



EMPLOYMENT ALERT

OCTOBER 2009

NYS Statutory Changes Mandate Written Notice of Pay Rate, Establish Discrimination Fines & Make Domestic Violence Victims a Protected Class

H E R R I C K

An amendment to New York State law requires for the first time that all employers give employees written notice of their pay and overtime rates. The amendment to the state's labor law goes into effect October 26, 2009, covering all employees hired on or after that date.

Meanwhile, two other recent changes to New York law establish fines and penalties for discriminatory employment practices and add domestic violence victims to the list of protected classes.

Written Notice Of Pay

Starting October 26, all employers in New York will be required to give new hires written notice of their rate of pay, their overtime rate if applicable, and their regular payday. The written notice must be given at the time of hiring and requires that employers obtain new employees' written acknowledgement that they received written notice.

Before the state legislature amended New York Labor Law §195(1), no written notice was required.

Fines For Discrimination, Protection For Abuse Victims

The legislature also amended New York State Human Rights Law to provide for civil fines and penalties of up to \$50,000 for unlawful discriminatory conduct, and up to \$100,000 for willful, wanton or malicious discrimination, that occurred on or after July 6, 2009. These penalties are in addition to possible compensatory damages and other relief available under the law.

The legislature is also considering amendments that would allow for punitive damages and attorneys' fees, both currently unavailable. (Punitive damages are, however, available to individuals who bring successful claims under the New York City Human Rights Act and Title VII of the Civil Rights Act.)

The legislature also established, for the first time, that domestic violence victims are a protected class, prohibiting New York employers from discriminating against them in employment matters. The law defines domestic violence victims as anyone who is a victim of a family offense under New York's Family Court Act, including disorderly conduct, harassment, stalking, reckless endangerment or assault by family members, including spouses and former spouses.

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What This Means To You

To ensure compliance with the new written notice requirements, employers should, by October 26:

- Review and, if necessary, amend new-hire material.
- Prepare a standard written form for individuals hired on or after October 26 that advises new hires of their pay rate, overtime rate, and pay date, and includes a section for a signed acknowledgement, to be maintained in the employer's records.
- Consider adding these provisions and an acknowledgment form to offer letters and employment agreements.
- Conduct an employee audit if you are unsure whether any of your employees are properly deemed exempt from receiving overtime pay. This is a prudent way to avoid penalties and costly lawsuits by employees seeking overtime.

Regarding the recent amendments to the New York State Human Rights Law, employers should:

- Consider amending their employee handbooks, policies and procedures to include references to victims of domestic violence.
- Train their managers and human resources staff to ensure that they are aware of the protections now afforded to victims of domestic violence and are prepared to address workplace issues involving such individuals.

For more information on this issue or other employment matters, please contact **Mara B. Levin** at **mlevin@herrick.com** or (212) 592-1458 or **Carol Goodman** at **cgoodman@herrick.com** or (212) 592-1465.

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