



New York Employers Face New Wage and Hour Mandates

New York State recently amended its wage and hour laws to provide expanded protections for those who work in the state. New state minimum wage laws are now in effect, and beginning October 26, 2009, employers must provide all newly hired employees written notice of their pay rate and regular pay day. Expanded penalties are scheduled to take effect against employers who violate state wage and hour laws on or after November 24, 2009.

New York Minimum Wage Increased

Under New York law, the state minimum wage is the higher of \$7.15 per hour or the federal minimum wage. On July 24, 2009, the federal minimum wage was increased to \$7.25 per hour. As a result, New York State's minimum wage increased to \$7.25 per hour, and the salary threshold to qualify as exempt for overtime pay purposes as an executive, professional or administrative employee rose to \$543.75 per week. The new minimum wage rate is reflected in [New York State](#) and [federal](#) posters that must be conspicuously posted at the workplace.

BUCK COMMENT. *New York law imposes on employers certain requirements with respect to executive, professional or administrative employees who earn less than \$900 per week (e.g., they must be paid no less frequently than semi-monthly), and exempts employers from providing them certain benefits or wage supplements if they earn more than \$900 per week. Thus, in addition to ensuring that employees are properly considered exempt for overtime pay purposes, employers should review whether their executive, professional or administrative employees meet the \$900 threshold. New York employers should also coordinate with their payroll providers to ensure that any wage adjustments required by the change in minimum wage have been made, and any inadvertent pay gaps, including overtime pay, have been rectified.*

Written Notice to New Hires

Effective October 26, 2009, New York law will require employers to provide new employees at the time of hire with written notice of their rate of pay and regular pay day, and to obtain the employee's written acknowledgement confirming receipt of the required wage information. For non-exempt employees (i.e., overtime-eligible under applicable federal or state wage and hour laws), the notice must include their "regular hourly rate" as well as their overtime rate of pay.

BUCK COMMENT. *Because the regular rate of pay (i.e., pay for hours worked divided by hours worked) is calculated by work week rather than pay period, it often differs from the straight-time rate and can vary with fluctuating work weeks. Thus, it may be difficult for employers to determine the regular rate of pay in*

advance. Pending guidance from the New York State Department of Labor, employers should at a minimum make certain that there is a clear written understanding with the employee on overtime pay.

The New York State Labor Commissioner has not yet issued regulations on the content or form of notice or provided a sample acknowledgement form. Nonetheless, employers must still provide notice and secure a written acknowledgement of receipt from each employee hired on or after October 26. Although the new law left open the penalty for noncompliance, penalties for violations of New York wage payment laws for reasons other than the employer's failure to pay wages due generally range from up to \$1,000 for the first violation, \$2,000 for the second violation, and \$3,000 for the third and subsequent violations.

BUCK COMMENT. *Because different notices will be required for employees who are exempt and non-exempt from federal and state overtime pay requirements, employers must ensure that they have properly classified employees when providing notice. Since the written notice requirement will likely take effect before the Labor Commissioner provides guidance, employers should review and, if needed, revise their current offer or hire letters and employment agreements to include the information that will be required later this month.*

Increased Penalties for Wage and Hour Violations

Recently enacted legislation ([A6963](#)) amended the New York Labor Law to expand employee protections and increase penalties for state wage and hour violations. The amended law applies to wage payment violations that occur on or after November 24, 2009.

The amended law expands the categories of employee conduct protected against employer retaliation for complaints about wage and hour-related violations, and extends liability for such violations to limited liability companies and partnerships. Under the broader definition, protected conduct would include providing information to the Labor Commissioner or representative, exercising certain rights under the Labor Law, and receiving an employer-adverse determination from the Commissioner. Enhanced civil penalties for retaliating against employees who file a wage claim will increase five-fold to a minimum of \$1,000 and a maximum of \$10,000. Importantly, in addition to imposing penalties, the Labor Commissioner for the first time will be authorized to award lost compensation to employees who have been the subject of retaliation.

Changes in the law will now allow an employee who prevails on an overtime or minimum wage claim (and in certain other wage payment situations) to recover liquidated damages in the amount of 25% of total wages due, without having to prove that the employer's failure to pay was willful. The law also authorizes the Labor Commissioner to bring administrative proceedings, as well as lawsuits, against employers to collect wages owed and liquidated damages for employees. In either circumstance, the employer can avoid liquidated damages by proving that it had a good faith basis to believe its wage payments complied with New York law.

BUCK COMMENT. *In light of an overall trend toward increased enforcement of wage laws, employers should take particular care to ensure that they have in place effective human resources policies and payroll*

practices designed to avoid wage underpayments. To avoid increased penalties, any changes that are needed should be made by November 24.

Conclusion

New York's new notice requirements and expanded penalty provisions increase potential employer liability for wage and hour violations. To minimize that liability, New York employers should revisit their human resources policies and payroll practices to make certain that appropriate job classifications are in place, pay rates and regular pay days are effectively communicated to new hires, and wages are being properly paid. To ensure compliance with the new notice requirements, employers should act promptly to review their new hire process, and consider whether their offer letters, employment agreements and onboarding practices should be adjusted.

Buck's consultants are available to assist you in this process.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.