CLIENT ALERTS & INSIGHTS

New Legislation Introduced to Protect and Expand Employee Rights and Benefits in New York

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New York Criminalizes Wage Theft

On September 6, 2023, New York Governor Kathy Hochul signed legislation making failure to pay wages a criminal offense. The new law, (S2832-A/A154-A), expands New York's definition of larceny to include "wage theft," specifically providing that:

> a person obtains property by wage theft when he or she hires a person to perform services that the person performs such services and the person does not pay wages, at the minimum wage rate and overtime, or promised wage, if greater than the minimum wage rate and overtime to said person for work performed.

It further amends the definition of "property" to include "compensation for labor or services." The penalties for wage theft under the new law range from small fines to incarceration, depending on the severity of the offense. Multiple instances of wage theft may also be aggregated into a single larceny count.

The new law follows the Manhattan District Attorney's February 2023, implementation of a 'Worker Protection Unit' to investigate wage theft allegations and prosecute alleged offenders. Prosecutors across New York State may now use the new law to pursue criminal penalties against employers that withhold wages in their jurisdictions. It remains to be seen, however, whether employers who inadvertently fail to comply with New York's complex wage and hour laws will be able to rely on the larceny statute's "intent to deprive" requirement as a defense.

In light of New York's criminalization of wage theft, employers should ensure that they remain in full compliance with New York's robust wage and hour laws. This includes properly paying workers for all hours worked and keeping comprehensive and accurate records of the same. Failure to do so is now riskier than ever.

Increased Workers' Compensation Benefits in New York

Governor Hochul also signed legislation which increased the benefits for workers compensation under New York law. Specifically, minimum benefits as of January 1, 2024 will be no less than $250 per week, unless an employee's wage is less than $250 per week, in which case employees will receive the full amount of their weekly wage. This amount will increase to $325 per week on January 1, 2025.

After July 1, 2026, those receiving workers' compensation benefits in New York will be entitled to no less than one-fifth of the New York State average weekly wage, unless an employee's wage is less

than or equal to one-fifth of the New York State average weekly wage, in which case the employee will receive the full amount of their weekly wage.

Quite naturally, an increase in these benefit amounts could result in an increase in claims. Employers should be mindful of the same going forward.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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