

Client Alert



A report for clients and
friends of the Firm

September 2009

New York State Strengthens Wage and Hour Protections

On August 26, 2009, Governor Paterson signed into law an act amending specific wage and hour provisions of the New York State Labor Law – sections 198(1-a), 215(1) and 663(1), (2). The new amendments strengthen the State's protections for covered workers by: 1) shifting the burden to employers, who have been found in violation of New York's Labor Law (NYLL), to avoid liquidated damages by establishing a good faith basis for underpaying workers; 2) increasing penalties against employers; 3) extending liability to officers and agents of limited liability companies and partnerships; and 4) broadening the Commissioner of Labor's enforcement powers to commence civil or administrative actions and seek liquidated damages. These "strengthened" wage and hour protections passed with no significant public opposition and take effect ninety (90) days from enactment, which is November 24, 2009.

Strengthened Wage and Hour Protections

(1) Burden on Employers To Avoid Liquidated Damages. The new protections amend Labor Law § 198(1-a) and § 663 to conform to the Fair Labor Standards Act's (FLSA) requirement allowing for the recovery of liquidated damages unless the employer can establish a good faith basis and reasonable grounds for its underpayment to workers. While maintaining New York's 25% cap on liquidated damages (under the FLSA, employees may recover an amount fully equal to the underpayment or 100% in liquidated damages), the amendment shifts the burden of proof from the employee to the employer. Previously, the employee was required to show entitlement to liquidated damages. Now, as amended, the employer must show a good-faith rationale to avoid imposition of liquidated damages under the State law. In short, effective

November 24th, the NYLL explicitly provides for the recovery of liquidated damages, "unless the employer proves a good-faith basis for believing its underpayment complied with the law."

(2) Increased Penalties for Retaliation. The amendment increases the penalties for employers who retaliate against employees who invoke their rights under the State's Labor Law. Amending NYLL § 215(1), minimum penalties are now increased from \$200 to \$1,000 and maximum penalties are increased from \$2,000 to \$10,000.

(3) Limited Liability Companies and Partnerships Now Liable. The law now extends the liabilities for violations of the State Labor Law to officers and agents of limited liability companies and partnerships. As a result, such officers and agents may be liable for retaliation against employees who exercise their rights under the State's Labor Law.

(4) Commissioner Has Broader Enforcement Powers. The law broadens the Commissioner of Labor's power in two areas. *First*, under amended NYLL § 215, the Commissioner may now award lost compensation to victimized employees in addition to imposing penalties for retaliatory employer conduct. *Second*, § 663 now makes clear that the Commissioner can use an administrative proceeding to collect wage underpayments and liquidated damages from employers, as well as commence civil actions.

What It Means for Employers

All New York employers should be aware of these heightened wage and hour protections intended to increase remedies for violations of New York's Labor Law. Along with the recent amendments signed into law a few weeks earlier regarding notice, at hire, of the employee's pay rate, overtime rate, and pay day, there is an evident effort by New York State to better monitor how New York employers are classifying and paying employees. [Click here](#) to view our prior client alert titled: *New York Amends Labor Law to Require Employers to Provide Written Notice to Employees of*

Rate of Pay and Overtime Rate. In this regard, as well, New York's Attorney General, Andrew Cuomo, recently brought a criminal complaint against an employer for underpaying 25 workers and for failing to make appropriate payments into New York State's unemployment insurance fund on their behalf. Notably, New York's Commissioner of Labor, Patricia Smith, has been nominated by President Obama to serve as the Solicitor of Labor for the U.S. Department of Labor. Hence, as we see the legal landscape in the months and years ahead, employers should anticipate increased enforcement of wage-hour laws by state and federal authorities.

If you have questions about this Client Alert, or the manner in which your business has classified employees under federal or state wage-hour laws, please do not hesitate to contact your Proskauer relationship attorney or any of the Co-Chairs of Proskauer's Employment Law Counseling Practice Group.

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If you have any questions about the impact of this new law, please contact your Proskauer relationship lawyer or one of the lawyers listed below:

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