

New York State “Wage Theft Prevention Act”

The Wage Theft Prevention Act amendments will take effect April 12, 2011. The Wage Theft Prevention Act amends New York State Labor Law by providing additional protection for employees regarding information that must be given to them in regard to their pay. The Act also subjects employers who fail to comply with the Wage Theft Prevention Act with more severe penalties than in effect at this time.

The Wage Theft Prevention Act requires written notice be given to employees at the time of hire on or before February 1 of each year they continue their employment and at least 7 days prior to implementation of any change in the information previously provided. The statement must include the following information:

1. The rate or rates of pay and the basis thereof whether paid by the hour, shift, day, week, salary, piece, commission, or other
2. Allowances, if any are claimed as part of the minimum wage, including tips, meals, or lodging
3. The regular pay day designated by the employer
4. The name of the employer and any doing business that is used
5. The physical address of the employer’s main office or principal place of business and mailing address if different
6. The telephone number of the employer

The employer shall obtain from the employee a signed and dated written acknowledgment in English and the primary language of the employee of receipt of the notice.

Further notification must be provided at least seven days prior to any change.

The Wage Theft Prevention Act also requires notification with the payment of wages. The statement must include the following:

1. Dates of work covered by the payment;
2. Employee name;
3. Employer name, address and phone number;
4. Rate or rates of pay and the basis for the rate of pay and for exempt employees, the basis of the exemption;
5. Gross wages;
6. Deductions;
7. Allowances, if any are claimed; and
8. Net wages.

The Act also contains an anti-retaliation provision for an employee who files a complaint. The employee can receive up to \$10,000.00 in liquidated damages as well as reinstatement, back pay, and front pay for retaliation.

The Department of Labor has issued an opinion letter regarding the pre-amended section 195 which says that notice and acknowledgment can be made electronically if an employee has access to a computer and print a copy of the notice at the time and at no cost.

Criminal Penalties

Employers who fail to pay employees minimum wage or overtime compensation shall be guilty of a Class B misdemeanor and upon conviction shall be fined an amount between \$500.00 and \$20,000.00 or in prison for up to one year. If the employer's convicted of a subsequent offense within six years of the prior offense, the employer shall be guilty of a felony and upon conviction be fined between \$500.00 and \$20,000.00 or in prison for up to one year and one day.

Important Issue

This wage statement is going to look like a contract of employment. The statement should contain a sentence similar to the following:

“This statement is to comply with the Wage Theft Prevention Act and it does not constitute a contract of employment. Employment with our company is employment at will.”