

Wage & Hour Law Update

NYS DOL Adopts Regulations Implementing State Law Limiting Employer's Right to Restrict Employee Discussion Regarding Wages

By Noel P. Tripp and Jeffrey W. Brecher on January 31, 2017

In October 2015, New York amended its equal pay law making it unlawful for an employer to prohibit employees from inquiring about, discussing, or disclosing their wages or the wages of other employees. N.Y. Lab. Law § 194(4). The law reflects the belief that if employees can openly discuss their wages (including knowledge regarding the wages of co-workers performing similar work), the equal pay law would be more fully implemented. "Policies adopted by employers that discourage or prohibit employees from sharing information about their earnings can contribute to unjust wage disparities going undetected," according to the memorandum submitted in support of the law.

But not every employee wants his or her wages discussed among co-workers. The law recognizes this, and permits employers to establish a written policy to set "reasonable workplace and workday limitations on the time, place and manner for inquiries," including limitations on the ability of an employee from discussing or disclosing the wages of other employees without their "prior permission." The law also contains an exception for those employees who, based on their job functions, have access to the wages of other employees (e.g., Human Resources professionals).

NYS DOL regulations effective February 1, 2017 (published in the NYS Register the same day as the effective date) implement these provisions. While largely parroting the statute, the regulations do explain that the law applies to *all* employees and explain that while an employer is permitted to issue a written policy prohibiting employees from discussing the wages of other employees without their prior permission, that "permission" means an "express, advance, authorization given voluntarily by the employee," which need not be in writing. Thus, although an employer may implement a written policy prohibiting employees from disclosing or discussing the wages of other employees without their prior permission, a co-worker may verbally provide such permission.

Employers should consider all applicable laws before implementing any written policy limiting employee discussion of wages as employees covered by the National Labor Relations Act already have the right to discuss terms and conditions of employment including wages for mutual aid and protection.

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