Moritt Hock & Hamroff LLP
ATTORNEYS AT LAW
STRENGTH IN PARTNERSHIP

ALERT

January 2014

EMPLOYMENT LAW ROUNDUP:
NEW OBLIGATIONS ON NEW YORK EMPLOYERS IN 2014

In 2014, new obligations are imposed on employers by the following changes in the law: New York City's Earned Sick Time Act (effective April 1, 2014), new regulations from the New York State Department of Labor ("DOL") regarding wage deductions (effective October 9, 2013), changes to the New York City Human Rights Law requiring reasonable accommodations to pregnant employees (effective January 30, 2014) and increases to the minimum wage (effective December 31, 2013).

Earned Sick Time Act

Pursuant to New York City's Earned Sick Time Act (the "Act"), beginning April 1, 2014, most New York City private employers (many manufacturing employers are exempt) that employ at least 20 employees must provide all employees employed for more than 80 hours in a calendar year ("Eligible Employees") up to five days paid sick leave per year. Beginning October 1, 2015, employers with between 15 and 19 employees must also provide paid sick leave for all Eligible Employees. The Act, however, does not require those employers that provide their employees enough paid vacation time or paid time off to provide additional paid sick leave to their employees, as long as any paid time off may be used for purposes set forth in the Act. Under the Act, all employees, whether or not they are Eligible Employees, are entitled to unpaid sick time for the same purposes for which Eligible Employees can take paid sick leave.

Under the Act, Eligible Employees accrue sick leave at the rate of one hour of paid leave for every 30 hours of work, beginning from the employee's date of hire or on the date the law becomes effective, whichever is later, up to a total of 40 hours in a calendar year. However, employers are not required to let Eligible Employees use their Sick Leave until they have been employed for at least 120 days (or on the 120th day following April 1, 2014). Employers may require Eligible Employees to take sick leave in minimum increments of four hours, and may require that they provide up to seven days advance notice when the need to use sick leave is foreseeable. (When the need to use sick leave is not foreseeable, employers may require that notice be given as soon as practicable.) Finally, when an Eligible Employee is absent for three or more consecutive workdays, employers may request reasonable documentation justifying the paid sick leave.

Eligible Employees may take paid sick leave for the following purposes: (1) an employee's own mental or physical illness, injury or health condition; or (2) to care for an ill family member (a spouse, domestic partner, child or parent) or care for a child when the child's regular childcare provider or school has been closed due to a public health emergency. If an Eligible Employee does not use paid sick leave earned in one calendar year, the unused time can be carried over into the next calendar year. However, the Act does not require an employer to give an Eligible Employee more than 40 hours of paid sick leave in one calendar year.

The Act does not apply to the following types of workers: (1) work-study students; (2) independent contractors; (3) seasonal workers; (4) certain workers in the manufacturing sector and some hourly occupational, speech and physical therapists; and (5) certain unionized employees covered by a collective bargaining agreement, so long as the Act's provisions are expressly waived in the collective bargaining agreement, and the agreement provides a comparable leave benefit. For unionized employees in the construction and grocery industries, there is no requirement that a collective bargaining agreement provide a comparable benefit to the employees. However, the Act still must be expressly waived in the collective bargaining agreement in order for the Act not to apply.

Employers must provide all new hires at the start of their employment with written notice in both English and in the employee's primary language of the employee's right to paid sick time. The New York City Department of Consumer Affairs (the "Department") is tasked with drafting a form notice, which must include reference to the employee's right to be free from retaliation and to bring a complaint to the Department. Failure to provide such notice may subject employers to a civil fine of up to fifty dollars for each employee not given appropriate notice. Employers must also retain records documenting the employer's compliance with the requirements of the Act for a period of two years or be subject to penalties. Finally, the Act prohibits an employer from retaliating against employees who exercise their rights under the Act.

Deductions From Wages

For decades, Section 193 of the New York Labor Law limited wage deductions to certain enumerated purposes for the benefit of the employee, such as for health care insurance, charitable deductions, deferred income or union dues, and then only if the employee authorized the deduction in writing.

In 2012, Governor Cuomo signed a bill that removed some of the more restrictive provisions of Section 193. The revised statute permits employers to recover wage overpayments due to mathematical or clerical errors, and to repay an advance of wages to an employee. The 2012 amendment to Section 193 also broadened the list of wage deductions permitted with the employee's consent to include, among other things, fitness center/health club/gym membership dues; discounted parking or certain items to permit an employee to use mass transit; day care (or before-and after-school care) expenses; purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least 20% of the profits from the event are contributed to the charity; and certain other purposes set forth in the statute.

