

ALERTS

New York State Eliminates Annual Wage Notice

January 22, 2015

On Dec. 29, 2014, New York State Governor Andrew Cuomo signed into law a bill that amends the New York State Wage Theft Prevention Act (the “Wage Theft Act”) in various aspects, including eliminating the annual wage notices that employers were previously required to provide to employees in January each year. Employers must still provide employees with the wage theft notice at the time of hire and when information in the notice changes. Although the amendments will not go into effect until Feb. 27, 2015, the New York State Department of Labor (“DOL”) has announced it will not be enforcing the annual notice requirement for 2015. Accordingly, employers will not be required to distribute annual wage notices to employees this year.

The Wage Theft Act, which took effect on April 9, 2011, created specific notice and recordkeeping requirements for employers and expanded civil and criminal remedies for an employer’s failure to comply with those requirements.[1] Some specific amendments to the Wage Theft Act include:

- The 10 members of a limited liability company with the largest percentage ownership will now each jointly and severally be liable for unpaid “wages or salaries” of employees of the LLC. “Wage and salaries” also include overtime pay, vacation, severance, pension contributions and other benefits. This change only applies to New York limited liability companies. The new provision is analogous to a provision in the New York Business Corporation Law which provides that the 10 largest

shareholders of a closely held corporation are liable for unpaid wages and salaries of the corporation's employees.

- An employer who is “substantially similar in operation and ownership” to a prior employer found in violation of the Wage Theft Act is considered to be the same employer for the purpose of successor liability for violations of the Wage Theft Act.
- In addition, the penalties for violations have been substantially increased as follows:
 - An employee who is not provided with the wage notice within 10 business days of the employee's first day of employment may bring a civil action to recover damages in the amount of \$50 for each work day (up from \$50 per week) that the violations occurred and continue to occur, up to a maximum of \$5,000 (up from \$2,500). Additionally, in an administrative action, the DOL may assess damages of \$50 per day (up from \$50 per week) for each employee who was not notified, up to a maximum of \$5,000 (this amount was previously uncapped).
 - An employee whose pay stub does not include the information required by the Wage Theft Act may bring a civil action to recover damages in the amount of \$250 for each work day (up from \$100 per week) that the violations occurred and continue to occur, up to a maximum of \$5,000 (up from \$2,500). Additionally, in an administrative action, the DOL may assess damages of \$50 per day (up from \$50 per week) for each day that the violation occurred, up to a maximum of \$5,000 (this amount was previously uncapped).
 - In a civil action, a court may order liquidated damages of up to \$20,000.
 - The DOL may assess a penalty of not less than \$1,000 nor greater than \$20,000 for a new violation of the Wage Theft Act on employers found to have committed a violation of the Wage Theft Act within the prior six years.
 - Employers with repeat violations of the Wage Theft Act, as well as those whose violations are found to be willful or egregious by the DOL, will be required to report certain wage information, which will then be posted on the DOL's website.
 - When a construction industry contractor or subcontractor is found liable for failure to pay wages, it must notify all of its employees of the nature of

the violations.

Given the steep penalties involved, employers should carefully review the requirements of the Wage Theft Act. Specifically, employers should ensure that they provide all newly-hired employees a wage notice within 10 days of hire and confirm that their pay statements conform to the requirements of the Wage Theft Act.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] For a complete overview of the original requirements in the Wage Theft Act, please see SRZ’s Feb. 23, 2011 *Alert*, “New York’s Wage Theft Prevention Act Creates New Employer Obligations and Increases Penalties.”

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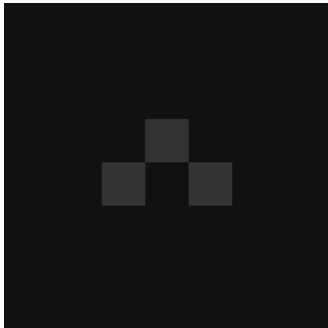
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