

Dear Valued Clients and Business Partners,

Spring is in the air. Although the temperatures in New York are still quite cold, we are beginning to enjoy more sunshine as we approach warmer temperatures and longer daylight hours. In this issue, we focus on seasonal issues, including tax filing and reporting, daylight savings time, and holiday observances. We also discuss an important update to New York State labor law that imposes new notification and record-keeping requirements on employers with regard to wage payment and earnings records.

As always, if you have any questions about the information provided in this newsletter, or are in need of specific guidance and/or recommendations about related issues within your organization, please do not hesitate to contact us using our contact information on the last page of this newsletter.

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## Did you know?

The deadline for filing federal 2010 tax returns and paying any tax due is extended this year until April 18, 2011. Taxpayers will have until Monday, April 18 to file, because Emancipation Day, a holiday observed in the District of Columbia, falls this year on Friday, April 15. By law, District of Columbia holidays impact tax deadlines in the same way that federal holidays do; therefore, all taxpayers will have three (3) extra days to file this year. Taxpayers requesting an extension will have until October 17, 2011 to file their 2010 tax returns. State income tax returns are still due on April 15 (traditional Tax Day).

Daylight Saving Time starts on Sunday, March 13 and ends on Sunday, November 6. When local standard time is about to reach Sunday, March 13, 2011 at **2:00:00 AM**, clocks are turned **forward** one (1) hour to Sunday, March 13, 2011 at **3:00:00 AM** local daylight time instead.

## Earned Income Tax Credit

The Earned Income Tax Credit (EITC) is a refundable federal income tax credit for low to moderate income working individuals and families. When EITC exceeds the amount of taxes owed, it results in a tax refund to those who claim and qualify for the credit. To qualify, taxpayers must meet certain requirements and file a tax return, even if they do not have a filing requirement.

Employers are encouraged to provide guidance to their staff to help determine eligibility for the EITC. There are federal notification requirements that are satisfied by providing the IRS Form W-2, Wage and Tax Statement, which has the required information about the EITC on the back of Copy B. Additionally, some states, including CA, IL, LA, NJ, TX, and VA, maintain notification requirements for employers; however, these requirements have most likely been satisfied through your payroll provider and year-end tax documents.

In addition to the federal EITC, many states have enacted an EITC at the state level. For links to state and local government EITC information, please visit the IRS web site at <http://www.irs.gov/individuals/article/0,,id=177866,00.html>.

Tax laws have recently changed so that some individuals who did not qualify last year may qualify this year; therefore workers should check each year for eligibility. The IRS has created an online assistance program to help workers determine their eligibility. The online assistance program can be found by following this link: <http://www.irs.gov/individuals/article/0,,id=130102,00.html>.

For more information regarding the EITC, including employer responsibilities and sample notices, please visit the IRS website at: [www.irs.gov](http://www.irs.gov).

## New York Enacts Wage Theft Prevention Act

The New York Wage Theft Prevention Act (the "Act") was signed into law by Governor Paterson in mid-December 2010 and takes effect April 12, 2011. The Act amends the New York Labor Law to provide new protections for employees in New York, as well as stiffer penalties for employers who fail to pay their employees overtime or the minimum wage.

The Act requires employers to disclose broader information to their employees more frequently, and to preserve certain records for a longer period of time. The Act also significantly expands the remedies (liquidated damages, criminal penalties, and/or otherwise) for violations of the New York Labor Law and Minimum Wage Act, such as underpayment in wages, failure to provide the required notice, and failure to furnish necessary documents.

### Notification and Record-keeping Requirements

The New York Labor Law already requires employers to notify all newly hired employees at the time of hiring, in writing, of their regular rate of pay, regular pay day, and overtime rate of pay if they will be eligible for overtime. However, as of April 12, 2011, employers will be required to provide their employees, at the time of hire, and on or before February 1 of each subsequent year, in writing in English and in the language identified by the employees as their primary language, a notice containing:

- the rate or rates of pay and basis thereof
- the regular pay day
- how the employee will be paid (hour, shift, week, etc.)
- allowances claimed as part of the minimum wage

- the employer's name and any "doing business as" names used by the employer
- the employer's address and telephone number
- the regular hourly and overtime rate of pay for employees eligible for overtime.

Employers must also obtain a signed and dated written acknowledgement in English and in the employee's primary language of receipt of this notice each time the employer provides such notice. These written acknowledgements are to be maintained for six (6) years. Under the Act, the notice must be updated and provided again to the employee at least seven (7) calendar days prior to any changes to the employee's pay or other terms contained in the notice (unless such changes are reflected in the employee's wage statement).

According to the Act, the NY Commissioner of Labor will prepare templates for notices complying with these requirements; however, they have not been made available yet.

The Act further requires employers to furnish each employee with a statement with every payment of wages, listing the following information:

- dates of work covered by that payment of wages
- the employer's name, address and phone number
- rate or rates of pay and basis thereof
- how the employee is paid (hour, shift, week, etc.)
- gross wages
- deductions
- allowances claimed as part of the minimum wage
- net pay

For employees eligible for overtime, the statement also must include the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked. The Act also increases the length of time an employer must preserve and maintain payroll records and/or pay statements to six (6) years.

