

EXPERT ANALYSIS

New York State Eliminates Annual Wage Notice

By Mark E. Brossman, Esq., Ronald E. Richman, Esq., Holly H. Weiss, Esq., Scott A. Gold, Esq., and Adam B. Gartner, Esq.
Schulte Roth & Zabel

On Dec. 29, 2014, Democratic New York Gov. Andrew Cuomo signed into law a bill that amends the New York State Wage Theft Prevention Act, N.Y. Lab. Law § 195, in various aspects, including eliminating the annual wage notices that employers were 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 went into effect Feb. 27, the New York State Department of Labor 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 Prevention Act, which took effect April 9, 2011, was enacted to impose greater accountability on employers in relation to employee pay. It created stringent record-keeping requirements for employers and substantially expanded civil and criminal remedies for an employer's failure to comply with those requirements.

The WTPA however, came under criticism from employers for what was viewed as extremely burdensome record-keeping requirements and from employee advocates for what they viewed as an insufficient enforcement scheme. The amendments to the law were designed to remedy these complaints.

The amendments 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 LLCs. 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 WTPA is considered to be the same employer for the purpose of successor liability for violations of the act.

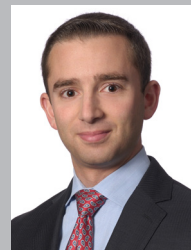
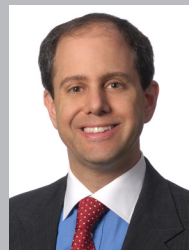
In addition, the amendments substantially increase the penalties for violations, as follows:

- 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 state Department of Labor 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).

The Wage Theft Act was enacted to impose greater accountability on employers in relation to employee pay, with stringent record-keeping requirements for employers.

- An employee whose pay stub does not include the information required by the WTPA 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 Labor Department 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 Labor Department may assess a penalty of not less than \$1,000 nor greater than \$20,000 for a new violation of the WTPA on employers found to have committed a violation of the act within the prior six years.
- Employers with repeat violations of the WTPA, as well as those whose violations are found to be willful or egregious by the state Labor Department, will be required to report certain wage information, which will then be posted on the Labor Department's website.
- When a construction industry contractor or subcontractor is found liable for failure to pay wages, it must notify all employees of the nature of the violations.

Given the steep penalties involved, employers should carefully review the requirements of the Wage Theft Prevention 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 law.



(From L-R) **Mark E. Brossman** is a partner and co-head of the Employment & Employee Benefits Group at Schulte Roth & Zabel in New York, where he concentrates his practice on all aspects of ERISA, employment discrimination, labor relations, education law and related litigation. He can be reached at mark.brossman@srz.com. **Ronald E. Richman** is a partner and co-head of the Employment & Employee Benefits Group and a member of the firm's executive committee, whose practice concentrates on the litigation of employee benefit and employment cases in federal and state courts and the representation of employers and employee benefit plans before the Labor Department, Internal Revenue Service and Pension Benefit Guaranty Corp. He can be reached at ronald.richman@srz.com. **Holly H. Weiss** is a partner in the Employment & Employee Benefits Group, where she focuses her practice on the representation of employers in all aspects of employment law and employee relations. She also litigates disputes involving restrictive covenants, ERISA claims, executive compensation, employment agreements, statutory employment discrimination claims, and common-law tort and contract claims. She can be reached at holly.weiss@srz.com. **Scott A. Gold** is a special counsel and **Adam B. Gartner** is an associate in the Employment & Employee Benefits Group. Scott Gold can be reached at scott.gold@srz.com and Adam Gartner can be reached at adam.gartner@srz.com.