

## **California Wage Theft Prevention Act Takes Effect January 1, 2012**

*DLSE issues template notice for use by employers.*

**December 30, 2011**

California Governor Jerry Brown recently signed into law Assembly Bill 469, also known as The Wage Theft Prevention Act of 2011 (the Act). The Act requires employers to provide all new nonexempt hires with written notice of specific wage information. It also increases the penalties for nonpayment of all wages due, including overtime premiums and minimum wage for all hours worked. The Act also mandates that the Labor Commissioner prepare a template of the written notice, which the Division of Labor Standards and Enforcement (DLSE) issued on December 28. A copy of the template is available online at [http://www.dir.ca.gov/dlse/Governor\\_signs\\_Wage\\_Theft\\_Protection\\_Act\\_of\\_2011.html](http://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html).

The Act is similar to wage theft statutes recently enacted in other states, including New York, New Mexico, Maryland, and Illinois. Below is a summary of the Act's key provisions, which take effect on January 1, 2012.

### **Background**

A UCLA study released in 2010 suggested that wage theft was costing low-wage California workers \$26.2 million per week. Further, the DLSE, the state enforcement agency, was reporting more penalties assessed than actually collected. These statistics influenced the legislature to create the newer, heightened incentives for wage and hour compliance that are contained in the Act.

### **Labor Code § 2810.5: New Written Notice Requirements for New Employees**

Under the Act, at “the time of hire” of any nonexempt employee, an employer will need to provide to the employee a written notice containing all of the following information:

- The employee's rate or rates of pay (including overtime rates), and whether the employee is paid hourly, by the shift, by the day, by the week, by salary, by piece, by commission, or otherwise.
- Any allowances claimed as part of the minimum wage (i.e., allowances for meals or lodging).
- The regular payday.
- The name of the employer, including any D/B/A names the employer uses.
- The physical address of the employer's main office or principal place of business, and a mailing address if it is different.
- The employer's telephone number.

- The name, address, and telephone number of the employer's workers' compensation insurance carrier.
- Any other information that the Labor Commissioner deems necessary.

Employers need to provide the notice in the language that the employer normally uses for communicating employment-related information to employees. Employees must be notified of any changes to the information provided in the initial notice within seven calendar days after these changes are made. This notice of changes may take the form of an entirely new notice containing all of the information required by Section 2810.5, a notice of only the changed information, or a timely wage statement that reflects the changes.

### ***Recordkeeping***

The Act significantly increases employers' recordkeeping obligations. Specifically, Labor Code § 226 requires that employers keep a copy of **both** an employee's wage statement and a record of deductions, rather than just one or the other, for at least three years. The Act also amends Labor Code § 1174, requiring employers to keep payroll records for each employee for at least three years, instead of two years as previously required.

### ***Increased Penalties and Damages and More Time for the Labor Commissioner to Seek Them***

The Act contains numerous provisions that subject employers to significantly increased penalties and damages for noncompliance with various Labor Code provisions, including the following:

- **Labor Code § 98:** The Labor Commissioner is now authorized to collect liquidated damages, in addition to wages and penalties, for failure to pay the minimum wage. Previously, liquidated damages were only available in civil court.
- **Labor Code § 240:** The time period for which the Labor Commissioner can require that employers post bonds in order to incentivize compliance and ensure the employer can pay any future awards during that period has been increased from six months to two years. If the employer does not post the bond and does not appeal the order requiring a bond, the Labor Commissioner may order an accounting of the employer's assets and subject the employer to an additional civil penalty of up to \$10,000.
- **Labor Code § 243:** An employer that has been convicted of violating wage laws for the second time within 10 years or has failed to satisfy a judgment for nonpayment of wages could be issued an immediate restraining order from conducting business within the state for 30 days unless the employer posts a bond conditioned on making correct wage payments or satisfying any judgment for nonpayment of wages.
- **Labor Code § 200.5:** The DLSE now has three years—rather than one year, as previously—from the date a penalty or fee becomes final to collect it.
- **Labor Code § 1197.2:** An employer may be criminally liable for a misdemeanor for the willful refusal to pay a final court judgment or final order for wages by the Labor Commissioner within 90 days. Each offense carries a minimum \$1,000 fine or minimum six months of imprisonment.

If the total wages due are more than \$1,000, the minimum fine per offense is \$10,000 and an employer may be subject to both the fine **and** imprisonment.

## **Conclusion**

Under California's new Wage Theft Prevention Act, employers have additional Labor Code compliance obligations, including the new written notice requirements in Section 2810.5. The Act also significantly increases the damages and penalties available for violations of the Labor Code. Thus, it is important that employers become familiar with the new requirements and take steps now to bring their policies and procedures into immediate compliance.

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