Effective October 9, 2013, the DOL issued new regulations (the "Regulations") that apply to Section 193. The Regulations state that no deductions from wages are permitted except:

- Deductions "specified by, or similar to those specified by" Section 193, authorized by and for the benefit of the employee.

- Deductions for the "recovery of overpayments" or "for the repayment of wage advances," but only if made in the manner required by the Regulations.

- Deductions "made in accordance with any law, rule or regulation issued by any governmental agency."

This last category requires clarification. The Regulations explain that deductions made in accordance with law include but are not limited to "deductions for recovery of overpayments, for repayment of salary advances, and for pre-tax contribution plans approved by the IRS; wage garnishments and levies for child support and taxes, which may be involuntary as long as they are made in accordance with the statutes and regulations authorizing them."

In contrast, deductions for the repayment of loans not made in accordance with the Regulations are prohibited. While a detailed review of the repayment requirements is beyond the scope of this Client Alert, the Regulations impose limits as to the timing, frequency and duration of deductions, the method of recovery (e.g., procedures for wage deductions or other, separate transactions to recover overpayments) and notice requirements to the employee.

Deductions for the repayment of loans are only permitted if there is written agreement for it prior to the advance. Deductions from wages to recover an advance are permitted under the Regulations only if, among other things, the employer and employee reached an agreement "to the timing and duration of the repayment deduction in writing before the advance is given." In addition, deductions for the repayment of loans are only permitted if the employer provides the employee with an opportunity to "dispute the overpayment and terms of recovery, and/or seek a delay in the recovery of such overpayment." If an employee objects in writing to a deduction, the employer must respond in writing, and "shall cease deductions until such reply has been given and any applicable adjustments made." An employer's failure "to afford this process to the employee will create the presumption that the contested deduction was impermissible."

Reasonable Accommodation Obligation Under New York City Human Rights Law

Effective January 30, 2014, an amendment to the New York City Human Rights Law (the "Amendment") now requires employers to provide reasonable accommodation to employees who are pregnant or have a medical condition related to pregnancy or childbirth. Such accommodations may include, but are not limited to, unpaid medical leave, light workload and/or shorter hours, or changes to the employee's work environment.

Minimum Wage Increase for 2014 and WTPA Compliance

Effective December 31, 2013, New York State's minimum wage increased from $7.25 to $8.00 an hour. Employers should note that the Wage Theft Prevention Act (the "WTPA") forms must be completed in January of 2014.

Implications For Employers

Employers should review their employment policies and practices to come into compliance with these new laws. For example, New York City employers must make

Moritt Hock & Hamroff LLP
ATTORNEYS AT LAW
STRENGTH IN PARTNERSHIP

ALERT

sure that they are properly accruing paid sick leave for Eligible Employees and unpaid sick leave for all employees, and providing proper notice to new hires. Further, employers who may have liberalized their practices regarding wage advances to employees following the 2012 changes to Section 193 will want to make sure that they do not jeopardize their legal right to recoup these advances by failing to comply with the Regulations. Finally, employers should make sure all employees are being paid at least $8.00 an hour beginning December 31, 2013 and that they complete the WTPA forms in January 2014.

The New Year brings with it for New York employers the challenge of complying with new and pre-existing employment laws, including the New York City Earned Sick Time Act, Section 193 of the New York State Labor Law, the WTPA and the minimum wage. Moritt Hock & Hamroff LLP can assist you in understanding and addressing these issues, including reviewing your employee handbook and other employment practices.

◆ ◆ ◆ ◆ ◆

This Alert is published solely for the interests of friends and clients of Moritt Hock & Hamroff LLP for informational purposes only and should in no way be relied upon or construed as legal advice.

This Alert was written by A. Jonathan Trafimow.

Mr. Trafimow, a partner with the firm, heads the firm's employment and labor practice where he represents employers in all areas of workplace discrimination, retaliation, harassment and civil rights claims, and class actions. He also routinely advises employers on compliance with local and federal employment laws and regulations.

John P. Hauser, a law clerk with the firm, assisted with the research and preparation of this Alert.

Any questions concerning the matters raised in the Alert should be addressed to Mr. Trafimow. He can be reached at (516) 873-2000 or by email at jtrafimow@moritthock.com