

## in this issue:

MARCH 2006

Effective December 15, 2005, New York employers must obtain and keep on file proof of age for employees between 18 and 25.

## East Coast Edition

*A Littler Mendelson East Coast-specific Newsletter*

### New York Employers Must Obtain Proof of Age From “Youthful” Employees

*By Michael P. Pappas*

With little fanfare, New York State has amended its Labor Law to require employers to maintain “proof of age” of employees claiming to be between 18 and 25 years old. See N.Y. Labor Law § 135(2). The amendment, which took effect December 15, 2005, states that the required proof of age must be in the form of: (1) a driver’s license; (2) a certificate of age issued by an “employment certificating official”; or (3) other government-issued documentation. Previously, employers were permitted, but not required, to demand proof of age from employees claiming to be over 18.

According to the sponsors of the legislation, the purpose of the amendment is to “deter violations of the child labor laws by requiring employers to maintain proof of the age of youthful employees.” Although the legislative history indicates that the new law is aimed primarily at curbing child labor abuses in garment industry “sweatshops,” the amendment applies to all New York employers in any industry. Failure to comply exposes employers to criminal penalties, including fines and imprisonment. Specifically, a first offense is punishable by a fine of up to \$500 and/or imprisonment for up to 60 days, and subsequent violations are punishable by fines of up to \$5,000 and/or imprisonment for up to one year.

The amendment raises several questions that are not addressed in either the statute or its legislative history.

First, requiring proof of age from new hires may conflict with New York’s prohibition on

unlawful pre-employment inquires. Therefore, employers should not seek the required age documentation until *after* an offer of employment has been made, as in the case of I-9 employment eligibility verifications. In many cases, the employer will be able to obtain proof of the employee’s age from documents provided during the I-9 process.

Second, the amendment is silent regarding retroactivity, *i.e.*, whether proof of age must be required only from new employees going forward or from current employees as well. Generally, statutory amendments are not applied retroactively unless they expressly state that they have retroactive effect. This amendment does, however, require proof of age of “any” employee between 18 and 25 years of age. Representatives of the New York Department of Labor were unable to provide any guidance regarding the possible retroactive application of the amendment. Even if retroactive, however, the requirements of the statute would likely be satisfied by I-9 documents employers currently are required to maintain for existing employees. In cases where an employee’s I-9 documents do not state his or her age, the employer must require proof of age in addition to I-9 documentation.

---

*Michael P. Pappas is a shareholder in Littler’s New York office. If you would like further information, please contact your Littler attorney at 1.888.Littler, [info@littler.com](mailto:info@littler.com), or Mr. Pappas at [mpappas@littler.com](mailto:mpappas@littler.com).*

---