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New York Expands Individual Shareholder Responsibility for Wage and Hour Liability to Corporations Incorporated Outside New York

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Garnering unanimous support from both houses of the New York legislature and Governor Andrew Cuomo, the New York Business Corporation Law (BCL) § 630 is amended, effective January 19, 2016, to extend joint and several personal liability to the top 10 shareholders of all privately held corporations for wages due to employees of such corporations. Previously, individual liability under the BCL only applied to domestic corporations – those entities incorporated in New York. This new amendment extends the law’s reach to the top 10 shareholders of foreign corporations as well (even to “silent” owners).

The amended law does not appear to affect the existing notice requirements in the BCL that require an employee to first notify any shareholder he or she intends to hold liable under this provision within 180 days after the termination of that employee’s services. Moreover, the amendment does not appear to affect the new corresponding provision in the New York Limited Liability Company Law § 609 (effective February 25, 2015) that recently enabled personal liability for the 10 members of any limited liability company as well. It appears that only members of domestic LLCs are affected by that new law, and not members of foreign LLCs.

As wage and hour litigation in New York continues to proliferate, individual shareholders of corporations that do business in New York should take note of this new law. Even shareholders with a relatively small interest in a closely held corporation can potentially be held personally liable for wage and hour issues. It is now more critical than ever that you ensure any privately held corporations you own are in strict compliance with the hyper-technical and ever-changing wage and hour laws in New York, otherwise you could be personally on the hook.

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