
BOND INFORMATION MEMO

Labor and Employment Law

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The New York Legislature Passes a Bill Eliminating the Annual Wage Notice Requirement

Under the bill passed by the New York Legislature, employers in New York will not have to issue annual wage notices to employees in 2015 and beyond. On June 19, 2014, a bill was passed in both the New York Assembly and Senate that eliminates the requirement contained in the Wage Theft Prevention Act that employers provide a wage notice to all employees by February 1 of each year. This is certainly a welcome development for employers in New York who found the annual wage notice requirement to be extremely burdensome and costly. The bill also increases the penalties for an employer's failure to provide a wage notice upon hiring a new employee and for an employer's failure to provide appropriate wage statements to employees, and imposes significant consequences on employers who are found to be repeat offenders. If Governor Cuomo signs the bill, the legislation will take effect 60 days after it is signed.

The bill does not change the requirement that employers provide a wage notice upon hiring a new employee. The Department of Labor has issued templates for wage notices that can be used by employers for this purpose. The bill increases the damages that can be recovered for an employer's failure to provide the initial wage notice within ten business days of an employee's first day of employment to \$50.00 per work day that the violation occurred up to a maximum of \$5,000.00 (up from \$50.00 per work week up to a maximum of \$2,500.00). The bill also increases the damages that can be recovered for an employer's failure to provide appropriate wage statements to employees to \$250.00 per work day that the violation occurred up to a maximum of \$5,000.00 (up from \$100.00 per work week up to a maximum of \$2,500.00). An employer who is faced with a claim that it failed to provide the required wage notice or wage statement can still avoid liability by establishing that it made complete and timely payment of all wages due to the employee who was not provided the wage notice or wage statement.

If an order to comply has been issued to an employer who has previously been found to have violated the wage payment laws or to an employer whose violation is found to be willful or egregious, the employer will be required to report certain data regarding the wages paid to employees and the hours worked by employees (without employee identifying information), which the Department of Labor will publish on its web site. Employers who are found to have committed a wage payment violation for the second time in a six-year period could be liable for a maximum civil penalty of \$20,000, which is double the maximum civil penalty that can be imposed for a first violation in a six-year period.



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The bill also provides that an employer similar in operation or ownership to a prior employer who has been found to have violated the wage payment laws will be liable for the prior employer's violations. This provision prevents an owner (or owners) of a business entity from avoiding liability by dissolving the business entity and creating a new one that has essentially the same business purpose.

The bill adds a provision to the Limited Liability Company Law providing that the ten members of a limited liability company ("LLC") with the largest percentage ownership will be personally liable for all wages and salaries due to employees of the LLC. This new provision of the Limited Liability Company Law is similar to Section 630 of the Business Corporation Law, which provides that the ten largest shareholders of a corporation are personally liable for all wages and salaries due to employees of the corporation.

The bill also adds a provision to the Construction Industry Fair Play Act, requiring construction contractors and subcontractors who have been found to be in violation of the wage payment laws to notify all of its employees regarding the nature of the violations. The notification must be made by an attachment to the pay checks of all employees at all work sites.

On the whole, this legislation (if it is signed by the Governor) will be a positive development for employers in New York, who will no longer have to engage in the costly and time-consuming process of issuing wage notices to all employees between January 1 and February 1 of each year.

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