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TO: Clients, Colleagues and Friends of the Firm

FROM: Henry L. Goldberg, Esq.

RE: **Important Changes to the NYS Labor Law**

1. Effective February 24, 2008 – Required Prevailing Wage Notification
2. Effective July 18, 2008 – Mandatory Safety Course Certification

DATE: February 7, 2008

I. New Prevailing Wage Law Notice Requirement.

Effective February 24, 2008, all employers on public works projects in NYS must include on each employee's weekly pay stub, the prevailing wage classification and rate for that employee's particular work. The rate to be included on the pay stub is the applicable prevailing wage rate for the individual employee ("laborer, worker or mechanic"), not his actual rate of pay. In some instances, employees may be paid more than the prevailing wage rate.

If an individual is covered by more than one job classification within a payroll period, then each such classification and prevailing wage rate must be reported on the pay stub.

The prevailing rate is for direct labor only, not fringe benefits, unless such benefits are paid directly to the employee through a cash equivalent payment in the particular paycheck.

In addition, the new law requires the following annual notices:

- At the beginning of performance of every public works contract, and with the first paycheck after July first of each year, the contractor and every subcontractor shall notify all applicable employees, in writing, on the form to be prescribed by the NYS Department of Labor, of his right to be paid the prevailing wage and of the telephone number and address of the Department.
- This annual notice shall also inform each applicable employee of his right to contact the NYS Labor Department if he does not receive the proper prevailing wage or supplement.

If after investigation, the Commissioner of the NYS Department of Labor finds that a contractor, or subcontractor has: (A) failed to post any notice required, (B) failed to set forth the prevailing wage on the pay stub, (C) willfully posted the incorrect prevailing wage, or (D) willfully set forth the incorrect prevailing wage on the pay stub, the Commissioner shall assess the contractor, or subcontractor, a civil penalty of not more than \$50 upon the first finding of a violation, \$250 upon the second finding of a violation, and \$500 for each subsequent violation. In assessing the amount of the penalty, the Commissioner is required to give due consideration to the size of the employer's business, the good faith of the employer, and the gravity of the violation.

It is unclear from the statute what exactly the Department of Labor will consider a "violation". Does a violation relate to the entire week's payroll for an employer, or to each individual employee's paycheck? If a violation relates to individual payroll checks, contractors could be exposed to substantial civil penalties.

Since the good faith of the employer is a mitigating factor regarding the assessment of civil penalties, it is a good idea to take clear steps demonstrating your efforts towards compliance. You should consult with your payroll service provider or internal payroll management staff to discuss the new reporting requirements and to determine how those requirements can best be incorporated into your payroll system.

The New York State Department of Labor is currently developing a publication which will set forth further details. Once the publication is complete, it will be posted on the DOL's website: www.labor.state.ny.us.

II. New Mandatory Construction Safety & Health Course Certification

As of July 18th of this year, all workers on any public works project (state or municipal) in excess of \$250,000 must be certified as having completed a 10 hour U.S. Dept. of Labor OSHA – approved safety course. This safety requirement must be complied with whether the worker is employed by a general contractor, subcontractor or other entity doing, or contracting to do, the work contemplated by the contract. Further, for those covered under this new law, the 10 hour construction safety course must actually be completed prior to the performance of any on-site work.

The new law requires that all public works construction contracts after July 18, 2008 contain a provision implementing this new state-wide requirement. The Legislature left to the NYS Dept. of Labor the responsibility to promulgate rules and regulations enforcing this new section and we, again, anticipate further details shortly.