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New York Enhances Penalties for Failure to Comply with Labor Law

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January 4, 2011— Twice in the last four months, the New York Legislature significantly altered the penalty provisions applicable to employers who violate provisions of the New York Labor Law. Most recently, the Governor signed the Wage Theft Prevention Act in December, which also changed the notice and record keeping requirements applicable to New York employers.

We previously wrote articles regarding the notice and record keeping requirements of the Wage Theft Prevention Act and previous legislation. This article will focus on the key penalty provisions of the recent legislation.

In August, the Labor Law was amended to make it easier for an employee or the Commissioner of Labor to recover liquidated damages for any failure to pay wages. The previous version of the statute only permitted recovery of liquidated damages—equal to 25% of the total amount of wages found to be due—upon a finding that the employer's failure to pay the wages was willful. This placed the burden squarely on the employee or the Commissioner to establish the willfulness of the employer's conduct. Since this amendment, liquidated damages are now available in administrative proceedings, and they are now mandatory in a civil action unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law.

With the enactment of the Wage Theft Prevention Act (the "Act"), liquidated damages became mandatory in administrative proceedings, and the amount of liquidated damages recoverable was boosted from 25% to 100% of the total amount found to be due. While the amount of liquidated damages imposed in an administrative proceeding remains discretionary, the amount imposed in civil actions is required to be equal to 100% of the amount of wages found to be due.

The Act also clarified that prejudgment interest is also recoverable as there had been some question as to whether an employee could recover both interest and liquidated damages. As has always been the case, successful employees are also entitled to recover attorney's fees in addition to the other damages recoverable in a wage claim.

The Act also now specifically provides for the recovery of attorney's fees and costs incurred in enforcing any judgment. Previously, it was unclear if such fees and costs were available for post-judgment activities. Now it is clear that they are.

Additionally, the Act provides that judgments remaining unpaid after the expiration of ninety days following the time to appeal are automatically increased by fifteen percent. These are significant enforcement provisions added to the Commissioner's toolkit, and they apply equally to actions commenced by an employee directly without the aid of the Commissioner.

While these are the most significant provisions affecting enforcement of the Labor Law, the Act also made several definitional clarifications, closed loopholes previously applica-

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ble to retaliation claims, and enhanced criminal and civil penalties available for violations of New York's notice and record-keeping requirements, among other things.

If you have any questions about the Act and its impact on your business, please feel free to contact Peter Weishaar at pweishaar@mccmlaw.com or (585) 512-3542.

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