different, and telephone number.
- If nonexempt from overtime requirements, the regular hourly rate and overtime rate of pay.

There are a few points worth mentioning. First, the hire and annual notifications must be in writing, and must

be provided in English as well as the employee's primary language (if other than English). Second, the "writing" requirement does not currently appear to allow for electronic transmission of the required notifications, although the Department of Labor may at some point allow for that. Third, employers must receive a signed and dated written acknowledgment from each employee that he or she received each notice (again, it appears that electronic acknowledgement does not currently satisfy the obligation). Fourth, employers must preserve and maintain the notices and acknowledgments for six years. Finally, employers must notify employees in writing of any changes to the information provided in the notices at least seven days prior to any change.

To the extent not already being done in a pay stub or otherwise, employers also must now accompany every wage payment with a statement listing the following:

- The dates of work covered by the payment.
- The name of the employee and employer, and the address and phone number of the employer.
- The rate or rates of pay and the basis of such rate(s), and whether being paid by the hour, shift, day, week, salary, piece, commission, or other basis.
- The gross wages, deductions, and net wages.
- The allowances, if any, claimed by the employer as part of the minimum wage.
- If nonexempt from overtime requirements, the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked.

New Costs and Remedies

The new law has added and increased the costs resulting from a failure to comply with the law:

- If an employee is not provided with the required notice within 10 business days of his or her first day of employment, the employee may recover damages in a civil action of \$50 for each workweek in which the violation has occurred up to a maximum of \$2,500 plus the employee's costs and attorneys' fees in bringing the action.
- If an employee is not provided with the required wage statement accompany pay, the employee may recover damages in a civil action of \$100 for each workweek in which the violation has occurred up to a maximum of \$2,500 plus the employee's costs and attorneys' fees in bringing the action.
- In a successful action for unpaid wages brought by an employee or the commissioner of the Department of Labor, liquidated damages in the amount of 100 percent of the underpayment (up from 25 percent) can be assessed against the employer in addition to all other remedies.
- If an employer violates the New York Labor Law provisions, the commissioner can require the employer to post an 8 x 11½-inch notice in "an area visible to employees" summarizing the violations that were found.
- Criminal penalties have been added and increased against officers and agents of covered business entities for violations of the New York Labor Law provisions.

New Retaliation Provisions

The new law also expands the prohibition against retaliatory conduct, as well as those who are prohibited from engaging in such conduct:

- The law now prohibits retaliation by any "person" (not solely an employer or its agent).
- The law now prohibits "threatened" retaliation.
- The law now extends covered complaints to those made internally to the employer, to the commissioner, and to the attorney general or any other person.
- The law now protects employee conduct if he or she "reasonably and in good faith" believes the employer has acted in a manner that constitutes a violation of the New York Labor Law or an order issued by the commissioner.

For more information about New York employment law, contact the author, or visit his blog at <http://www.socialmediaemploymentlawblog.com/>.