

New N.Y. 'wage theft' law imposes stiff penalties on employers

Late last year, Gov. David Paterson signed the Wage Theft Prevention Act, a law designed to end what workers' rights advocates term "wage theft."

Wage theft includes wage underpayment, failure to pay the minimum wage, requiring workers to work "off the clock," pilfering tips and misclassifying workers.

The new law has teeth. It expands the New York Department of Labor's enforcement powers, and as much as quadruples penalties on employers that violate the law.

The wage theft law takes effect April 12, but the time to plan is now.

Notice requirements

The new law expands employers' notification and reporting requirements. It requires employers to add additional information to the envelopes bearing employees' W-2 statements of the previous year's earnings.

By Feb. 1 of each year, employers must provide a written notice to each employee spelling out his or her pay rate, basis of pay rate, how the employee will be paid (for example, by the hour, shift, week or, in the case of salaried employees, the year), any allowances claimed as part of the minimum wage, the regular pay day and "such other information as the commissioner deems material and necessary."

A similar notice must be provided to each new hire. If there's a change in an employee's pay or other terms included on the notice, the employer must notify the employee in writing within seven days.

Employers must provide this documentation in both English and in the employee's primary language.

Employers must maintain accurate records for six years.

The law imposes a \$50 fine—per employee—for each workweek in which a violation occurs, plus costs and reasonable attorneys' fees.

If a wronged employee files a complaint, damages are capped at \$2,500. There's no damages cap if the Labor Commissioner files the complaint.

Wage statements

Regular pay envelopes will be a little heavier, too. The new law requires employers to provide employees with a detailed wage statement with every paycheck.

Required information includes, among other things:

- The dates of work covered by that payment
- The pay rate
- The pay basis—by the hour, shift, week or yearly salary
- Any allowances claimed as part of the minimum wage.

For nonexempt employees, employers must also provide the employee's regular hourly rate, overtime rate, the number of regular hours worked and the number of overtime hours worked.

Employers face stiff penalties for violating this part of the law as well.

Either the employee or the Labor Commissioner may seek damages of \$100 per week for each week the violation occurs, plus costs and attorneys' fees. Like the annual/new hire notification, damages are capped at \$2,500 for employee-filed actions, with no cap on actions brought by the Commissioner.

Liquidated damages

Potentially, the new law's most costly provision deals with liquidated damages.

Previously, an employee who prevailed in a court action alleging failure to pay wages could receive the total amount of the underpayment, costs, attorneys' fees and, in some instances, liquidated damages equal to 25% of the underpayment.

The new law raises the ante. It now permits a prevailing employee

to recover payment of all wages due, costs, attorneys' fees, prejudgment interest—plus liquidated damages equal to 100% of the total wages due. The only way employers can avoid liquidated damages is to prove it made the mistake in good faith.

That's right, the burden of proof is on the employer—meaning the employer is guilty until proven innocent.

Anti-retaliation protection

The law makes several key changes to the New York Labor Law's anti-retaliation protections, such as requiring any person found to have engaged in unlawful retaliation to pay liquidated damages of up to \$10,000, along with costs and attorneys' fees. In addition, retaliation is now listed as a Class B misdemeanor.

That means retaliating employers will now have criminal records if they're convicted.

While the act does not take effect until April 12, employers should begin reviewing their payroll practices to determine what they will have to change to comply with the new notice and wage statement requirements.

Prepare now

Before the new law takes effect, take the following steps:

- Start assembling the information needed for the notices.
- Make sure your payroll software complies with the new law.
- Make sure all independent contractors you work with are prepared to comply with the law.
- Determine if employees are properly classified under the Fair Labor Standards Act.
- Change new-hire material to include the required notifications.

Many of the law's changes reinforce what employers should already be doing. Nevertheless, the law signals a new era of increased enforcement and tougher penalties.