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CLIENT ALERT

**AMENDMENTS INCREASE PENALTIES AND
EXPAND COVERAGE OF NEW YORK WAGE AND HOUR LAWS**

On August 26, 2009, Governor Paterson signed legislation that provides for five significant amendments to the New York State Labor law ("Labor Law"). The amendments will take effect November 24, 2009.

1. Five-fold Increase In Penalties for Retaliation Under the Labor Law

The legislation amends a law more than a half-century old by increasing the minimum penalty an employer may be subject to for retaliation from \$200 to \$1,000. The maximum penalty has similarly been increased from \$2,000 to \$10,000.

2. Expanded Categories of Retaliation

These amendments also identify new categories of unlawful retaliatory conduct. Under the amended law, employers may not discharge, penalize or discriminate against employees because:

- an employee has provided information to the Commissioner of the Department of Labor or his authorized representative;
- an employee otherwise exercised rights protected under the Labor Law;
- the employer has received an adverse determination from the Department of Labor involving the employee.

These new grounds supplement the prior law that had made it unlawful to retaliate against an employee for:

- making a complaint to an employer regarding a possible Labor Law violation;
- instituting a proceeding under the Labor Law against an employer;
- testifying in an investigation initiated under the Labor Law.

3. New Basis for Recovery of Liquidated Damages for Wage Underpayment

Employees found to be underpaid are now entitled to liquidated damages, “unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law.” Under the prior standard, liquidated damages would only be awarded if the employee demonstrated that the employer’s underpayment was willful. Under the new law, the employer now bears the burden to demonstrate that the underpayment came despite the employer’s good faith effort to comply with the law. The amount of liquidated damages an employee may be entitled to remains unchanged at twenty-five percent of the total of underpayments found to be due to the employee.

4. Employees May Now Recover Wages through Administrative Hearings

The Commissioner of Labor is now empowered to initiate administrative proceedings on behalf of an employee to recover underpaid wages or liquidated damages. Previously, employees could only recover unpaid wages through a civil action against their employer.

5. Expansion of Liability for Retaliation Under the Labor Law

Officers and agents of limited liability companies and partnerships will now be subject to liability for retaliation under the Labor Law.

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If you should have any questions regarding these important changes to the New York State Labor Law, please contact us.

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