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In December 2010, New York enacted the "Wage Theft Prevention Act" (the "Act"), which amended various significant provisions of the New York Labor Law effective April 2011. The Act added new affirmative obligations for employers and increased the costs of non-compliance. The Act applies to all New York employers (except governmental agencies, which are not subject to the requirements of the applicable Labor Law provisions).

Covered employers should have already modified their recordkeeping and notice practices to comply with the Act. However, the annual notice requirement takes effect for the first time in 2012. **Between January 1, 2012 and February 1, 2012, New York private sector employers must give written notice of certain pay information and obtain signed and written acknowledgments of receipt from each employee.**

Annual Notices

The Act requires that all of the following information be provided in writing to each employee (including employees exempt from minimum wage and/or overtime requirements) on an annual basis:

- The employee's rate(s) of pay (including both regular hourly rate(s) and the overtime rate(s) for employees subject to overtime payment under New York law);
- Basis of pay (whether by the hour, shift, day, week, salary, piece, commission, or other);
- Allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- The regular pay day;
- The employer's name and any "doing business as" names;
- The physical address of the employer's main office or principal place of business;
- The employer's mailing address if different from the physical address;
- The employer's telephone number; and
- All other information that the Commissioner of Labor "deems material and necessary."

Employers must give the required notice to each employee in English and in the employee's primary language (if other than English). However, notice in a language other than English is only required if a template notice has been issued in such language by the Department of Labor ("DOL"). DOL templates are currently available in English, Chinese, Haitian Creole, Korean, Polish, Russian, and Spanish.

The DOL's template wage notices are available [here](#). **The wage notices needed to complete are Forms LS 54-59 depending on employee pay rate, salary or hourly, and pay frequency. (see enclosed)**

Although use of the DOL's templates will often be the preferred way to satisfy the notice requirement, employers must evaluate the sufficiency of the templates for their specific circumstances. As appropriate, employers may add to the DOL's templates or prepare alternative forms that provide all of the required information.

In addition to the annual notice requirement, notices are also required at the time of hire and when there are changes in the information listed above.

Penalties for Failure To Provide Required Notices

Employers who do not provide the required notices and obtain acknowledgment of employee receipt are subject to significant monetary penalties on a per-employee basis. Failure to provide and retain the required notices could also be used against employers in other wage-related proceedings, where severe civil or even criminal penalties may be at stake.

Immediate Action Required

Employers should immediately ensure that they have a plan in place to provide the required notice to each employee by February 1, 2012. Depending on the nature of the workforce, preparing the notices is not always a straightforward task. It often involves intricate interpretation of the Act's requirements and careful consideration of the applicable compensation structure(s), among other issues. Thus, legal counsel experienced in this area should be a component of your compliance efforts.

Joel Agler
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New York State Department of Labor WAGE THEFT PREVENTION ACT

A law passed in 2010 gives more protection to workers in New York State. This law, the Wage Theft Prevention Act (WTPA), took effect on April 9, 2011. Here are some key provisions of the new law that employers need to know.

What is New?

Public Notice of Violations

If an employer breaks certain parts of the law, the Labor Department (DOL) may post the violation in a place where employees can see it for up to a year.

For a willful failure to pay all wages under this law, DOL may post a summary of violations in a place where the public can see it, for up to 90 days. *It is a misdemeanor to remove or tamper with this notice without permission.*

What Are Changes to Existing Law?

Enhanced Rules against Retaliation

The WTPA extends the protections under Labor Law 215. It also gives DOL more power to enforce this law.

- It was always illegal to discharge, penalize and/or discriminate against an employee who makes a complaint. **Threats are now included as a form of retaliation.**
- In the past, we could only cite employers for retaliation. **Now, it is illegal for any person to retaliate.**
- In the past, penalties for breaking this rule meant we could fine an employer up to \$10,000. **Now, DOL can order the employer or the person who acted against the employee to pay liquidated damages. The payment can be up to \$10,000.**
- DOL may order the employer to reinstate the worker's job. **Or the employer may have to pay the person for lost salary or pay a lump sum in lieu of reinstatement.**
- **Retaliation carries criminal penalties for employee complaints about any section of the Labor Law.**
- The protection applies to any worker who alleges that

the employer has done something that *the employee thinks breaks a Labor Law or an Order issued by the Commissioner. This applies even if the employee is mistaken about the law, if they acted in good faith. It applies even if the employee does not cite a specific part of the Labor Law.*

- **This law protects employees even if the employer incorrectly believes they made a complaint.**

