

New York Labor Law Amendments Put LLCs and Their Members on the Front Line

The New York State Legislature passed a bill on June 19, 2013, intended to update New York's labor law, including the Wage Theft Protection Act (WTPA). The bill (A 8106-C, S5885-B), signed into law by Governor Andrew Cuomo on December 29, 2014, became effective on February 25, 2015. Key provisions of the amendments concerning New York limited liability companies and successor employers are listed below.

PERSONAL LIABILITY FOR CERTAIN LLC MEMBERS FOR WAGES

The amendments to the WTPA appear to extinguish at least one of the benefits of choosing a limited liability company (LLC) over a corporation because one provision essentially mirrors a long-standing provision of New York's Business Corporation Law (§ 630), which imposes liability on the 10 largest shareholders of a closely held New York corporation. The amendments include a provision making the 10 members with the largest percentage ownership interest in an LLC jointly and severally liable for the debts, wages, and salaries owed to the LLC's employees for their services to the LLC. Employees may also recover liquidated damages, penalties, interest, and attorney's fees or costs incurred in successfully pursuing such claims. For an employee to recover wages from an LLC member, the employee must provide written notice to any such member within 180 days of the employee's termination. In addition, any action to collect unpaid sums from an LLC member must commence within 90 days after the return of an execution unsatisfied against the LLC following a judgment recovered against it. Because members are jointly and severally liable, they may be required to pay more than their pro rata share of wages or salaries due to the employee but are eligible for a pro rata contribution from other liable members.

NEW SUCCESSOR EMPLOYER LIABILITY

Another provision aims to prevent entities from forming "alter ego" companies to avoid their liabilities. The new law states that an employer with ownership, employees, products, and customers similar to those of a prior employer may remain liable for its predecessor's violations of New York Labor Law. A successor employer will be deemed the same employer as its predecessor where the employees of the new employer are engaged in "substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the subsequent employer has substantially the same production process, produces substantially the same products and has substantially the same body of customers."

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