

## Significant Changes to New York's Labor Laws Take Effect

On December 29, Governor Andrew Cuomo signed a bill eliminating the annual wage notice requirement under New York's Wage Theft Prevention Act, effective immediately. The bill also increased penalties for wage theft and expanded liability for wage payment violations, effective February 27. With expanded penalty and liability provisions now in effect, New York employers will want to review their wage payment practices to ensure compliance.

### Background

New York's Wage Theft Prevention Act (WTPA) amended state labor laws in 2011 to protect employees against wage nonpayment, imposing new wage notice requirements on employers and penalties for failing to disclose or pay wages. (See our [March 28, 2011 For Your Information.](#)) Last summer, the New York legislature passed a bill to amend the WTPA. In addition to eliminating the annual wage notice requirement, the bill increased penalties for wage theft and expanded employer liability for wage payment violations. (See our [July 22, 2014 For Your Information.](#)) On December 29, Governor Andrew Cuomo signed the bill into law, immediately eliminating the WTPA's annual wage notice requirement. The remaining provisions took effect on February 27. (See our [January 6, 2015 For Your Information.](#))

### The Amendments

Elimination of the annual wage notice requirement bill significantly reduced — but did not eliminate — employers' administrative burdens. New York employers must continue to provide wage notices to new hires, issue earnings statements with each wage payment, and maintain pay-related records for six years. The amended law expands employer liability and increases penalties for violations of state wage and hour laws. It also makes clear that investigations into violations of the WTPA or retaliation against an employee for reporting wage theft will generally cover a six-year period from the date of the claim.

### Increased Penalties

The new law significantly increases the employer penalties for noncompliance with its notice and disclosure requirements. The WTPA originally imposed per workweek, per worker penalties (up to a maximum of \$2,500) for



failure to provide timely wage notices to new hires or for failure to provide required employee pay statements. As amended, the WTPA assesses a per workday, per worker penalty of \$50 for failing to provide the new hire notice within the first 10 days of employment, up to \$5,000. The amended law provides a per workday, per worker penalty of \$250 for failing to provide required earnings statements, also subject to a \$5,000 cap.

The amended law also strengthened penalties for repeat offenders, authorizing the state labor commissioner to assess a larger civil penalty on employers who had a violation within the previous six years. The WTPA as amended doubles the maximum penalty from \$10,000 to \$20,000 for these employers. The labor commissioner may also require an employer that previously violated the labor laws' wage payment, minimum wage, day of rest, or meal period provisions or an employer whose violation is willful or egregious to report detailed employee and wage data by location, and for a period determined by the labor commissioner. The information would be posted on the New York State Department of Labor's website.

### **New Successor Employer Liability**

Successor employers may now face liability for a prior employer's violations of the wage payment or minimum wage laws. The amended WTPA provides that an employer similar in operation or ownership to a prior employer will be liable for the acts of the prior employer for the purposes of orders directing payment of wages from the labor commissioner, civil penalties, or other decisions.

### **Individual Liability for LLC Members**

The WTPA amends New York's Limited Liability Company (LLC) Law to impose personal liability on certain LLC members for wages and salaries (all compensation and benefits payable for services performed) due and owing to employees of the LLC. The 10 members with the largest ownership stakes in LLCs may be held jointly and severally liable for unpaid wages. Any member who pays more than his or her pro rata share is entitled to contribution pro rata from the other members who are liable, and may sue them to recover any amount due.

### **Notice Obligations for Construction Contractors and Subcontractors**

Construction contractors and subcontractors may be required to disclose wage violations to employees. If a contractor or sub-contractor is found to have committed wage theft, the contractor or sub-contractor will be required to notify all of its employees at all worksites of the violations via paycheck attachment.

## **In Closing**

The WTPA amendments reduced existing administrative headaches on New York employers, but increased penalties and expanded potential liability for wage payment violations to successor employers and LLC members. Construction contractors and subcontractors, repeat offenders, and certain other employers with wage violations face new notice and disclosure obligations. New York employers will want to review their wage payment practices to ensure compliance.

**Authors**

Nancy Vary, JD  
Abe Dubin, JD

**Produced by the Knowledge Resource Center of Buck Consultants at Xerox**

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email [fyi@xerox.com](mailto:fyi@xerox.com).

You are welcome to distribute *FYI*® publications in their entireties. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.