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### Recent Amendments to New York State's Wage Parity Act

As of October 1, 2020, new amendments to New York State's Wage Parity Act (Section 3614-c of the New York Public Health Law) went into effect. These amendments, discussed in detail below, make substantial revisions to the requirements of the Wage Parity Act (the "WPA"), and should be enacted immediately.

The critical amendments to the WPA, which took effect October 1, 2020, are as follows:

### Return of WPA Benefits to Employer Prohibited<sup>1</sup>

First, the law now prohibits any "portion of the dollars spent to satisfy the wage or benefit portion" to be returned to the employer, regardless of whether "as a refund, dividend, profit, or in any other manner." In essence, any monies that are to be used to pay WPA benefits **cannot be returned to the employer and instead must be provided to the Aide**, even if such monies remain unclaimed at the end of an employer's fiscal year. Home health agencies should immediately review their Wage Parity program offerings to ensure compliance with this new requirement.

### Revised WPA Reporting Requirements<sup>2</sup>

The certification employers must provide to the Commissioner of the Public Health Department has now been **expanded**. In addition to being needed to be verified under oath, the certification must now include a "compliance statement of wage parity hours and expenses," on a form provided by the New York State Department of Labor ("NYSDOL"). The new amendments also add the requirement that any such certification must now also include "**an independently-audited financial statement** verifying such expenses" (emphasis added). Knowing falsification of these certifications is subject to criminal perjury penalties.

<sup>1</sup> See N.Y. Pub. Health Law § 3614-C(5-a)

<sup>2</sup> See N.Y. Pub. Health Law §§ 3614-C(5), (6), (6-a)

Further, if Certified Home Health Agencies (a “CHHA”), Long-term Home Health Care Programs (an “LHHCP”), and/or Managed Care Programs (an “MCP”) choose to provide services through contracts with a Licensed Home Care Services Agency or Fiscal Intermediary (or other third party) (collectively a “Third-Party Provider”), such CHHA, LHHCP and/or MCP is now required to include language in the contracts with their Third-Party Providers to the effect that the CHHA, LHHCP, or MCP must be provided an annual, written certification under oath from the Third-Party Provider, confirming compliance with applicable rules. In connection with this newly required contractual language, CHHA’s, LHHCP’s and/or MCP’s also are now required to review and assess each annual compliance statement they receive from their Third-Party Provider, and now must refer “any reasonably suspected failures” of their Third-Party Provider to comply with WPA requirements to the NYSDOL in writing.

### **Revised Notices to Comply with the Wage Theft Prevention Act<sup>3</sup>**

Employers also now must include relevant WPA benefits information on both the original Notice of Pay Rate and the weekly pay statements required by New York’s Wage Theft Prevention Act. These documents must now specifically include the benefit portion paid to the Aide to satisfy the WPA, including but not limited to delineating “each type of . . . benefit provided.” In order to comply with the new requirements, information required now includes, but is not limited to, whether the benefits provided are pension or healthcare, the hourly rate of such benefit, and the name and address of the person/entity providing such benefit.

### **Criminal and Contract Forfeitures for WPA Violations<sup>4</sup>**

Finally, the amendments now add **criminal** penalties for any employer that “willfully pays less than such stipulated minimums regarding wages and supplements” under the WPA. Such violations constitute a misdemeanor, with a first violation being punishable by a \$500.00 fine, 30 days’ imprisonment, or both. A second violation is punishable by a \$1,000.00 fine **and** forfeiture of the contract on which the violation occurred, including all payments under that contract.

If you have any questions regarding these amendments or how they affect your Agency, please contact the Co-Chairs of the Labor and Employment Group (Jonathan Farrell – [jfarrell@meltzerlippe.com](mailto:jfarrell@meltzerlippe.com), or Larry Martinez – [lmartinez@meltzerlippe.com](mailto:lmartinez@meltzerlippe.com)), or Christopher Hampton – ([champton@meltzerlippe.com](mailto:champton@meltzerlippe.com)).

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<sup>3</sup> See N.Y. Lab. Law §§ 195(1),(3) (eff. October 1, 2020) (noting “the benefit portion of the minimum rate of home care aide total compensation as defined in [section thirty-six hundred fourteen-c of the public health law](#)” must be included on Wage Notice and Wage Statements, respectively).

<sup>4</sup> See N.Y. Pub. Health Law § 3614-C(7-a)