Labor and Employment Alert: Wage Theft Prevention Acts: *The Good – The Indifferent – And The Ugly*

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CLIENT ALERT | 1.30.2015

As multistate employers are well aware, several states have enacted "wage theft prevention acts." These laws are designed to ensure employees know how much they are being paid by requiring employers to provide detailed notices to employees on a set schedule, including at the time of hire. California and New York have had laws on wage theft for several years. Washington, D.C. enacted a new law late last year dealing with wage theft and making other, perhaps more disturbing, changes to wage and hour law in the District.

Good News – New York

The good news in the wage theft arena this year comes from New York. Though New York employers must continue to provide wage theft act notices to employees at the time of hire and when there is a change in the information described in the wage theft notice, employers are no longer required to provide annual wage theft act notices.

Proving that for every action there is an equal and opposite reaction, in exchange for the elimination of the yearly notice requirement, the penalty for non-compliance with the notice requirement was increased to $50 per day with a maximum of $5,000 per employee.

Indifferent News – California

The indifferent news in the wage theft arena comes from California, where there has been a change to the information employers must provide to employees. Employers are now required to provide employees information about their entitlement to leave under California's Paid Sick Leave Act. A new form was issued by the Department of Labor Standards Enforcement in November.

Ugly News – Washington D.C.

Moving to the ugly news, Washington, D.C. has enacted a wage theft prevention act that requires employers to provide detailed information to employees and, perhaps even more troubling, makes onerous

changes to D.C.'s wage and hour laws. These changes are set to take effect on February 26, 2015.

The Washington, D.C. wage theft act requires employers[1] to provide each employee a written notice, both in English and the employee's primary language, detailing:

1. The name of the employer and any "doing business as" names used by the employer;
2. The physical address of the employer's main address or principal place of business, and mailing address, if different;
3. The telephone number of the employer;
4. The employee's rate of pay and the basis of that rate, including: by the hour, shift, day, week, salary, piece, commission, and any allowances claimed as part of the minimum wage, including tip, meal or lodging allowances, or overtime rate of pay, exemptions from overtime pay, living wage, exemptions for living wage, and the applicable prevailing wages;
5. The employee's regular payday designated by the employer in accordance with the District of Columbia Code; and
6. Any such other information as the Mayor considers material and necessary.

The notices must be issued to all employees within 90 days after the effective date of the act. Thereafter, employees must receive notice immediately upon hire and when any of the information in the notice changes. The D.C. Department of Employment Services is to issue a sample notice, but has not yet done so.

All employers must maintain records proving that the required notices have been provided. To establish compliance, every employer must maintain copies of the written notice furnished to employees that are signed and dated by the employer and by the employee.

In addition, there are several other important changes to Washington, D.C.'s wage and hour laws that will take effect on February 26, 2015. Some of the more important changes include:

- Requiring that all employees, exempt and non-exempt, must be paid at least twice a month and must be paid one business day after an involuntary termination;
- Allowing employees to file class actions for violations of certain wage and hour provisions if they simply establish "similar" questions of liability and seek "similar relief;
- Presuming that retaliation occurs if an adverse employment action is taken within 90 days of certain protected activity. The presumption can only be overcome by "clear and convincing" evidence; and
- Allowing for treble damages for certain violations of the Minimum Wage Revision Act.

We recommend that employers review their existing policies and procedures to ensure compliance with these wage and hour laws. If you need assistance, please contact your Vorys lawyer.

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[1] The Act places even more restrictive requirements on temporary staffing agencies and, in some cases, provides for joint liability for the temporary staffing agency and the entity using the services of the temporary staffing agency. Employers should contact their Vorys lawyer if they are using temporary employees in Washington D.C.