

## > Client Alert

### New York Enacts Three New Labor Law Provisions

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On September 6, 2023, at an event celebrating the Labor Day holiday, New York Governor Kathy Hochul signed into law a package of legislation regarding the rights of workers in New York State. Employers should take note of and ensure compliance with these new laws, all of which take effect immediately.

#### Criminal Penalties for Wage Theft

New York now joins several other states in making unpaid wages a criminal offense. This new law expands New York's definition of larceny to include wage theft. Pursuant to the new law, a "person obtains property by wage theft when he or she hires a person to perform services and the person performs such services and the person does not pay wages, at the minimum wage rate and overtime, or promised wage, if greater than the minimum wage rate and overtime, to said person for work performed." Penalties for larceny in New York range from small fines to incarceration, depending on the severity of the theft. Multiple instances of wage theft can be aggregated into a single larceny count under this new law.

Although New York has had longstanding statutes allowing employees (and, as deemed necessary, the State's Attorney General) to bring private lawsuits seeking civil damages and penalties for the non-payment of wages, wage theft now becomes a criminal offense as well. The New York County District Attorney's office created a Worker Protection Unit earlier this year to investigate and prosecute wage theft, and it is probable that other local prosecutors will now follow suit. It remains to be seen to what extent local prosecutors will pursue criminal penalties for wage theft.

Now that withholding earned wages is a crime in New York, subjecting employers to fines, incarceration and other monetary penalties, employers should remain ever-vigilant about full compliance with New York's wage and hour laws. Employers should also retain documentation showing that employees were paid for all hours worked, including maintaining appropriate time and payroll records, should they find themselves the target of a criminal investigation. And while the new statute does not specifically address this, an employer's cash flow problems or other temporary inability to timely pay owed wages is not a defense to liability.

## **No “Captive Audience” Meetings**

Most New York employers may no longer discipline employees who fail to attend so-called “captive audience” meetings where religious and/or political matters are discussed. The new law's definition of political matters includes, but is not limited to, discussions relating to elections for political office, political parties and the decision whether or not to join a labor organization.

It is now unlawful for an employer to refuse to hire, discharge or otherwise discriminate against an employee because of their refusal to attend an employer-sponsored meeting or listen to / view communications, where the primary purpose of the meeting or communication is to communicate the employer's opinion concerning religious or political matters, including the formation of [or decision whether or not to join] an organization representing employees. For example, an employer may not discharge an employee who opts out of an employer-sponsored assembly that has the purpose of discouraging employees from joining a labor union.

The law does not prohibit employers from communicating to their employees any information that it is required to communicate by law, nor does it prohibit employers from sharing necessary information for employees to perform their job duties. The law also does not prohibit casual conversations on political or religious topics between employees and managers, provided that participation in such conversations is voluntary. Religious institutions have certain exemptions from the law, as do institutions of higher education who seek to communicate religious and political ideas to employees as part of an academic program or forum.

Employers are required to post a sign in the workplace to inform employees of their rights under this law in a location where such notices are normally posted.

Quite clearly, this new enactment in some measure covers the similar ground to that detailed in Sections 7-9 of the National Labor Relations Act, one of the central themes of which is to prohibit employer action which chills free speech and which maintains strict guidelines concerning so called captive audience addresses during the pendency of union organizational campaigns.

It is anticipated that there will be legal challenges to the law. A similar law in Connecticut is currently at the center of a lawsuit brought by business groups alleging that the law chills free speech. We will of course provide an updated alert should there be any such challenges to the New York law or its enforcement.

## **Increased Minimum Weekly Workers' Compensation Benefits**

Finally, Governor Hochul has also signed into law a forthcoming increase in the workers' compensation benefits schedule. From January 1, 2024 to January 1, 2025, individuals receiving workers' compensation benefits will receive no less than \$250 per week, unless their wages are less than \$250 per week, in which case, they will receive the full amount of their wages. That amount will increase to \$325 per week from January 1, 2025 to July 1, 2026.

After July 1, 2026, individuals receiving workers' compensation benefits shall receive no less than one-fifth of the New York State average weekly wage, unless the employee's weekly wage is equal to or less than one-fifth of the average weekly wage, in which case, they would receive the full amount. It will be interesting to see whether these more robust benefits to workers' compensation claimants will result in an increase in claims.

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The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice and counseling related to all issues implicated by these new enactments as well as any other employment law questions you may have.