

LEGAL UPDATE

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By: Alice B. Stock and Jesse Oppenheim

IMPORTANT CHANGES TO NEW YORK'S WAGE NOTICE LAW

New York's Wage Theft Prevention Act (WTPA), which requires that employers provide notice to employees of information concerning their wages at hire, annually and when there are changes in wage rates, has recently been changed in a number of important ways. These changes include:

- striking the requirement that employers provide annual notice to employees concerning their wages between January 1 and February 1 each year;
- increasing penalties significantly for non-compliance with various provisions of the WTPA; and
- expanding liability to contractors, successors and adding personal member liability for violations by limited liability companies (LLCs).

The most important change to the notice requirements is that for 2015, and going forward, employers will not need to give employees the annual wage notices, but will still need to issue wage notices to new hires.¹

THE NEW WAGE NOTICE RULES

Although the amendments eliminate the WTPA's requirement that employers provide annual wage notices and obtain yearly employee acknowledgements between January 1 and February 1, employers must still provide a wage notice to employees at the time of hire.

Employers in the hospitality industry must still give

¹ The law was signed by Governor Andrew Cuomo on December 29, 2014, but does not go into effect until February 27, 2015 -- after the 2015 annual wage notices would have been required to be given to employees. The Governor therefore included a signing statement that removes the notice requirement for the 2015 calendar year.

a new wage notice every time there is a wage rate change, whether the wage rate is increased or decreased. Employers outside of the hospitality industry do not need to give employees a notice of a wage increase, provided the new rate is shown on the next wage statement. However, for a wage rate reduction, an employee must be notified in writing prior to the reduction being implemented.

The WTPA notice must include:

- Rate or rates of pay, including overtime rate of pay (if it applies)
- How the employee is paid: by the hour, shift, day, week, commission, etc.
- Regular payday
- Official name of the employer and any other names used for business (DBA)
- Address and phone number of the employer's main office or principal location
- Allowances taken as part of the minimum wage (tips, meal and lodging deductions)

While employers may use their own notices, provided that notice includes all required information, the New York Department of Labor ("NYDOL") has supplied sample forms.²

Furthermore, employers still must obtain signed acknowledgments from new hires that the employees have received the wage notice in English and in any other language identified by the employee as his or her primary language. (The NYDOL's website has notices in Spanish, Haitian-Creole, Russian, Polish, Chinese and Korean.)

² These forms are available at <http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>.

Wage Statements provided to employees with each paycheck are still required.³

INCREASED PENALTIES FOR NON-COMPLIANCE

The amendments substantially increase the penalties for non-compliance with the WTPA as follows:

- If an employer fails to provide the required wage notice within ten (10) days of an employee's hire date, the employee may recover \$50 per day, up to \$5,000 (the law previously allowed a penalty of \$50 per week, up to \$2,500), together with costs and reasonable attorneys' fees. Damages available for actions brought by the NYDOL Commissioner on behalf of the employee have also increased to \$50 per day. The Commissioner's recovery, previously unlimited, is now capped at \$5,000 per violation. Courts may also award other relief, including injunctive and declaratory relief.
- Employers will also face increased penalties for failing to provide employees with the required wage statements along with each wage payment. Under the amendments, the employee and the Commissioner may each recover up to \$250 from an employer for each workday that it does not comply with the wage statement requirement, up to a maximum of \$5,000.
- If an employer is found to have violated the law more than once in a six (6) year period, that employer may be liable for a civil penalty of between \$1,000 and \$20,000, and for liquidated damages of up to \$20,000. The DOL is empowered to conduct audits for a six-year time period following a claim.
- For repeat, willful, or egregious violations, employers may also be required to disclose certain wage data to the Commissioner for posting on the NYDOL's website.

³ For a summary of the wage statement requirements, see Pryor Cashman's previous legal update at <http://www.pryorcashman.com/news-publications-129.html>.

NEW RULES CONCERNING LIABILITY

The amendments significantly expand the scope of liability for WTPA violations:

- Personal liability will now be imposed on the ten (10) members with the largest percentage of ownership interest in an LLC. These members will now be jointly and severally liable for all debts, wages or salaries due and owing to the LLC's employees for their services to the LLC. To obtain damages from individual LLC members, an employee must provide written notice to those members of his or her intention to bring a claim against them.
- A new section regarding successor liability has been added which provides that "an employer similar in operation or ownership to a prior employer who had previously committed wage theft is liable for the acts of the prior employer" for violations of the WTPA. Presumably, this amendment aims to prevent employers from avoiding their liabilities by forming "alter ego" companies.
- Construction industry contractors and subcontractors who have failed to pay all wages will be required to provide written notice of their wage violations to their employees as an enclosure with employees' wage statements.

CONCLUSION

Although the WTPA amendments also address certain internal NYSDOL administrative and enforcement issues, this article covers the key issues for employers in New York. While the amendments relieve employers of the onerous annual wage notice requirement, they significantly increase penalties for non-compliance with the remaining provisions and expand personal liability to LLC members. It is therefore recommended that employers of all sizes consult with counsel to ensure that they are compliant with the WTPA.

The foregoing is merely a discussion of The New York Wage Theft Protection Act. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Alice B. Stock at (212) 326-0480, or astock@pryorcashman.com or Joshua Zuckerberg at (212) 326-0885, or jzuckerberg@pryorcashman.com.

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ABOUT THE AUTHORS



ALICE B. STOCK, PARTNER, LABOR AND EMPLOYMENT GROUP

Recognized by *Super Lawyers* for her work in Employment and Labor Law, Alice Stock is a member of Pryor Cashman's Employment Law Group and Immigration Law Group. Ms. Stock represents domestic and multinational employers in virtually all aspects of labor and employment law and litigation and business immigration law. She represents clients in both areas of law in various industries, including the airline, manufacturing, financial services, education, entertainment, technology, biotech, pharmaceutical, luxury goods, and food and beverages industries. Ms. Stock regularly speaks and publishes articles on U.S. business immigration and employment law matters.

Ms. Stock counsels and litigates on behalf of domestic and multinational employers in employment law matters arising under the ADA, ADEA, Title VII, ERISA, COBRA, WARN, FLSA, NLRA, LMRA, FMLA, state and local discrimination and wage and hour laws, and wrongful discharge law. She represents employers before federal and state courts as well as federal, state and local administrative agencies, and in labor arbitrations. Ms. Stock handles matters involving:

- Employment discrimination, sexual harassment, equal employment opportunity, and affirmative action
- Employment-at-will, wrongful discharge, and workplace torts
- Labor relations, union organizing, collective bargaining, labor arbitrations, unfair labor practices, strikes, picketing, boycotts, and labor injunctions
- Human resources administration, personnel forms and policies, and employee handbooks
- Wage and hour laws, family and medical leave, employee theft and drug testing
- Independent contractor issues
- Plant closings and mass layoffs
- Labor and employment law issues in mergers, acquisitions, sales, corporate reorganizations, and bankruptcies

Ms. Stock is a graduate of Harvard Law School, where she held various editorial positions on the *Harvard Civil Rights-Civil Liberties Law Review*.



JESSE OPPENHEIM, ASSOCIATE, LITIGATION

Jesse Oppenheim is an associate in Pryor Cashman's Litigation Group, and works on a wide variety of matters involving labor and employment, ADA defense, intellectual property and entertainment. He represents clients in complex commercial and business litigation matters ranging from FINRA arbitration proceedings to defending a fashion designer in a trademark infringement claim to negotiations with the Screen Actors' Guild.