Proskauer

Update on NYS Wage Theft Prevention Act

March 30, 2011

Since many clients have been taking steps in preparation for the April 9, 2011 effective date of the N.Y. Wage Theft Prevention Act (WTPA), we wanted to provide you with some updated information that we received yesterday from the Director of Strategic Enforcement for the NYSDOL Labor Standards Division, Lorelei Salas:

- The NYSDOL is likely to issue form templates for the Notice and Acknowledgment requirements next week and will not take any enforcement action under the WTPA until it has issued the templates.

- Initially, the NYSDOL will issue the templates in English, Spanish, Chinese and Korean, with several other languages to follow. As discussed during the Webinar last week, we do not recommend that employers attempt to translate the templates themselves. If the NYSDOL has not issued a template in the primary language identified by the employee, the employer can comply with the WTPA by providing the Notice and Acknowledgment in English.

- It appears likely that the NYSDOL will modify its position that employers *must* identify the specific nature of the exemption in the new hire and annual Notice and Acknowledgment forms to be provided to exempt employees. Contrary to the NYSDOL's existing Guidance under NYLL §195.1, Ms. Salas anticipates that under the WTPA, the NYSDOL will *not* require that employers specify the nature of the exemption for exempt employees (although the NYSDOL will encourage employers to provide the information). Based on this informal advice, as things now stand, the failure to provide the basis for the exemption in the new hire and/or annual Notice will *not* be considered a violation of the Notice requirements.

- The statute does not require employers to issue a supplemental Notice and Acknowledgment when wage and certain other changes occur during the course of the year so long as the changes appear in the wage statement provided to employees. However, the NYSDOL, will encourage employers to provide employees with at least 7 days notice, either verbal or written, before the change takes effect.

- It appears that the NYSDOL interprets the statute as requiring the annual Notice and Acknowledgment be provided existing employees between January 1 and January 31, 2012, and then annually during this window period. As many employers are voicing objection to this strict time frame, we will keep you posted on developments.

- Finally, the NYSDOL expects employers to maintain the records identified in the WTPA, including time records showing the hours worked for each employee, including exempt employees, for six years. Ms. Salas conceded that enforcing timekeeping requirements for exempt employees is not a high priority for the NYSDOL.

We will continue to update you on developments as they occur. Definitive answers to many questions triggered by the WTPA remain fluid. We anticipate that when the form templates are issued, additional guidance may be forthcoming. In the meantime, please do not hesitate to call your Proskauer relationship lawyer, Fred Leffler, or Amy Melican, if you have any questions or would like to discuss issues particular to your employees.