

EMPLOYMENT LAW ALERT

December 2011

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- Comprehensive Litigation Services

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Recommended New Year's Resolution: Wage and Hour Compliance

By: Jeffrey M. Schlossberg



It is without question that government agencies and plaintiffs' attorneys are continuing their focus on employers who are not complying with the minimum wage and overtime provisions of the Fair Labor Standards Act ("FLSA") and the New York State Labor Law. Two recent developments underscore an employer's need to focus its attention on wage and hour compliance. There is

no time like the start of a new year to address this critical and potentially costly issue.

U.S. Department of Labor Recovers Over \$2.3 million from Long Island Employers

The U.S. Department of Labor recently announced that an ongoing enforcement initiative conducted by its Wage and Hour Division has found widespread noncompliance with the minimum wage, overtime and record-keeping provisions of the Fair Labor Standards Act among full-service restaurants on Long Island. As a result, the DOL completed 46 investigations and recovered \$2,341,507 in back wages for 578 employees. In addition, the DOL has assessed \$202,315 in civil money penalties against employers for willful and repeated FLSA violations.

Secretary of Labor Hilda L. Solis said that, "The Wage and Hour Division will continue to monitor full-service restaurants and other industries in which unlawful pay practices are widespread."

When violations are found, the division is using all enforcement tools available - including litigation, administrative subpoenas, civil money penalty assessments and liquidated damages - to ensure accountability and deter future violations.

Immigration Status Not Relevant to

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AND A HAPPY NEW
YEAR
TO OUR CLIENTS
AND FRIENDS!**

Wage and Hour Claim

Earlier this month, a federal judge in Manhattan ruled that an employee's immigration status and national origin are irrelevant in determining whether the employee is entitled to minimum wage and overtime for time worked.

The Court distinguished the case from a 2002 United States Supreme Court decision that denied back pay to an undocumented immigrant who had fraudulently gained entry to the United States. In the Supreme Court case, the back pay was for a time period following an unlawful termination where the employee did not actually work.

In the recent case, the undocumented worker actually performed work but the employer did not adhere to the provisions of the FLSA. The federal judge stated that permitting "a claim for back pay on behalf of undocumented workers who earned, but were not paid, overtime wages vindicates not only the policy underlying the FLSA but also federal immigration policy." The court went on to note that the opposite result would permit an employer to be immunized from its duty to pay wages. Further, denying back pay would create a "backwards incentive" where an "unscrupulous employer seeking to minimize wages would have a strong temptation to hire illegal workers."

Please let us know if we can be of assistance in helping you address wage and hour issues. We can assist in conducting an audit of your procedures as well as an analysis of the exempt vs. non-exempt classifications of your employees.



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