

## Client Alert

### REMINDER: NOTICE OF PAY RATE FORMS DUE BY FEBRUARY 1, 2013

**January 14, 2013** – This is a reminder for all New York employers to provide their workers with the appropriate Notice of Pay Rate forms by February 1, 2013 pursuant to the Wage Theft Prevention Act (the "Act"), which was signed into law on December 13, 2010 and became effective 120 days thereafter. As has been the case since February 1, 2012 (and in select circumstances, prior thereto), the Act imposes increased obligations for employers at the time an employee is hired and on an annual basis thereafter, as well as additional penalties upon those employers who are charged with violating the State's wage and hour laws. The Act also expands the enforcement powers of the New York State Department of Labor and contains enhanced anti-retaliation protections for employees.

#### Legal Obligations at the Time of Hire and Annual Notice Requirements

New York Labor Law Section 195(1) requires employers to notify all newly hired employees at the time of their hire and again on an annual basis before February 1<sup>st</sup> of each year, in writing, of their regular rate of pay and regular pay date and, for nonexempt employees, their hourly and overtime rates of pay. The Act also requires that employers inform new hires, in writing, in English as well as in the language identified by each employee as his/her primary language at the time of hiring, of the following:

- The rate or rates of pay and the basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other;
- Allowances, if any, claimed as part of the minimum wage, including tip, meal or lodging allowances;
- The regular pay day designated by the employer;
- The name of the employer, including any "doing business as" names used;
- The physical address of the employer's main office or principal place of business and a mailing address if different; and
- The employer's telephone number.

#### Record-Keeping Requirements

The Act also imposes additional record-keeping obligations. For instance, all New York employers must obtain from each employee a signed and dated written Notice of Pay Rate form in English, or in the employee's primary

language if other than English. Notice of Pay Rate forms can be found at <http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/lshmpg.shtm>, or they can be provided by us upon request.

If there are any changes to the information listed by an employer on these forms at any time, the employer must notify its employees in writing of such changes at least seven (7) calendar days in advance of the changes taking effect, unless the changes are noted on the employee's wage statement.

The Act also increases the length of time an employer must preserve and maintain payroll records from three to six years.

### **The Scope of these Labor Laws**

The Act applies to all corporations (and their officers and agents), as well as to partnerships and limited liability companies (and their respective officers and agents), that employ employees. It also extends the same penalties that cover record-keeping violations and nonpayment of wages to nonpayment of minimum wages.

Underpayment of wages includes, but is not limited to, failing to pay minimum wage, failing to pay overtime, requiring off-the-clock work, misappropriating tips, and misclassifying workers as independent contractors. Penalties for violations can be significant under the Act, as the Act can impose double damages and attorneys' fees if a violation is found to be willful. Thus, the costs for noncompliant employers may be steep, particularly when a group of employees is affected.

### **Anti-Retaliation Provisions**

The Act also protects employees who complain of conduct that they "reasonably and in good faith" believe constitutes a violation of the Labor Law. Under the Act, the Labor Commissioner has the same authority as the courts to remedy any retaliatory conduct that occurs as a result of an employee's complaint, including awarding compensatory damages, enjoining the offending conduct, ordering the payment of liquidated damages (not to exceed \$10,000), and ordering injunctive relief such as the rehiring or reinstatement of the employee, or awarding front pay in lieu of reinstatement.

While New York has always taken an aggressive stance on wage matters, this statute further demonstrates the necessity for all employers to comply with their notice and payment obligations to their workers.

If you have any questions about New York's wage and hour laws or any other employment law compliance issues, please contact Jeffrey Englander or Keith Markel at Morrison Cohen LLP.

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