

Will New York Employers Finally Be Relieved of Annual Reporting Obligations Under the Wage Theft Prevention Act?

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A recently proposed [amendment](#) (“Amendment”) to New York’s Wage Theft Prevention Act (“WTPA” or “Act”) would provide less burdensome employer reporting obligations but increase penalties under the Act. The Amendment passed the New York State Legislature on June 19, 2014, and is currently awaiting the governor’s signature. The Amendment will take effect 60 days after it is signed by the governor.

The Act is designed to prevent employers from failing to pay workers’ wages, in two ways. First, it requires written statements setting forth employees’ pay rates and pay dates. Second, the Act provides for penalties, including a civil cause of action against employers that fail to properly disclose or pay wages.

What Would the WTPA Amendment Do?

- **Increase Penalties:** Under current law, an employee may sue to recover \$50 for every week that he or she was not provided a wage notice, up to a maximum of \$2,500 (together with costs and attorneys’ fees). The Amendment would increase the penalty from \$50 a **week** to \$50 a **day** and increase the maximum monetary penalty to \$5,000. The Amendment would also provide for additional penalties of up to \$20,000 for repeated violations of the Act as well as additional penalties for construction contractors.
- **Increase Enforcement:** The Amendment would increase the Commissioner of Labor’s authority in connection with investigating claims of retaliation for reporting violations of the Act. Further, the Commissioner will be *required* (currently, the Commissioner is simply *permitted*) to assign a portion of a judgment against an employer to the employees who were harmed.
- **Create Successor Liability:** An employer with similar ownership, employees, products, and customers will be liable for its predecessor’s violations of the Act. Indeed, if members of a control group close down and subsequently start a new

business, they must pay out all outstanding obligations to employees of their former business or such liabilities will fall to the successor.

- **Establish Personal Liability for Members of an LLC:** Under current law, members of a limited liability company (“LLC”) may not be held liable for company debts absent a specific provision to the contrary in the company’s articles of organization. The Amendment would make the 10 members with the largest ownership share of an LLC liable for the LLC’s debts to employees. In the event that an LLC defaults on its obligations to its employees, the employees will have 90 days to inform the 10 largest members of the employees’ intent to hold those members personally liable.
- **Create an Enforcement Account:** The Amendment would reduce the Department of Labor’s discretion in deciding whether or not to investigate particular violation allegations. In order to pay for the increased investigatory burden, the Amendment would create a “Wage Theft Prevention Enforcement Account” to be funded by fines and penalties assessed for violations of the Act.
- **Eliminate the Annual Wage Notice Requirement:** Finally, and most significantly for employers, starting in January 2015, the Amendment would eliminate the annual requirement for employers to provide every employee with a written notice of pay rates and pay dates. Employers must still provide the wage notice within 10 business days of a new employee’s start date, as well as “at least seven calendar days prior to” implementing any changes to the information contained in the prior notice (excluding pay increases if such increases are properly reflected in the employee’s wage statement).

What Employers Should Do Now

- For now, await the governor’s signature.
- If the governor signs the Amendment, employers should:
 - review payment and onboarding policies and procedures to ensure compliance with the Act in order to avoid the significantly increased penalties;
 - ensure that, in connection with any change of business structure, all obligations to former employees are satisfied (if not, such obligations may pass along to the company’s successor(s)); and
 - cease providing annual WTPA notices to existing employees as of January 1, 2015.

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