NEW LABOR LAW INCREASES EMPLOYER ACCOUNTABILITY FOR WAGE RELATED VIOLATIONS

February 1, 2011

New York's recently enacted Wage Theft Prevention Act ("Act"), which takes effect in April 2011, toughens penalties for wage violations and retaliation by employers and holds non-controlling business owners liable for wage violations.

INCREASED PENALTIES AND PUNISHMENT; CRIMINAL LIABILITY

The Act conforms New York State law with the Federal Fair Labor Standards Act ("FLSA"). However, whereas the FLSA provides for a 2 year review period, the Act provides for a 6 year review period.

Previously, liquidated damages for nonpayment of wages were capped at 25% of the total amount of the wages due. The Act increases the amount of liquidated damages for an employer's "willful or egregious" violations to 100% of the wages due. The Act also provides for attorneys' fees and prejudgment interest.

The Act adds civil penalties for employers that fail to provide employees with the required pre-employment notice of wages. An employee who does not receive a notice of wages within 10 business days of his first day of employment may bring a lawsuit to recover damages of $50 for each work week that the violation occurred or continues to occur (not to exceed a total of $2,500) plus reasonable attorneys' fees. Alternatively, the Act permits the Labor Commissioner to bring a civil or administrative action on behalf of the employee to collect or assess such damages.

Finally, non-controlling and non-managing members, partners or shareholders may be responsible for unpaid wages and subject to criminal penalties.

NEW NOTICES AND RECORDKEEPING REQUIREMENTS

Currently, New York Labor Law § 195(1) requires employers to notify all newly hired employees, in writing, of their regular rate of pay, regular pay day, and overtime rate of pay if they will be eligible for overtime. Under the Act, an employer must also notify the employee of: (1) the basis of the wage payment (such as hourly, daily, weekly, shift, salary, or commission); (2) the employer's intention to claim allowances (such as tip or meal allowances) as part of the minimum wage; and (3) any additional information about the employer such as the legal entity name.

The notice must now be written in both English and in the language identified by the employee as his primary language. It must also be updated and provided to the employee at least 7 calendar days in advance of any change to the terms in the original notice. After providing an updated notice, the employer shall obtain the employee's signed (bilingual) acknowledgment of receipt, which the employer must maintain for 6 years. Similarly, an employer must retain payroll records for 6 years.

ANTI-RETALIATION PROVISIONS

The Act makes 4 main changes relating to retaliation: (1) Like a Judge, the Labor Commissioner may award compensatory damages, enjoin the offending conduct, order payment of liquidated damages up to $10,000, and order injunctive relief including the rehiring or reinstatement of the employee; (2) an employee has a 2 year statute of limitations to commence a lawsuit for retaliation; (3) individuals who are not in control of a company may also be accountable under the Act; and (4) the definition of retaliation is enlarged to include the "threat" of retaliation, making an employee's burden of proof much easier than merely showing that he was actually penalized or terminated.

Act's Impact: New York's statutory wage protection provisions have always been favorable to employees. However, the penalties and record keeping requirements will have a draconian effect on those employers who fails to comply with all of the Act's provisions. It is vital to the employers understand and comply with the Act.

Please call us for more information

If you would like to discuss this case, or any other matter, please call us at (212) 448-9933. In addition, please visit our website at www.cuomollc.com for further information about our firm.