
LEGAL ALERT

Notice Deadline Looming Under NY Wage Theft Protection Act

Employers with operations and employees in New York State should by now be aware that the first notice to all employees regarding their pay status, required by the N.Y. Wage Theft Prevention Act (WTPA), must be given by January 31, 2012, and annually from now on. If you have not given these notices by now, you should have plans to do so before the end of the month. Fisher & Phillips described the requirements imposed by the WTPA in an [Alert](#) that was distributed in April 2011.

While giving the required notices concerning wage and salary information is an absolute requirement, employers should also realize that doing so may well raise additional issues that have not been discussed as widely as the specific legal requirement that employers provide the notices. Employees who receive a written notice about their pay can probably be counted on to discuss with other employees at least the fact that they received the notice. Some employees will probably discuss the details included in the notices – “comparing notes,” so to speak, about their relative compensation with their fellow employees.

Employers should remember that, much as they might prefer that individual employee compensation remain confidential, an employer-promulgated rule, whether written or oral, that prohibits employees from discussing their pay or benefits with co-workers is unlawful under the National Labor Relations Act (NLRA). It is also important to note that the NLRA applies in both union and non-union work places. It grants private sector employees the right to engage in, or refrain from, what the law calls “protected concerted activity” relating to their terms and conditions of employment. Wages clearly falls into that broad category.

The National Labor Relations Board (NLRB) – the agency that enforces the NLRA – has held that those rights include, generally, a right by one or more employees to share and discuss information about wages, salaries, benefits and other working conditions with other employees. You may not adopt or enforce any policy that restricts or bans such discussions. Even a policy stating that the company considers individual compensation



information to be confidential could be deemed unlawful by the NLRB because employees could understand it to preclude discussions with co-workers about wages and other working conditions.

We suggest that you review your policies and personnel handbooks to check for language that either explicitly or implicitly prohibits wage or salary discussions among employees, since any such language would likely violate the NLRA. And you may also want to review the law with their managers and supervisors, lest one of them react negatively to hearing employees discuss wage or salary information with co-employees in connection with the WTPA notice.

If you have questions related to the notice required by the WTPA or any of your policies that might be implicated by giving the notice on this Alert, contact your regular Fisher & Phillips attorney or any attorney in Fisher & Phillips' New Jersey office, at 908-516-1050.

This Legal Alert provides information about a specific state law requirement. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.