### **Penalties and Damages**

The Act increases the amount of liquidated damages an employee can recover in cases where a violation is shown and the employer fails to prove that it had a good-faith basis for believing it was acting in compliance with the law. The Act also provides for the recovery of prejudgment interest and attorneys' fees in any civil action to recover unpaid wages brought by an employee. The new law also gives employees expanded protections against employers who have been found to have violated the law, but still fail to pay.

The Act imposes criminal and/or monetary penalties, including reasonable attorney fees, against employers who fail to pay minimum wage or overtime compensation, fail to provide the required notice of wages within ten (10) business days of the employee's first day of employment, fail to provide the required pay statement, or fail to maintain records.

### **Retaliation**

The Act also increases protections for employees who complain about employer violations, as well as for workers the employer believes has complained about violations. The Act permits the Commissioner to order additional remedies in the event of retaliation, specifically enjoining conduct, liquidated damages not to exceed \$10,000, reinstatement with back pay, and/or front pay instead of reinstatement.

## Celebrating Your Staff

As budgets remain tight, staffing continues to be streamlined, and workloads increase or remain challenging, companies are looking for creative ways to maintain staff morale and recognize efforts and contributions. The next couple of months offer a variety of opportunities to recognize your staff and bring a sense of appreciation and fun to the workplace.

### **March 4 - Employee Appreciation Day**

Employee Appreciation Day is held annually on the first Friday in March. It is an opportunity to recognize employees for their contributions to the success of the organization, to acknowledge employees for their dedication and commitment, and to recognize them for a job well done.

### **April 1 - April Fools' Day**

If you're at work on April 1, you might want to double-check that those enticing chocolates in the break room aren't made of rubber. Humor on the job can help build rapport, but it should never be mean-spirited or at the expense of others. Those planning to stage an office prank should keep it light and make sure it does not negatively impact productivity.

### **April 4 - National Employee Benefits Day**

National Employee Benefits Day acknowledges trustees, administrators, corporate benefits practitioners, and professional advisors for their dedication to providing quality benefits and the important role they play in their colleagues' well-being. This year National Employee Benefits Day has a special focus on Communicating Employee Benefits. We encourage you to use the day to evaluate your current communication efforts and to take time to educate your employees on the valuable benefits you offer.

### **April 24 - 30 - Administrative Professionals' Week/Day**

The International Association of Administrative Professionals (IAAP) spearheads Administrative Professionals' Week/Day. The 2011 observance of Administrative Professionals' Week is April 24-30 and Administrative Professionals' Day is April 27. Administrative Professionals' Week/Day is an opportunity for employers to recognize and celebrate the contribution of these key front-line employer representatives.

For more specific tips and creative suggestions regarding ways to celebrate any of the above-mentioned holidays, please contact Imageon Consulting.

## Religious Accommodation

Federal law under Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers with 15 or more employees from discriminating against an employee or applicant based on the individual's religion or based on his or her association with a person of a particular religion. In addition, Title VII requires that an employer provide reasonable accommodation for an employee's religious beliefs or practices, unless it would cause the employer an undue hardship. However, state laws in many states lower the 15 employee threshold. For example, New York Human Rights Law offers similar protection from religious discrimination and applies to all employers with four (4) or more employees.

Employers must reasonably accommodate employees' sincerely held religious beliefs or practices unless doing so would impose an undue hardship on the employer. Undue hardship may be claimed by an

employer in situations where accommodating an employee's religious practices would require more than ordinary administrative costs. Undue hardship also may be shown if changing a bona fide seniority system to accommodate one employee's religious practices denies another employee the job or shift preference guaranteed by the seniority system.

A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his or her religion. Flexible scheduling, voluntary substitutions or swaps, job reassignments, lateral transfers and modifications to workplace practices, policies and/or procedures are examples of how an employer might accommodate an employee's religious beliefs.

It is important for employers to be sensitive to individual employee's religious obligations regarding holiday observances. Employers should accommodate an employee's request for time off for a holiday observance if the accommodation does not require more than a de minimis cost or burden to business operations (i.e., does not create an undue hardship). Some courts have ruled that requiring employees to take paid or unpaid leave on days they wish to observe as personal religious holidays meets the test of reasonable accommodation. Many employers grant all employees one or two paid personal days or floating holidays each year for this purpose.

Several major religious holidays fall in April of this year, including Good Friday on April 22, Easter Sunday on April 24, and Passover beginning at sundown April 18 and ending on April 25. In consideration of requests for time off for the purpose of religious observance, be sure to comply with the protections offered under Title VII, including any scheduling adjustment that may be considered a reasonable accommodation.

Imageon recommends maintaining a formal written religious accommodation policy in a good-faith effort to inform staff of their rights and help protect the company from claims of religious discrimination under Title VII or applicable state law. For assistance in creating and/or implementing such a policy, or for specific guidance regarding the management of religious accommodation requests, contact Imageon Consulting or a qualified attorney in your state.

### Additional Information

This information is being provided to you as a courtesy. For specific information about how the information in this newsletter affects your business, please do not hesitate to contact us at:

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#### **Important:**

*This document has been prepared for information purposes only and provides practical information from the HR Management perspective concerning the subject matter covered. No part of this document should be taken as legal advice. While you may contact Imageon Consulting, Inc. regarding advice or services related to the information presented herein, you should consult a competent attorney in your state if you are in need of specific legal advice concerning any of the subjects addressed.*