

## New York Legislature Nixes Annual Wage Notices

Among other things, New York's Wage Theft Prevention Act requires employers to provide wage notices to new employees at the time of hire and to existing employees by February 1 of each year. Governor Andrew Cuomo is expected to sign into law a recently passed bill that would reduce administrative burdens on employers by eliminating New York's annual notice requirement. Because the bill would also increase liability and penalties for noncompliance with state wage payment laws, employers should review their pay practices and onboarding processes to make certain they satisfy continued compliance obligations.

### Background

New York's Wage Theft Prevention Act (WTPA) amended the state labor laws to protect employees against wage nonpayment, imposing new wage notice requirements on employers and penalties for failing to disclose or pay wages. (See our [November 18, 2011 For Your Information](#).) New York Labor Law [Section 195](#), as amended, requires all New York employers to provide written notice to every employee at the time of hire that identifies his or her regular pay rates, pay days, and certain other information. Employers are also required to provide employees with an updated notice at least seven calendar days prior to any changes in pay or other information (such as overtime eligibility), and an annual notice on or before February 1.



### Amendments to the Wage Theft Protection Act

Before its summer hiatus, the New York legislature passed a [bill](#) that would amend the WTPA in several important ways. Governor Andrew Cuomo is expected to sign the bill into law shortly, and it would go into effect 60 days after signing.

#### Repeal of the Annual Notice Requirement

The bill would reduce the current administrative burden on employers by eliminating the annual wage notice requirement, starting in January 2015. Because the law's other wage notice and pay statement requirements would remain intact, employers would still need to provide both new hire notices and updated notices in advance of a pay day or pay rate change and satisfy recordkeeping requirements.

**Comment.** Although employers must also provide notice whenever wage information changes, the required information may be furnished via a paystub rather than a stand-alone notice.

### **Increased Penalties**

The bill would increase the maximum penalty for failure to comply with certain provisions of the WTPA. Employers that fail to timely provide notice to a new hire would be liable for a civil penalty of \$50 per work day up to a maximum of \$5,000 for each employee who did not receive notice (up from \$50 per work week up to a maximum of \$2,500). Failure to provide pay statements will expose an employer to penalties of \$250 per work day up to a maximum of \$5,000 (up from \$100 per work week up to a maximum of \$2,500).

Employers that have violated the wage payment laws more than once in a six-year period would also be subject to increased civil penalties. Repeat offenders could face civil penalties of \$1,000 - \$20,000, injunctions, and liquidated damage awards to aggrieved employees of up to \$20,000 (double the current \$10,000 limit). Financial penalties collected from employers will fund a newly created “Wage Theft Prevention Enforcement Account” to offset additional administrative and enforcement costs.

### **Expanded Liability**

In certain circumstances, the bill would create successor liability, extending liability to an employer for a prior employer’s wage payment violations. For these purposes, an employer that is similar in operation and ownership to a prior employer will be deemed to be the same employer if the employees continue to perform substantially the same work under the same working conditions and supervision, or the subsequent employer has substantially the same production process, products, and customers

**Comment.** The provision is intended to prevent employers from evading wage payment laws by essentially changing its ownership structure and continuing operations under another name.

Notably, the bill would amend the New York Limited Liability Company (LLC) Law to hold the 10 members with the largest ownership stakes in the LLC personally liable for unpaid wages (including compensation and benefits) to the LLC’s employees. The members would be jointly and severally liable for failure to pay wages, with their liability calculated on a pro rata basis according to their individual ownership interest. Liability would be triggered by the employee’s timely notice to the LLC members that the LLC has defaulted on its obligations.

The bill would also amend the Construction Industry Fair Play Act by adding a new section that would require contractors and subcontractors to disclose wage violations to employees. Notice would have to be given to employees at all worksites via a paycheck attachment that summarizes the nature of the violations.

Finally, the bill clarifies that any investigation conducted by the state Department of Labor into violations of the WTPA or employer retaliation against an employee for reporting wage theft would generally cover a six-year period from the date of the claim.

## In Closing

If, as expected, the governor signs the bill into law, employers would be relieved from the requirement to provide annual wage notices but would still have to provide compliant pay statements and other wage notices required by New York law. Employers should review their pay practices and onboarding processes to ensure that they satisfy continued compliance obligations.

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