

September 2, 2009

## **Recent Amendments to the New York Labor Law and New York State Human Rights Law**

In July and August 2009, Governor Paterson signed legislation amending the New York Labor Law and the New York State Human Rights Law. The amended Labor Law requires employers to provide written notification to all newly hired employees of their regular and overtime wage rates, as well as their regular pay day and get a signed acknowledgement from the employee. In addition, the amended Labor Law strengthens the authority of the Commissioner of Labor to remedy violations through administrative action, increases penalties and provides employers with a statutory defense to liquidated damages penalties. The amended New York State Human Rights Law now includes victims of domestic violence among those persons classified as protected under the statute. In addition, the State Human Rights Law now subjects employers to payment of civil penalties for unlawful discriminatory practices.

### Employer Notification Requirements

On July 28, 2009, the New York Labor Law was amended to require employers to provide employees, at the time of hire, with written notice of their regular wage rate and their regular pay date. An employee that is eligible to receive overtime must be provided with written notice of the overtime rate of pay as well. This amendment, which takes

effect on October 26, 2009, applies only to employees hired on or after that date.

Under the Labor Law as amended, employers are also required to obtain from each newly hired employee a written acknowledgement of receipt of the notice. The acknowledgement must conform to the requirements established by the Commissioner of the Department of Labor. The Commissioner has not published any guidelines or forms at this time.

In anticipation of the effective date October 26, 2009, employers are encouraged to include an acknowledgement of receipt form among any new-hire paperwork and to include the rates of pay and pay date in offer letters. Although the statute is silent on whether the notification provisions apply to union employees, employers are advised to provide newly-hired union employees with the same written notice and acknowledgement of receipt forms, noting relevant sections of the collective bargaining agreement.

### Protected Status Granted to Victims of Domestic Violence

As of July 7, 2009, the New York State Human Rights Law prohibits employers from discriminating against victims of domestic violence. A

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domestic violence victim is defined as “an individual who is a victim of an act which would constitute a family offense” under the Family Court Act. A family offense includes, but is not limited to, assault between spouses, disorderly conduct, menacing, harassment, and stalking. Although the New York City Human Rights Law already provides protection against discrimination against victims of domestic violence, employers that conduct business outside of New York City should be mindful of this new provision and undertake efforts to accommodate victims of domestic violence in the workplace.

#### Employers are Now Subject to Civil Penalties for Violations of the New York State Human Rights Law

Effective July 6, 2009, the New York State Human Rights Law authorizes the imposition of civil penalties against employers found to have engaged in unlawful discrimination. Civil penalties may be imposed on top of any compensatory damages the employer must pay to the complainant. The statute permits a maximum penalty of \$50,000, unless the employer is found to have acted maliciously, wantonly, or willfully, in which case the maximum permissible penalty is \$100,000. For employers with fewer than fifty employees, civil penalties may be paid in “reasonable installments” with interest. Legislation that would authorize punitive damages and payment of attorneys’ fees under the New York State Human Rights Law is currently pending in the legislature.

#### Penalties, Procedures and Defenses under the Labor Law have Changed

Effective November 24, 2009, the Commissioner of Labor may bring any legal action necessary to collect unpaid wages on behalf of an employee,

including through administrative procedures. The Commissioner may assess against the employer an amount equal to twenty-five percent of the total amount of wages found to be due, unless the employer offers a good faith basis for its belief that its underpayment of wages complied with the law.

Furthermore, the amended Labor Law strengthens the anti-retaliation provisions of the statute to protect an employee who has exercised his or her rights under the Labor Law and increases the Commissioner’s authority to assess a civil penalty of not less than \$1,000 (increased from \$200) but not more than \$10,000 (increased from \$2,000).

#### Conclusion

In recognition of the notice requirements imposed by the amended Labor Law, employers are advised to include written notification and acknowledgement forms among their new-hire paperwork. In addition, to the extent that civil penalties may now be imposed against employers for violations the New York Labor Law and the New York State Human Rights Law, it is increasingly important that employers afford appropriate accommodations and prevent and correct discrimination in the workplace. Employers are encouraged to conduct regular anti-discrimination and anti-harassment training and to enforce zero tolerance policies regarding discrimination and harassment. If you have any questions about the new legislation, please contact [Adam Harris](#) at (212) 758-7724.

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