

One Minute Memo®



Cuomo Signs Bill Revoking Annual Pay Notice Requirement

By Robert S. Whitman and Nadia S. Bandukda

Some welcome news for New York employers as we enter 2015: annual wage theft notices will no longer be required for current employees.

On December 29, Governor Andrew Cuomo signed a bill that eliminates the annual notice requirement established in the Wage Theft Prevention Act (WTPA). The Legislature passed the bill in June 2014 (S.5885-B/A.8106-C), but Cuomo did not sign it until now. Under the new law, employers are no longer required to provide current employees with a written notice containing wage-related information between December 31 and February 1 provided the same information is given at the time of hire.

However, the new legislation increases potential penalties for employers that violate the remaining WTPA requirements: failure to provide required pay notices at the time of hire will be subject to a \$50 *per day* penalty (it was previously \$50 per week), up to a maximum of \$5,000 per employee (previously \$2,500). Potential civil penalties under the WTPA have also been raised from \$10,000 to \$20,000.

The bill states that it takes effect 60 days after it is signed into law. But in a [signing statement](#), Cuomo wrote that the change to the annual notice requirement would be effective immediately. And the New York Department of Labor posted a [statement](#) on its website that annual statements will *not* be required in 2015.

The bill makes a few other notable changes:

- The successor to an employer that previously violated the WTPA is deemed liable for the acts of the prior employer.
- If an employer previously committed wage theft, or engaged in a previous violation found to be willful or egregious, it will be required to report certain employee and wage data to the Commissioner of Labor, which will be published on the DOL website. In addition, construction industry contractors and subcontractors will be required to notify their employees of any violations found by the DOL or a court.
- The top ten members of a Limited Liability Company can be jointly and severally liable for wage and hour violations committed by the company. However, plaintiffs will be required to provide notice to individual members within a specific timeframe before personal liability may be imposed.

While employers no longer have to provide annual wage notices, all previous requirements are still in place for new hires, including: (1) rate or rates of pay (including the overtime rate for non-exempt employees) and the basis thereof; (2) whether the employee will be paid by the hour, shift, day, week, salary, piece, commission or otherwise; (3) whether the employer will claim any allowances as part of the minimum wage (e.g., tip, meal or lodging allowances); and (4) the employer's regular pay day.

Employers should also keep in mind that New York's minimum wage will increase, effective December 31, 2014, to \$8.75 per hour.

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