

New Year Brings New Set of Wage Notification Obligations for NY Employers

By Michael W. Macomber

On Dec. 10, 2010, then-Gov. David Patterson signed into law the Wage Theft Protection Act (WTPA). The act amends a number of provisions in New York's Labor Law and has the stated aim of expanding "the rights of employees to seek civil and criminal avenues of remedy for their employers failing to follow labor law appropriately..." While the act has been in effect since April of 2011, certain time-sensitive deadlines are fast approaching. Employers should be keenly aware of their new obligations to ensure that they are in compliance with the new law. In January, employers will for the first time be obligated to comply with the act's annual notice provision, which requires employers to provide all employees with certain pay notices between Jan. 1 and Feb. 1 of each year. New hires must be given this notice within 10 days of their hire date. This notice must include the employee's rate of pay and the basis for this rate, any allowances claimed as part of the wage (i.e. tips or lodging), the normal pay day, as well as the employer's name, address, phone number and any name under which it does business. The employer must also obtain a signed and dated acknowledgment from the employee that it received this notice. Finally, the law leaves the door open for additional notice requirements, as it mandates that employers include "such other material as the [labor] commissioner deems necessary." Given that the financial penalties for non-compliance can be significant, employers should make sure that their pay notices contain all of the information required by the WTPA. Employers who fail to comply with the new notice provisions open themselves to substantial financial liability. The act provides for penalties of \$50 for every week that employers do not provide an employee with proper notice. As liability is assessed on a "per employee" basis, the amount of damages can multiply significantly even for smaller employers. The law also creates a private right of action for employees who are not provided proper notice. They can recover \$50 per week of non-compliance up to an amount of \$2,500. These employees can also recover litigation costs and attorneys' fees. The act requires that employers maintain copies of these notices for six years. Employers should be particularly aware of this requirement so that they have proof of compliance should the need arise. Finally, employers should be aware that the coverage of the WTPA is broader than many other labor law statutes. All private employers, including non-profit organizations, are required to comply with the new notice provisions. Furthermore, even salaried employees who may be exempt from overtime under state and federal law must be provided notice. Capital Region employers should start preparing for the WTPA's new notice provisions to kick in. By taking some time now to ensure that their pay notices comport with the new law, employers can avoid significant financial liability down the road. Tully Rinckey PLLC's business law attorneys in Albany, N.Y. can help businesses in Albany, Troy, Schenectady and Saratoga Springs comply with WTPA. Employees who do not receive notification in accordance with the law should contact one of the firm's employment law attorneys. Michael W. Macomber is an associate for Tully Rinckey PLLC who concentrates his practice on employment law and civil litigation. He can be contacted at mmacomber@1888Law4Life.com

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