FREEMAN FREEMAN & SMILEY, LLP

EMPLOYMENT LAW BULLETIN

October 20, 2015

Specializing in Employment Law and Business Litigation

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New California Law Provides Employers With a Limited Window of Correction for Paystub Violations

California Labor Code § 226(a) has long required every employer to furnish each California employee, either as a detachable part of the paycheck, draft or voucher an accurate itemized statement in writing showing nine different items of information. While these requirements are not new, many employers still fail to meet two of the most basic items of information, i.e., the name and address of the legal entity that is the employer, and the inclusive dates of the period for which the employee is being paid.

On October 2, 2015, a new California law (AB 1506) became effective that amends the California Private Attorneys General Act ("PAGA") to give employers a limited right to "cure" these two violations. The remaining paystub requirements continue to be incurable.

The new law amends Labor Code § 2699 and provides an employer with 33 calendar days from the postmarked date of a PAGA letter to the California Labor & Workforce Development Agency ("LWDA") to cure these two violations before an employee may file a civil lawsuit under PAGA.

Employers should certainly review their paystubs to ensure that on a going-forward basis, they include all of the required information, i.e., (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under Labor Code § 515(a) or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in Labor Code § 1682(b), the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Labor Code § 201.3, the rate of pay and the total hours worked for each temporary services assignment.

Although not listed in § 226(a), employers should also be sure that the paystub or a document issued the same day as the paycheck, contains the paid sick leave information required by Labor Code § 246(h), i.e., how many days of paid sick leave the employee has available.

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Employers who use a dba or other fictitious name, abbreviations, logos or similar identifiers should double-check that the name and street address shown on the paystub is the full name of the employing legal entity, and that the street address shown is that of the employing legal entity. If a subsidiary is the legal entity that is the employer, the subsidiary's full legal name and street address should be on the wage statement; conversely if the parent corporation is the employing legal entity, then its name and street address should be shown. Companies that have "divisions" should consult legal counsel about what name and street address should be shown.

Proactive employers will promptly remedy any problems found with paystubs to be sure that future paychecks do not have these problems. Prudent employers will go one step further and, before they are under the 33-day pressure period, will cure any defects found. For the purpose of "curing" under the new law, the employer must be able to prove that it provided a fully-compliant, itemized wage statement to each aggrieved employee for each pay period for the preceding three-year period. Of course, if an employer receives an LWDA letter, it should take advantage of the 33-day cure period if it has not already remedied the violation.

An employer who receives an LWDA letter has the same 33-day period to give written notice by certified mail both to the aggrieved employee or representative and the LWDA advising that the alleged violation has been cured, and a description of the actions taken. If the alleged violation is not cured and the LWDA "cure letter" is not sent within the 33-day period, the employee may commence a civil action under PAGA.

An employer cannot avail themselves of the notice and cure provisions of the new law more than once in a 12-month period for the same violation(s) contained in the notice, regardless of the location of the worksite. This effectively means that an employer who wants to cure these violations should do so on a comprehensive basis and include all current and former employees within the 3-year limitations period.

*Written by **Teresa R. Tracy***

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