



# Alert

Labor & Employment Client Service Group

To: Our Clients and Friends

September 15, 2009

## Significant Amendments to the New York Labor Law

The New York Labor Law has been amended to require written notification of employee pay, to shift the burden for establishing liquidated damages, and to raise certain available penalties.

### Notification of Employee Pay

Effective October 26, 2009, New York Labor Law Section 195 will require employers to notify all employees in writing at the time of hiring of their rate of pay and regular pay day. For employees who are eligible for overtime pay, the notice also must include the overtime rate of pay. The amendment also requires a written acknowledgement from each employee of receipt of this notice.

### Liquidated Damages

Labor Law Section 198 has long permitted liquidated damages of 25% of the amount an employee was underpaid. For example, if it is determined that an employee has been underpaid by \$1,000 because he or she was not paid overtime, that employee will receive the \$1,000 that should have been paid, plus \$250 in liquidated damages as a penalty. This penalty amount traditionally has been awarded if the employee can establish that the underpayment was willful on the employer's part. But as of November 24, 2009, section 198 will effectively reverse the burden and award 25% liquidated damages unless the employer can show a good faith basis for its belief that its underpayment was in compliance with the law. This change in the standard likely will lead to higher damages awards under the Labor Law, which also allows for attorneys fees and pre-judgment interest of nine percent annually.

### Increased Penalties

Also effective November 24, 2009, Labor Law Section 215 will be amended to raise the available penalties the Department of Labor may assess for employers found to have retaliated against employees who exercise rights under the Labor Law. The penalty range will rise from \$200 to \$2,000 up to \$1,000 to \$10,000. Also the law will be amended to make clear that individual liability is

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available for agents and officers of employers that are partnerships and limited liability companies - the earlier version referenced corporations only.

These amendments reflect New York state's continued focus on adding teeth the Labor Law. Employers should be mindful more than ever of their obligations to properly pay employees, and in particular, exercise care in correctly classifying employees as exempt or non-exempt from overtime pay requirements. Also, employers should update their regular practices to ensure receipt of new employees' acknowledgements that they were advised in writing of their rates of regular pay and overtime pay, as applicable.

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