

# STERLING NATIONAL BANK CPA BRIEF

## EARLY INTERVENTION: THE BEST REMEDY IN WAGE AND HOUR LAW MATTERS

Employers in New York face substantial exposure for violating existing wage and hour laws. Your clients are well advised to seek legal advice in order to avoid potentially devastating liability.

The Federal Fair Labor Standards Act and the New York State Labor Law govern the manner and means of how employees are paid. CPAs, based on their extensive client contact, are frequently the first to learn of wage and hour issues such as matters involving payment of the minimum wage (\$5.15 per hour in New York) correct payment of overtime (time and one half after forty hours of work in a workweek) and employees that are paid “off the books.”

Other major issues include: (1) employers’ failing to pay overtime to all “non-exempt” employees (simply paying someone a salary, as opposed to an hourly wage, does not render the employee “exempt” from the overtime laws); (2) misclassification of “employees” as “independent contractors” (an “independent contractor agreement” is not binding or dispositive), and; (3) falling to maintain proper wage and hour records as required by law.

As a professional, you should encourage your clients to address these issues proactively, with an attorney, when mitigating measures and corrective action can be taken. This is extremely important now because enforcement by the Department of Labor is on the rise, as are private lawsuits from current or former employees. Once that occurs, the facts have been set in stone and the question is often not whether monies are owed, but simply how much is owed.

The penalties for wage and hour law violations are severe and include double damages and recovery by a prevailing plaintiff of his or her attorneys’ fees. Moreover, the statute of limitations is long (six years under New York law), and a form of class action lawsuit is available for multiple plaintiffs. This is problematic because employers often do not have the

proper or even adequate records that they are required to maintain. Where that occurs, an employer may be precluded from challenging an employee’s assertions as to the amount of hours worked, and the amount of money paid. When the inquiry extends to all employees over the past six years, the potential liability often soars.

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