

Governor Paterson Signs into Law the Wage Theft Prevention Act

On December 13, 2010, Governor Paterson signed into law the [Wage Theft Prevention Act \(S.8380 and A.11726\)](#). The legislation, which takes effect April 9, 2011, requires employers to provide additional information to employees on wages, enhances penalties for violations of state wage law, and expands the scope of the New York wage statute's retaliation provision, among other things.

Additional Content in Wage Notice to Employees: The New York Labor Law currently requires employers to provide newly hired employees, both exempt and nonexempt, with written notice of their rate of pay, regular pay date and, if applicable, overtime rate of pay. The Act will require employers to provide the following additional information in the written notice: how the wage payment is calculated (e.g. hourly, salary, commission); allowances, if any, claimed as part of the minimum wage (e.g. tip, meal, or lodging); the employer's name and any "doing business as" names; the physical address of the employer's main office or principal place of business (and, if different, a mailing address); the employer's telephone number; plus other information deemed "material and necessary" by the Commissioner of Labor. For all nonexempt employees, the notice must also contain the employee's regular hourly rate and overtime hourly rate. In addition, the Commissioner has discretion to waive or alter the notification requirements for employers deemed "temporary help firms" under New York Labor Law.

Frequency of Wage Notice: The Act also changes the frequency with which employers must provide the written notice to employees. Under the Act, notice must be issued not only when an employee is hired (as is currently required), but also (i) on or before February 1 of every subsequent year, and (ii) at least seven days prior to any changes to the information contained in the wage notice, unless such changes are reflected in the wage statement employers must provide with each paycheck.

Language of Wage Notice to Employees: The Act specifies that the wage notice must be provided in English and, if applicable, the primary language of each employee. The Commissioner of Labor is directed to prepare template wage notices in English and additional languages chosen in the Commissioner's discretion. If an employee identifies as his or her primary language a language for which a template is not available from the Commissioner of Labor, an employer complies with this requirement by providing the notice in English.

Employee Acknowledgment of Receipt of Wage Notice: Under current law, employers must obtain, and maintain for six years, a signed and dated employee acknowledgment each time a wage notice is provided. The Act adds additional required elements to the acknowledgment--employees must affirm that (i) they accurately identified their primary language to the employer, and, (ii) the employer provided the notice in such language or, if the Commissioner of Labor has not made a template notice available in such language, in English.

Remedies for Failure to Provide the Written Wage Notice: If an employer fails to provide the written wage notice within 10 business days of an employee's date of hire, the Act permits both the employee and the Commissioner of Labor to bring an action against the employer. An employee may recover \$50 for each work week in which a violation

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occurred, up to a maximum of \$2,500, plus costs, reasonable attorney's fees and injunctive relief. The Commissioner, likewise, may recover \$50 per workweek per employee, but there is no cap on damages in an action by the Commissioner. The Act provides employers with two affirmative defenses. An employer can avoid liability if it demonstrates that it: (1) paid all wages legally required; or (2) had a good faith, reasonable basis for not providing notice.

Wage Statements: The Act also requires employers to provide employees with additional information in the mandatory statement issued with every payment of wages. Currently, under New York regulations, the wage statement must list hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages. The Act will require employers to include the following information in every wage statement (some of which was previously required by the regulations): dates of work covered; name of employee; name, address and phone number of employer; rate or rates of pay and basis thereof (e.g. hourly, salary, commission); gross deductions, allowances claimed as part of the minimum wage, and net wages. Under the Act, employers must provide non-exempt employees with the following additional information: regular rate of pay, overtime rate of pay, number of regular hours worked, and number of overtime hours worked. Employers must retain wage statements for six years.

Remedies for Failure to Provide Wage Statement: The Act also allows employees to bring civil actions against employers who do not furnish the requisite wage information with each pay stub. The Act calls for employers to pay \$100 damages for each week the law is violated, up to \$2,500, plus costs, attorney's fees and injunctive relief. The Commissioner of Labor may also bring such an action and assert claims for the same relief, except there is no similar cap on damages. In defending such actions, the Act affords employers the same two affirmative defenses that are available when defending wage notice claims.

Increased Damages for Failure to Pay Wages: The Act increases damages available for failure to pay wages. Currently, employees may recover, as liquidated damages for failure to pay wages due, 25% of unpaid wages. The Act increases liquidated damages to 100% of wages owed. The Act also clarifies that employees may recover prejudgment interest on unpaid wages.

Expanded Retaliation Provision: The Act also expands the retaliation provision of New York's wage statute. Under current law, an employee may bring a claim for retaliation against an employer that "discharge[s], penalize[s], or in any other manner discriminate [s] or retaliate[s] against an employee" that complains to the employer or the Department of Labor "that the employer has violated any provision of" New York's wage statute.

Under the Act, the provision is amended to prohibit retaliation against an employee (i) who complains to the employer, the Department of Labor, the New York Attorney General, "or any other person" that an employer "engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of" the New York wage statute or any order by the Commissioner of Labor, or (ii) "because such employer . . . believes that such employee has made a complaint to his or her employer, or to the [Commissioner of Labor], or to the attorney general . . ., or to any other person that the employer has violated any provision of this chapter, or any order issued by the" Commissioner of Labor.

Additional Retaliation Remedies: The Act clarifies and expands the remedies available to employees asserting retaliation claims under New York's wage law. Currently, an employee bringing an action for a violation may seek "all appropriate relief," including "lost compensation," "damages," reinstatement to the employee's former position, and

reasonable attorneys' fees. Under the Act, an employee may also seek an order "enjoining the conduct of any person or employer," liquidated damages of no more than \$10,000, and an award of front pay in lieu of reinstatement.

Criminal Liability for Partnerships and LLCs: The Act expands criminal liability to partnerships and limited liability companies. The Act calls for criminal penalties of up to one year in prison and a \$20,000 fine for failure to keep or furnish proper records or pay minimum wage or overtime compensation in accordance with New York Labor Law.

Postings of Wage Violations: The Act also empowers the Commissioner of Labor to require employers to post a summary of the employer's wage violations in the workplace and, for willful violators, to affix violations in an area visible to the general public.

Tolling Statute of Limitations: The Act does not alter the six year statute of limitations for wage suits, but does adds a tolling provision whereby the statute of limitations is tolled from the earlier of either the date an employee files a complaint with the Department of Labor or the date the Commissioner commences an investigation.

This post was authored by [Matt Lampe](#), [Craig Friedman](#), and [David Krieger](#) of Jones Day.

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