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## New York Wage and Hour Law Amended to Expand Employee Protection for Wage and Hour Violations

On August 27, 2009, Governor David A. Patterson signed a bill into law to enhance wage and whistleblower protections for employees complaining of wage violations under the New York Labor Law. The bill goes into effect on November 24, 2009. The bill exposes employers to liquidated damages for the underpayment of wages and also expands the scope of liability for employers who retaliate against employees who complain of wage payment and other labor law violations.

The bill amends New York Labor Law § 198(1-a) to allow the Commissioner of Labor to bring “any legal action” to collect unpaid wages. Furthermore, the new law will make New York State Labor Law consistent with the Federal Fair Labor Standards Act. In that regard, in all actions for unpaid wages, employees will automatically recover liquidated damages unless the employer provides a “good faith basis” to show that it believed its wage underpayment was in compliance with the law. Under the prior law, liquidated damages were awarded only upon a finding that the employer’s failure to pay wages was “willful.” Liquidated damages will be 25% of the unpaid wages and will be automatically added.

The bill also amends New York Labor Law § 215(1). This amendment increases the penalty for employers who retaliate against employees who exercise their rights under the New York Labor Law. The minimum penalties are increased from \$200 to \$1,000 and the maximum penalties from \$2,000 to \$10,000.

Furthermore, New York Labor Law § 215(1) is amended to expand the scope of employee conduct protected against employer retaliation. The amendment expressly expands whistleblower protection to employees who merely complain to their supervisor about a wage payment issue. This expands protection beyond the Federal Fair Labor Standards Act, which requires employees to file a formal complaint or commence enforcement proceedings before their conduct becomes protected against employer retaliation. Also, the amendment provides additional examples of employee conduct protected from wage and hour-related retaliation, including: (1) providing information to the Commissioner of Labor or the Commissioner’s authorized

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representative about a wage violation, (2) receiving an employer-adverse determination from the Commission involving that employee, and (3) otherwise exercising rights protected under the New York Labor Law.

The amendment also clarified that liability for retaliation applies to officers and agents of partnerships and limited liability companies. The amendment expressly includes “the officer or agent of any corporation, partnership, or limited liability company.”

In light of these amendments, employers should review their policies and practices for addressing and resolving employee complaints. When employees are disciplined, there must be a written record setting forth a legitimate business reason for the adverse employment decision. Furthermore, employers are reminded to be proactive in adhering to federal and state wage and hour laws and regulations. Internal reviews and audits will help employers comply with the law and avoid civil and criminal penalties. ■

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