

November 7, 2011

## California's New Wage Theft Prevention Act Takes Effect Soon

In the flurry of new California bills signed by Governor Brown in October, one stands out for immediate employer attention: A.B. 469, the Wage Theft Prevention Act of 2011, which will require employers to provide certain new hires with a written wage disclosure beginning January 1, 2012. Here is an overview of the disclosure requirement, as well as other new provisions that strengthen penalties for wage violations.

### *New Hire Disclosure*

The Act adds new Labor Code section 2810.5 to require employers to provide nonexempt employees with a written disclosure at the time of hire. The notice requirements do not apply to employees who are exempt from overtime, public employees, or employees covered by a valid collective bargaining agreement that provides premium rates for overtime and a regular pay rate of at least 30 percent more than the state minimum wage.

The new hire notice must contain *all* of the following information, in the language the employer normally uses to communicate with the employee:

- The employee's rate or rates of pay and basis thereof, whether the employee will be paid by the hour, shift, day, week, salary, piece, commission, or otherwise;
- The rates for overtime;
- Allowances, if any, that the employer claims as part of the minimum wage, including meal or lodging allowances;
- The regular payday;
- The employer's name and any "doing business as" names used by the employer;
- The physical address of the employer's main office or principal place of business, and a mailing address, if different;
- The employer's telephone number;
- The name, address, and telephone number of the employer's workers' compensation insurance carrier; and
- Any other information the Labor Commissioner requires employers to include.

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In addition, because the new law's disclosure requirement is ongoing, it will effectively apply to all employees if an employer changes any of the items that it must disclose to new hires. In particular, once changes occur, the employer has seven calendar days to notify employees of the changes or to include the new information on the employees' wage statements.

The disclosure requirement goes into effect on January 1, 2012. In the meantime, the Labor Commissioner is preparing a notice template for employers to use, as well as FAQs on the new law. The Labor Commissioner expects to have the information available by mid-December 2011. In addition, once the law takes effect, employers should: 1) consider having new hires sign and date an acknowledgment that they received the disclosure; and 2) retain copies of all disclosures and signed acknowledgments.

#### Increased and New Penalties

The Wage Theft Prevention Act also increases certain Labor Code penalties -- and adds some new ones. The key changes include:

- Revised Labor Code Section 98 allows an employee to recover liquidated damages in a Labor Commissioner hearing for failure to pay minimum wage. Under existing law, liquidated damages may be recovered only in court.
- New Labor Code Section 200.5 extends the statute of limitations from one year (current law) to three years for the Division of Labor Standards Enforcement to commence a collection action for penalties imposed under the Labor Code.
- Labor Code Section 226, which requires employers to provide wage statements (pay stubs), has been revised as follows: 1) farm labor contractors must list the name and address of the legal entity that secured the services of the employer; and 2) all employers must retain for three years wage statement copies *and* records of any deductions taken (existing law required retention of wage statements or deduction records).
- Revised Labor Code Sections 240 and 243 permit the Labor Commissioner to require an employer that is convicted of a wage violation or failure to satisfy a judgment to maintain a bond for two years (in contrast to six months under existing law). If the bond is not maintained, the Labor Commissioner can require an

accounting of the employer's assets; an employer that fails to comply will be subject to a civil penalty of up to \$10,000.

- Revised Labor Code Section 1174 requires employers to retain payroll records for three years (two under existing law). Additionally, an employer may not prohibit an employee from maintaining a personal record of hours worked or piece-rate units earned.
- New Labor Code Section 1194.3 permits employees to recover attorney's fees and costs incurred in enforcing a court judgment for unpaid wages.
- Revised Labor Code Section 1197.1 specifies that an employer that fails to pay the minimum wage must, in addition to a civil penalty, pay restitution to the employee in the amount of unpaid wages.
- New Labor Code Section 1197.2 provides that it is a misdemeanor, punishable by a fine and/or prison term, for an employer to willfully refuse to pay a final court judgment or order for wages within 90 days. If the amount due is less than \$1,000, the employer will be fined between \$1,000 and \$10,000 or imprisoned for up to six months. If the amount is over \$1,000, the fine will be between \$10,000 and \$20,000 and/or imprisonment for up to one year. If there are multiple failures to pay wages involving more than one employee, the total amount of wages due will be aggregated to determine the level of fine and prison term.

For information on other new workplace laws recently signed by the Governor, see our October 11, 2011 [Employment Law Alert](#).

**Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, risk management, wage and hour class actions, ERISA litigation, and appellate law.** If you have questions about your workplace obligations, please contact Michele Ballard Miller ([mbm@millerlawgroup.com](mailto:mbm@millerlawgroup.com)) or Carolyn Rashby ([cr@millerlawgroup.com](mailto:cr@millerlawgroup.com)), or call (415) 464-4300. To learn more about our firm, visit our website at [www.millerlawgroup.com](http://www.millerlawgroup.com).

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