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To: All Employer/Clients and their CPA's of Altshuler & Spiro

From: Bruce J. Altshuler/Jamie K. Kleinman

Date: 3/8/12

Re: New Wage Theft Protection Act, 2011

Similar to "wage theft" statutes recently enacted in other states (New York, Maryland, Illinois and New Mexico), on October 9, 2011, Governor Brown signed into law Assembly Bill 469, known as the Wage Theft Protection Act of 2011 (the "Act"). The Act which went into effect on January 1, 2012, amended and added new provisions to the Labor Code, creating additional notice and record keeping requirements that employers must comply with.

I. Labor Code §2810.5:

Private employers are now required to provide to all new, nonexempt employees with a written notice that contains detailed wage information. This information must be provided at the time of hire and in the language the employer normally uses to communicate employment-related information to the employee. Information that must be disclosed includes:

- **The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.**
- **Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.**
- **Regular payday designated by the employer.**
- **Name of the employer, including any "doing business as"/"dba" names used by the employer.**
- **Physical address of the employer's main office or principal place of business, and a mailing address, if different.**
- **Telephone number of the employer.**
- **Name, address, and telephone number of the employer's workers' compensation insurance carrier.**

The Department of Industrial Relations-Division of Labor Standards Enforcement (DLSE) has created a template or a form of the notice containing the required information. A blank copy of the DLSE's Notice to Employee form is enclosed. We have also enclosed a completed sample of the Notice for you to use as reference, as well as instructions for completing your own Notice.

As the employer, you have the right to modify this template, and use your own stand-alone form, so long as your form contains all the information required by the law, including all of the information contained in the Notice. It is important to note that information may not be eliminated from the DLSE's Notice. As such, we recommend using the DLSE's form, including any additional specific information either directly on the form or attached on a separate form, and referenced in the Notice.

Additionally, while Labor Code §2810.5 does not require that existing employees receive the same written disclosure, an employer is required to notify all employees (existing and new hires) in *writing* of any changes to the information contained within Labor Code §2810.5 within seven (7) calendar days.

The Act does not apply to exempt employees (e.g., union, state employees), however, if there is ever a challenge to the employee's classification and the employee is found to be non-exempt, increased penalties could apply. Based upon the strict requirements now enacted into law, we strongly recommend having *all* employees receive and complete the Notice provided by the DLSE¹, even though the form is only mandatory for new employees hired after January 1, 2012.

II. Changes to the Labor Code:

The Act amended several sections of the Labor Code (Labor Code §98, 226, 240, 243, 1174 and 1197.1) and added new requirements (Labor Code §2005, 1194.3, 1197.2 and 2810.5). These changes subject employers to significantly increased penalties and damages for non-compliance. Some of the specific changes to the Labor Code are as follows:

Labor Code §98: In addition to wages and penalties for failure to pay minimum wage, the Labor Commissioner is now authorized to collect **liquidated damages**. Liquidated damages are a form of monetary compensation "in an amount equal to the wages unlawfully unpaid and interest thereon." Previously, liquidated damages were only available in civil court actions.

Labor Code §226 and §1174: Employers are required to keep a copy of both an employee's wage statement and a record of deduction, rather than just one or the other, for at least **three (3) years**.

¹As referenced on the Instructions form, the Notice must be given in the language that the employer normally uses to communicate employment-related information to the employee. The Notice is currently available as a pdf or word doc in English, Vietnamese, Chinese, Korean, Spanish and Tagalog at the DLSE's website http://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html

Labor Code §243: If an employer had been convicted of violating a wage law for the second time within ten (10) years, or has failed to satisfy a judgment for the nonpayment of wages, or both, the court may issue a **temporary restraining order** prohibiting the employer from doing business within California for 30 days unless the employer posts a bond to secure compliance or to satisfy the judgment for nonpayment of wages.

Labor Code §1197.2 makes it a misdemeanor to avoid a wage judgment and imposes heavier fines.

Postings

Unchanged by the Act but rarely fully complied with, employers should remember that they are required to meet workplace posting requirements. All employers must post, including but not limited to the Industrial Welfare Commission wage orders, minimum wage notice, payday notice, safety and health protection on the job notice, emergency phone numbers, notice and information of workers' compensation carrier coverage, whistleblower protections, and notice of unemployment insurance benefits. A copy of the posting requirements and who must post in California is attached. Additional posting may be required based upon the number of employees and type of business. A majority of the posting forms required can be downloaded at no charge directly on the internet at Department of Industrial Relations's web-page <http://www.dir.ca.gov/wpnodb.html>. If more than five (5) copies of any posting is required, you may fax your order to (415) 703-4807.

Posting must be placed in an area frequented by employees which can be read during the workday, and need to be replaced when its content changes (updates posted on the DLSE web-page). As the employer, you should periodically check the DIR website for updates. We have had a few clients who have been cited for failure to post. As such, it is extremely important that all applicable notices be properly posted.