ALERTS

Update on New York's Wage Theft Prevention Act

April 11, 2011

The New York Wage Theft Prevention Act (the "Act") became **effective on April 9, 2011** (not April 12, 2011 as many practitioners previously believed). As discussed in our previous *Alert* , the Act increases employer obligations regarding notice and recordkeeping of wage information, and penalties for nonpayment and underpayment of wages under the New York Labor Law.

Yearly and New Hire Notice Requirements

The commissioner of the New York State Department of Labor (the "Commissioner") has prepared templates that employers may use to satisfy the notice and acknowledgement requirement of the Act. The templates are currently offered in English, Spanish, Chinese and Korean. The Commissioner anticipates also creating templates in Creole, Polish and Russian. Employers are reminded that if the Commissioner has not issued a template in the primary language identified by the employee, the employer can comply with the Act by providing the English language template to the employee. The templates, along with instructions, guidelines and frequently asked questions ("FAQ") regarding the Act, can be accessed at the New York State Department of Labor's ("NYSDOL") website: http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/lshmpg.shtm.

We recommend that employers immediately begin using the NYSDOL templates for employees hired on or after April 9, 2011. Beginning Feb. 1, 2012, the Act requires employers to issue the annual notice to all existing

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employees (not just new hires). Based on guidance from the NYSDOL, it appears that the Commissioner expects the annual notice to be provided to existing employees between Jan. 1, 2012 and Jan. 31, 2012, and each January thereafter.

Notably, the NYSDOL has changed its previous position that employers must identify the specific exemption that applies to employees exempt from overtime requirements. The new templates provide that specifying the exemption is "optional." In addition, in response to frequently asked questions, the NYSDOL prepared an FAQ on the Act, which states that an employer is not required to identify the specific exemption for employees exempt from overtime requirements.

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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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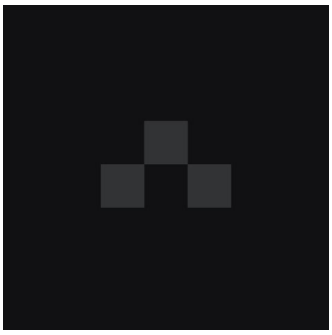

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