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MEMORANDUM

DATE: December 31, 2014

TO: Hotel Association of New York City, Inc.
Labor Relations Members
General Manager, Human Resource Directors

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: Amendments to the Wage Theft Prevention Act

On December 29, 2014, Governor Cuomo signed a bill to amend the Wage Theft Prevention Act. The amendments will become effective in sixty (60) days on February 28, 2015.¹

Repeal of Annual Notice

The amendments repeal the requirement that employers issue annual wage rate notices in English and in the employee's primary language to all employees between January 1 and February 1. Employers are not required to give such notice by February 1, 2015. Employers should continue to retain employees' signed certification of receipt from 2010 through 2014 for six years.

What Remains Unchanged: New Hire, Earning Statements and Rate Change Notices

The amendments do not change existing requirements that employers issue a wage rate notice to employees in English and their primary language within ten days of hire. Failure to do so results in an increased penalty (see below). The requirements regarding earnings statements, wage changes or change in status remain the same. Therefore, Hotels will be required to provide

¹ The Wage Theft Prevention Act and amendments thereto apply to all employers in New York State regardless of the number of employees.

wage statements reflecting changes in wage rates seven (7) days prior to the IWA July 1st annual wage increases.

Increased Penalties

The amendments increase existing penalties to employers. The most significant penalties are:

- an increase for failure to provide timely notice to \$50 per day from \$50 per week for delayed notice, and \$250 per day from \$250 per week for failure to give notice to a maximum of \$5,000 from \$500;
- penalties of \$1,000 to \$20,000 maximum for repeat offenders;
- successor employers are now liable for violations committed by the prior employer;
- the Commissioner may investigate violations, including retaliation against an employee reporting wage violations for a six (6) year period;
- the Commissioner of Labor is required to assign money due for certain violations to an employee;
- require that if a contractor or subcontractor is found to have violated the Act, it will be required to notify all of its employees and subcontractor's employees of the violations in an attachment to the employee's paycheck.

Who is Liable

The amendments also make the ten (10) members with the largest percentage of ownership interest in a limited liability company ("LLC") personally liable for all wages or salaries and benefits payable by an employer to or for the account of the employee including overtime, vacation, holiday and severance pay, employer contributions to pension or annuity funds as well as liquidated damages, penalties, interests, attorneys' fees or costs. The amendments require that before an employee can bring a charge against any of the ten (10) largest members of the LLC under the amendments, the members must be provided with 180 days' advance written notice.

Result of the Amendments

Because of the increase in penalties, potential for individual employee recovery and widening scope of liability we anticipate more litigation. Accordingly, employers are urged to review their procedures to facilitate compliance with the Wage Theft Prevention Act and all relevant wage and hour laws.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Lois M. Traub, Alexander Soric, Robert L. Sacks or Michael Lydakakis.

cc: Joseph E. Spinnato, Esq.
Geoffrey A. Mills, Chairman