

CRITICAL UPDATE CONCERNING THE WAGE THEFT PREVENTION ACT

Labor & Employment Alert
January 8, 2015

On December 29, 2014, Governor Cuomo signed a bill amending the Wage Theft Prevention Act (WTPA) to eliminate the requirement that employers provide annual wage notices to all existing employees between January 1 and February 1 of each year. The bill itself states that it is effective 60 days following the date it was signed into law. In his signing statement, however, Governor Cuomo announced that he had reached an agreement with the Legislature to make certain additional changes to the bill, which include making the bill effective immediately. A bill amending the effective date and proposing additional changes to the WTPA should be introduced at the end of this month. We will provide an update once the additional changes are proposed. Further, the Department of Labor has declared that the annual notices need not be provided in January 2015.

The bill makes other important amendments to the WTPA. Specifically, it:

1. Increases the maximum penalties that can be assessed for failing to provide WTPA notices to new employees from \$2,500 per employee to \$5,000.
2. Increases the maximum penalties that can be assessed for failing to provide paystubs that comply with the WTPA's requirements from \$2,500 per employee to \$5,000.
3. Requires employers who were previously found to have violated the WTPA, or whose violation was willful or egregious, to report to the Commissioner of Labor certain compensation data regarding their employees, which will be posted on the Department of Labor's website. This compensation information will not be individually identifiable with any particular employee.
4. Makes the ten members with the largest ownership interest in a limited liability company jointly and severally personally liable for all debts, wages, and salaries due to its employees.
5. Requires that any investigation by the commissioner of labor cover the entire six-year statute of limitations period, unless the commissioner notifies all affected employees.
6. Expressly provides for successor liability for employers that are similar in operation and ownership to a prior employer found to have been liable under the New York Labor Law, where the subsequent employer meets certain conditions.

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This provision is intended to prevent employers from avoiding wage liability by changing an employer's ownership structure.

7. Increases the penalties for retaliation from \$10,000 to \$20,000 for employers who had previously engaged in unlawful retaliation within the prior six years.
8. Requires any employer in the construction industry that is found to have violated the New York Labor Law to notify all of its employees of the nature of such violation via an attachment to their paychecks.

The obligation to provide all newly hired employees with a WTPA notice upon hire, and the obligation to provide all employees with a pay statement that contains all of the information required by the WTPA each pay period, remain unchanged.