

Client Alert
January 2011

WAGE THEFT PREVENTION ACT SIGNED INTO LAW

On December 13, Governor Patterson signed the Wage Theft Prevention Act (“Act”) into law, which provides enhanced remedies and greater enforcement powers to prevent violations of New York wage laws. Under New York’s current wage statutes, an employer may be held civilly liable for the amount of wages withheld, plus damages equal to 25% of the owed wages.¹ Another labor law provision requires that employers provide employees with notice of their rate and date of pay and to retain employment records for three years.² The current retaliation law provides a burdensome process for employees claiming employer retaliation for reporting violations of wage laws, which requires the employees to cite the section of the law the employer violated.³ Even where liability is found against an organization, the current law excludes partners and officers in partnerships and limited liability organizations, respectively, from criminal penalties for violations by the organization.⁴

The following is a summary of the key portions of the Act, which is effective April 12, 2011.

1. Increased Damages and Criminal Punishment

The Act’s most notable provision is its amendment of the liquidated damages available in civil suits, increasing potential damages from 25% to 100% for violations, plus interest. Further, willful or egregious violations allow the Commissioner of Labor to require the employer pay a civil fine “not exceeding double the amount of unpaid wages.” These enhanced damages are an attempt to remove the financial incentive for employers to skirt wage provisions. Moreover, attorney’s fees are provided for under the Act.

¹ N.Y. LAB. LAW § 198.

² N.Y. LAB. LAW § 195.

³ N.Y. LAB. LAW § 215.

⁴ N.Y. LAB. LAW § 198-A.

Criminal punishments have also been added for employers offending the minimum wage and overtime provisions, including jail time of up to one year and one day per offense.

2. Notice Requirements

The legislation's most controversial aspect is the affirmative requirement imposed on employers to provide notice of certain wage information at the time of hire. Employers are currently required to provide written notice of the rate of pay and the regular pay day, with the employee acknowledging in writing the receipt of the notice.⁵ As amended, the employer is required to provide, in addition to the current requirements, written notice in English **and** the employee's identified primary language:

- how wages are to be determined, e.g., whether hourly, weekly, commission, etc.;
- allowances claimed as part of the minimum wage, including tip, meal or lodging allowances;
- the employer's name and any "doing business as" names of the employer;
- the address of the employer's principal place of business and telephone number; and
- any other information the Commissioner of Labor deems relevant.

Upon notice, the employer must provide the employee with a written acknowledgement form in English and the employee's primary language stating that the employer complied with the above requirements. After the initial notice, employers must again provide wage notices either: at least seven days before any changes to the information set forth in the notices, or if no changes, on or before February 1 of each subsequent year of the employee's employment with the company.

The Commissioner of Labor is responsible for preparing templates that employers may use to comply with the primary language requirement. Where no template was made for a primary language, the employer need only provide English language notices.

These forms must be retained by the employer for at least six years for each employee. The power of the Commissioner of Labor to enforce the notice requirements was also expanded to enforce the Act, and added a fine of \$50.00 per week until the violation is remedied (up to \$2500).

3. Additional Pay Statement Information

The Act also adds another affirmative requirement impacting the information to be included in the employee's pay statement. In addition to the previously required statement accompanying each payment of wages that included gross wages, deductions and net wages,

⁵ N.Y. LAB. LAW § 195.

www.bklawyers.com

the employer is now also required to provide the dates of work covered, name of employee and employer, address and phone number of employer, rate or pay and basis thereof, allowances claimed as part of minimum wage, rate of overtime pay and the number of overtime hours worked.

The Act further amended the period in which weekly payroll records must be retained by the employer, increasing from three years to six. Failure to provide this statement subjects the employer to a fine of \$100 per week for each statement not provided with wages, unless the employer reasonably believed he complied with the Act's requirements. A private right of action is created by the statute as well, rather than limiting remedies to the Commissioner and/or Department of Labor.

4. Other Relevant Provisions

Other provisions strengthening employee protections include expanding protection under the retaliation statute to cover third parties (persons or organizations) acting on an employee's behalf and removing the requirement that an employee cite the section of the Labor Law that was violated. The amendments also include enhanced retaliation remedies to provide for injunctions, liquidated damages, reinstatement with back pay, or front pay without reinstatement.

In addition, the statute expands the scope of corporate officers that may be held liable to include officers of limited liability companies and partnerships. The Act also increases publicity of the employer's violations, requiring postings in the workplace of the employer's violations of the wage act.

Conclusion

Some lawmakers have criticized the Act as anti-business due to the burden that the additional reporting and record-keeping requirements, claiming the benefits of the bill do not outweigh the burdens. Labor counters that the bill merely is a way to create punishments that employers are not willing to risk, where employers treated the lesser fines as mere "costs of doing business." Regardless of how it is framed, the Act's enhanced remedies have the potential to subject employers to significant financial penalties for failing to comply with its requirements.

* * *

This client alert is not intended to provide legal advice with respect to any particular situation and no decision should be based solely on its content. Questions concerning issues raised in this client alert should be directed to Nathaniel G. Lambright at (315) 422-7111, or any member of Blitman & King's Employment and Labor practices.