

## New York Wage Theft Prevention Act Update: Annual Notice Requirement Is Removed for 2015

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On December 29, 2014, Governor Andrew Cuomo signed [the long-awaited amendment](#) (“Amendment”) to the Wage Theft Prevention Act (“WTPA” or “Act”) and [a chapter memorandum](#). Notably, the Amendment and the chapter memorandum abolish the annual notice requirement for 2015. The text of the Amendment states that the law is not effective until 60 days following enactment; however, Governor Cuomo’s chapter memorandum states that it “accelerate[s] the effective date of the notification rules in section 1 of the bill to remove the notice requirement on employers for the 2015 calendar year.” This means that for 2015, employers **do not need to provide annual notices of pay rates/pay dates to New York employees.**

Further, the governor noted in the chapter memorandum that there were some other issues with the Amendment, which the New York Legislature agreed to address in the next legislative session. He did not address which provisions would require revision.

As a reminder, the WTPA 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 a civil cause of action against employers that fail to properly disclose or pay wages.

### How Does the Amendment Affect the WTPA?

- **Penalties Are Increased:** Under current law, an employee may sue to recover \$50 for every week that he or she was not provided a notice, up to a maximum of \$2,500 (together with costs and attorney’s fees). The Amendment has increased the penalty from \$50 a **week** to \$50 a **day**, and increases the maximum monetary penalty to \$5,000. The Amendment also provides for additional penalties of up to \$20,000 for repeated violations of the Act. There are additional penalties for construction contractors.
- **Enforcement Is Increased:** The Amendment increases the Commissioner of Labor’s authority in connection with investigating claims of retaliation for reporting violations of the Act. Further, the Commissioner is now *required* to assign a

portion of a judgment against an employer to the employees who were harmed (previously, the Commissioner was simply *permitted* to do so).

- **Successor Liability Is Created:** An employer with similar ownership, employees, products, and customers to a prior employer will be liable for its predecessor's violations of the Act. 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.
- **Personal Liability for Members of LLCs Is Established:** Under current law, members of limited liability companies ("LLCs") may not be held liable for corporate debts absent a specific provision to the contrary in the company's articles of organization. The Amendment makes 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 the members personally liable.
- **Enforcement Account Is Created:** The Amendment also reduces the Department of Labor's discretion in deciding whether or not to investigate particular violation allegations. In order to fund the increased investigatory burden, the Amendment creates a "Wage Theft Prevention Enforcement Account," which is funded by fines and penalties assessed for violations of the Act.
- **Annual Requirement Is Eliminated:** Finally, and most significantly for employers' regular compliance with the Act, the Amendment eliminates the annual requirement for employers to provide every employee with a written disclosure of pay rates and pay dates. However, employers must still provide the disclosure 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).<sup>1</sup>

### What Employers Should Do Now

- For 2015, do not provide wage theft annual notices to New York employees.
- Further, employers should do the following:
  - Review and revise payment and onboarding policies and procedures to ensure compliance with the Act and 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 be passed along to the company's successor(s).

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<sup>1</sup> Note: This exclusion is not applicable to most employers in the hospitality industry.

- Going forward, cease providing annual WTPA notices to employees.
- Continue to provide WTPA notices to new hires and prior to implementing changes to information contained in the WTPA notice.
- Monitor updates in the law, as requested by the governor, which the legislature agreed to address.

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