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****EMPLOYMENT LAW ALERT****

New York Wage Theft Protection Act

By: S. Whitney Rahman

The New York Wage Theft Protection Act took effect April 12, 2011. This Act provides additional protections for employees in New York State.

Employers in New York already were required to provide a written notification to all new employees of their regular rate of pay and overtime rate (if the employee is eligible for overtime) as well as their regular pay day. Now employers also must provide information on whether the wage is an hourly, salary, commission, piece rate, or other rate, and whether the employer intends to claim a tip or meal allowance as part of the minimum wage. Such notices must be updated at least seven days prior to any changes to the terms in the notice, unless the changes are shown in the employee's wage statement.

Employers are required to obtain and keep for six years signed written acknowledgements of employees' receipt of the notices. These must be in English and in the primary language of the employee. Payroll records and statements now must be maintained for six years as well.

If an employee does not give the required notice within ten days of the employee's first day of employment, the employee may sue in court to recover \$50.00 for each workweek of the continuing violation, capped at \$2,500.00, plus costs and attorney's fees.

The Act also requires employers to provide pay statements specifying the dates covered by the wages, and the rate and basis of the pay, as well as regular and overtime pay rates and the number of regular and overtime hours worked for nonexempt employees. Aggrieved employees can sue to recover \$100.00 per work week where such pay statements were not provided. This amount is capped at \$2,500.00, but employees also can recover costs and attorneys fees.

When an employer has not paid the appropriate minimum wages or overtime under the Act, the Act increases the liquidated penalty for a violation from 25% to 100% of the total wages due. Thus, an employer may have to pay double wages if it has violated the Act. If an employer fails to pay within 90 days of an adverse judgment, the employee can collect an extra 15% of the judgment owed, as well as the attorney's fees and costs necessary to enforce the judgment.

The Act has an antiretaliation provision to protect both employees who have complained about violations of its provisions, and employees that employer may have believed had complained, but did not. Remedies for retaliation include back pay and front pay, as well as liquidated damages not to exceed \$10,000.00.

The Act also contains new criminal penalties for employers who do not pay minimum wage or overtime, or who fail to maintain the required records. Penalties can include fines and/or imprisonment.

If you have any questions about this alert, contact S. Whitney Rahman at 610-372-5588.