

Client Alert

New York Wage Theft Prevention Act Takes Effect on April 9, 2011

April 4, 2011

The New York Wage Theft Prevention Act ("Act"), effective April 9, 2011, implements new mandates regarding wage and hour notifications and recordkeeping for New York employers, and provides for increased civil and criminal penalties for violation of these new and existing requirements.

Employers in New York must, under the Act, provide certain specific pay information to employees, and receive and maintain written acknowledgments from employees, at three specified times: (i) at the time of hire; (ii) on or before February 1 of each year of employment; and (iii) at least seven calendar days prior to the time of any changes in the information required to be provided, unless such changes are reflected in the employee's wage statement.

New York employers are currently required to provide newly hired employees with a written notice containing specific wage information, including their regular rate(s) of pay, regular designated pay day and, for non-exempt employees, their overtime rate(s) of pay. Under the Act, the following additional information must also be provided in writing, at the above-mentioned required times:

- the basis for the rate(s) of pay (e.g., by the hour, shift, day, week, salary, piece, commission or other);
- allowances, if any, claimed as part of the minimum wage, including lodging, meal or tip allowances;
- the employer's legal name and any "doing business as" names;
- the physical address of the employer's main office or principal place of business and, if different, its mailing address;
- the employer's telephone number; and
- such other information as the New York State Commissioner of Labor ("Commissioner") deems necessary and material.

No particular form of notice is required. Employers may use their own form or adapt the forms to be issued by the Commissioner. Employers must provide these notices to employees in English and in the language identified to the employer by each employee as his/her primary language if it is not English. Unless the Commissioner issues a notice template in a specific non-English language, the notice may be provided in English only. To date, the templates issued by the Commissioner do not address the Act's new notice requirements.

When employers provide these written notices to employees, they must obtain signed and dated written acknowledgements that the employees have received the required notices. Such acknowledgements must include an affirmation from the employees that they have accurately identified their primary language to the employer, and that they have received a copy of the notice in their primary language, unless the Commissioner

has not made available any template in that language. Employers must maintain these written acknowledgements for at least six years.

Pursuant to existing New York law as supplemented by the new requirements of the Act, wage statements provided to employees must include: (i) the dates of work covered by the wage payments; (ii) the employee's name; (iii) the employer's name, address and telephone number; (iv) the rate(s) of pay and the basis thereof (whether by the hour, shift, day, week, salary, piece, commission or other method); (v) gross wages; (vi) deductions; (vii) any allowances claimed as part of the minimum wage; and (viii) net wages. Furthermore, wage statements provided to non-exempt employees must include as well: (ix) the regular hourly rate(s) of pay; (x) the overtime rate(s) of pay; (xi) the number of regular hours worked; (xii) the number of overtime hours worked; and (xiii) any applicable piece rate(s) of pay and number of pieces completed at each piece rate. Upon request of an employee, the employer must furnish a written explanation of how back wages were computed.

The Act further requires employers to maintain for at least six years contemporaneous, true and accurate payroll records for each employee documenting, for each week worked, certain specified information related to the payment of employees' wages. Among the information required to be maintained are the hours worked by each employee, the rate(s) of pay, gross wages, deductions and net wages.

The penalties for violation of the mandates of the Act are severe. For example, if an employer fails to provide the above-mentioned required notices to employees within ten business days of the employee's first day of employment, the employee may recover in a civil action \$50 for each week that the violations occurred or continue to occur, up to a maximum of \$2,500, as well as costs and reasonable attorneys' fees. Similarly, the Act further provides for civil actions for damages of \$100 for each week that the employer does not satisfy the wage statement requirements, up to a maximum of \$2,500, plus costs and reasonable attorneys' fees. Furthermore, the Commissioner may initiate actions for damages against employers in connection with these violations. The Act further provides for liquidated damages of an additional 100 percent of the total amount of wages found to be due to an employee.

Among the other penalties and remedies provided in the Act, the Commissioner is authorized, in the context of retaliation cases, to enjoin unlawful conduct, order reinstatement with back pay or front pay in lieu of reinstatement, and award liquidated damages of up to \$10,000. The Act also provides for the posting of notices of violation in the workplace and, in the case of willful violations, posting in areas visible to the general public. Furthermore, the Act provides for criminal penalties, including fines of up to \$20,000 and imprisonment of up to one year and a day.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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