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LABOR & EMPLOYMENT ALERT

ALERT

UPDATED: NEW YORK EMPLOYERS – MINIMUM WAGE INCREASES AND OTHER REMINDERS FOR THE NEW YEAR

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As we approach the end of the year, it is important to remind New York employers about a few legal requirements that will impact the New York business community in January 2014. Failure to comply with these requirements could subject an uninformed employer to substantial liability.

Minimum Wage Increases

Effective December 31, 2013, the minimum wage in New York will increase from $7.25 per hour to $8.00 per hour. This means that employers must make changes to their payroll prior to New Year's Day. Further, in order to be classified as exempt from overtime, in addition to satisfying the duties requirement for exempt status, effective December 31, 2013, most exempt employees must be paid at least $600 per week.

For those employers covered by New York's Hospitality Wage Order, the tipped minimum wages for food service and non-food service (e.g. valets, bathroom attendants, coat check personnel) employee will respectively remain at $5.00 per hour and $5.65 per hour. However, the overtime rate for such employees will change. Effective December 31, 2013, assuming such employees only receive the tipped minimum wage and tips, the overtime rate for food service workers will be $9.00 per hour and the overtime rate for non-food service workers will be $9.65 per hour.

New York is not the only state in which the minimum wage will be increasing in the new year. For example, as the below chart indicates, effective January 1, 2014, the minimum wage will be increasing in a number of other states as well, including the following (this list is not exclusive; accordingly, please check your specific jurisdiction):

State	Current Minimum Wage	Current Tipped Minimum Wage	Minimum Wage Effective January 1, 2014	Tipped Minimum Wage Effective January 1, 2014
Arizona	$7.80	$4.80	$7.90	$4.90
Colorado	$7.78	$4.76	$8.00	$4.98
Connecticut	$8.25	$5.69 ($7.34 for bartenders)	$8.70	$5.69 ($7.34 for bartenders) (no change from 2013)
Florida	$7.79	$4.77	$7.93	$4.91
Missouri	$7.35	$3.68	$7.50	$3.75
Montana	$7.80	$7.80 (no tip credit)	$7.90	$7.90 (no tip credit)
New Jersey	$7.25	$2.13	$8.25	$2.13 (no change from 2013)
Ohio	$7.85	$3.93	$7.95	$3.98
Oregon	$8.95	$8.95 (no tip credit)	$9.10	$9.10 (no tip credit)
Rhode Island	$7.75	$2.89	$8.00	$2.89 (no change from 2013)
Vermont	$8.60	$4.17	$8.73	$4.23
Washington	$9.19	$9.19 (no tip credit)	$9.32	$9.32 (no tip credit)

Some municipalities such as San Francisco, California and Albuquerque, New Mexico have minimum wages that are higher than the state minimum wage; accordingly, it is prudent for employers to consult with counsel to determine if the minimum wage is increasing in the city and/or state in which the business operates.

Notice of Rate of Pay

Pursuant to New York's Wage Theft Prevention Act (WTPA), between January 1 and February 1 of each year, New York employers must provide a "Notice of Pay" form to all employees, regardless of their position or role within the organization. The notice must contain the following information:

- The employee's normal rate(s) of pay and the basis thereof (hourly, shift, weekly, salary, etc.);
- If applicable, the employee's overtime rate of pay;
- The employee's regular pay day;
- Any allowances claimed against the minimum wage (e.g., tip credit, meal credit, lodging allowance, etc.);

- The name of the employer (including any "doing business as" name);
- The address of the employer's main office, and a mailing address (if different); and
- The employer's telephone number.

The written notice must be signed by both the employer and the employee and must be retained by the employer for at least six years.

The New York Department of Labor (NYDOL) has issued sample Notice of Pay forms that employers may use. Although employers are not required to use the NYDOL forms it is recommended that they do so in order to ensure full compliance with New York law. The NYDOL sample forms can be obtained from the NYDOL's website, here.

In addition, the notice must be provided in both English and the employee's native language (if not English), provided the NYDOL has created a Notice of Pay form in the employee's native language. Currently, the NYDOL has issued forms in English, Spanish, Chinese, Haitian Creole, Korean, Polish and Russian, which are available on the NYDOL's website.

The WTPA also requires employers to provide notice to employees whenever there is a change in the employee's rate of pay. For all employers outside of the hospitality industry, the NYDOL has opined that as long as the new rate of pay is referenced in the employee's next pay stub, employers do not need to provide a new Notice of Pay as a result of the increase in the minimum wage. Unfortunately, hospitality employers are not so lucky. Because of the language of the Hospitality Wage Order, hospitality employers must provide a Notice of Pay form to those employees who are affected by the increase to the minimum wage (including all tipped employees) on or prior to December 31, 2013 as well as in January 2014. However, Fox Rothschild and the New York City Hospitality Alliance are working with the NYDOL to try and obviate the need for issuing two Notice of Pay forms in such a short period.

New York City Employers – Pregnancy Accommodation

On October 2, 2013, Mayor Michael Bloomberg signed into law an amendment to the New York City Human Rights Law (CHRL) that was unanimously passed by the New York City Council. The law requires employers with at least four employees within the City of New York to provide reasonable accommodations to pregnant employees. The law takes effect on January 30, 2014.

Under the amendment, employers must provide "reasonable accommodations to pregnant women and those who suffer medical conditions related to pregnancy and childbirth. Examples of such reasonable accommodations that are specifically referenced in the amendment include providing extra bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time and assistance with manual labor.

The amendments states that "[i]t is not the intent of the [New York City] Council to require such accommodations if their provision would cause an undue hardship in the conduct of an employer's business. Employers who want to take advantage of this exception would have the burden of proving that a proposed accommodation is not reasonable because it creates an undue hardship. Factors that are to be considered in determining whether there is an undue hardship on the employer include:

- The nature and cost of the accommodation;
- The overall financial resources of the facility at which the employee works;
- The number of persons employed at the facility where the employee works;
- The effect on expenses and resources or the impact of the proposed accommodation upon the operation of the facility;
- The overall financial resources of the employer;
- The overall size of the employer with respect to the number of persons it employs and their location; and
- The type of operation or operations of the employer, including the composition, structure and the functions of its workforce.

In addition, employers must provide notice to employees about their right to be free from discrimination in relation to pregnancy, childbirth and related medical conditions. This notice is to be "in a form and manner to be determined by the [New York City Human Rights] Commission" and must be provided to all employees within 120 days after January 30, 2014 as well as all new employees at the commencement of employment. We are waiting for the New York City Commission on Human Rights to draft sample notices, but in the meantime it would be prudent for employers to amend their employee handbooks to reflect this change in the law.

Employees who believe that their employer has violated this amendment to the CHRL can file a complaint directly in court or with the New York City Human Rights Commission. If a court or the Commission determine that the employer has violated the amendment, the employer could be liable for back pay, front pay, compensatory damages, punitive damages, attorneys' fees and costs. Accordingly, employers should work with counsel to ensure that they provide reasonable accommodations to pregnant employees and otherwise comply with the CHRL.

For more information about this Alert, please contact Carolyn D. Richmond at 212.878.7983 or crichmond@foxrothschild.com, Glenn S. Grindlinger at 212.905.2305 or ggrindlinger@foxrothschild.com or any other member of Fox Rothschild LLP's New York Labor & Employment Department.

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