Written Notice

- The Law already required employers to give notice to employees of their wage rates at the time of hire. **Now, the WTPA requires employers to give a written notice to each new hire and to all employees by February 1 each year.** The notice must include:
 - Rate or rates of pay, including overtime rate of pay (if it applies)
 - **How the employee is paid:** by the hour, shift, day, week, commission, etc.
 - Regular payday
 - **Official name of the employer and any other names used for business (DBA)**
 - **Address and phone number** of the employer's main office or principal location
 - **Allowances taken as part of the minimum wage (tip, meal and lodging deductions)**
- In the past, the notices were in English. **Now, the notice must appear both in English and in the employee's primary language (if the Labor Department offers a translation).**
- Employers must have each employee sign and date the completed notice. Employers must provide a copy to each employee.

- If any data in the notice changes, the employer must tell employees at least a week before it happens unless they issue a new paystub that carries the notice. The employer must notify an employee in writing before they reduce the employee's wage rate. Employers in the hospitality industry must give notice every time a wage rate changes.
- Employers that do not give notice may have to pay damages of up to \$50 per week, per employee, unless they paid employees all wages required by law. (This stops at \$2,500 per employee in civil lawsuits filed by workers.)

Payroll Records

Under prior law, some of the recordkeeping requirements were in the statute, while others were in the regulations. Now, the requirements are part of the law, which makes it easier for employers to understand their obligations. However, industry-specific regulations will still have some additional requirements. Employers must:

- Keep records for six years. Records include the new notice and acknowledgment and payroll records.
- Keep accurate records of hours worked by employees and wages paid. **Now, the law clarifies the employers must keep the records on an ongoing basis. The employer may not make up the records after the fact at the end of the week, month or year.**
- For each week an employee works, the payroll records must contain:
 - Hours worked - (regular and overtime)
 - Rate or rates of pay (regular/overtime)
 - **How the employee is paid:** by the hour, shift, day, week, commission, etc.
 - **Pay at the piece rate must show what rates apply and the number of pieces at each rate**
 - Employee's gross and net wages
 - Itemized deductions
 - Itemized allowances and credits claimed by the employer, if any (tip, meal and lodging allowances or credits)

Wage Statements

Under the new law, employers must:

- Give each employee a wage statement or pay stub each payday that lists all of the above payroll data plus:
 - Employee's name
 - Employer's name, address and phone number
 - Dates covered by the payment

- Give any employee who asks a written explanation of how they computed wages

Employers that do not give wage statements may have to pay damages of up to \$100 per week, per employee, unless they paid employees all wages required by law. (This stops at \$2,500 per employee in civil lawsuits filed by employees.)

Damages and Other Penalties

The WTPA provides for higher penalties when an employer fails to pay the wages required by law.

- Under prior law, liquidated damages only covered up to 25% of the unpaid wages. **Now, the law provides for liquidated damages on up to 100% of the unpaid wages. Once DOL issues an Order to Comply, it includes 100% liquidated damages, as well as other civil penalties and interest.**
- If the violation is for other than wages, benefits or wage supplements, DOL may assess civil penalties for *each* violation. This means up to \$1,000 for a first violation, \$2,000 for a second, and \$3,000 for third and subsequent violations.
- If the Labor Commissioner has issued an Order to Comply against an employer who does not pay the money owed, then 10 days after the appeal period ends, DOL can require them to post a bond and/or **provide a list of their assets**. If employers fail to do so, the Commissioner may bring a court case against them. **For failure to provide the list of assets, DOL may impose a penalty of up to \$10,000.**
- **The WTPA permits DOL to add 15% in damages to a judgment if the employer fails to pay in full within 90 days of the final Order to Comply.**

PROTECT *all Workers*

ASSIST *the Unemployed*

CONNECT *Employers and Workers*



New York State Department of Labor, Division of Labor Standards
Instructions: Templates for Notice of Pay Rates, Pay Days and Employee Acknowledgement
Under Section 195.1 of the NYS Labor Law

The Department of Labor provides templates for several common types of pay agreements including dual language notices and acknowledgements in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish. Employers may create their own notices, use or adapt the Labor Department forms, as long as the:

- Required information appears in English and the employee's primary language (if template available)
- Employee receives a copy
- Employee signs an acknowledgment of receipt, and identifies their primary language to the employer
- Employer keeps a copy of the notice and acknowledgement for 6 years

Below are instructions for choosing among the templates. For details or help, see the Guidelines (LS 52) or contact the Division of Labor Standards.

LS 54 Notice for Hourly Rate Employees

This form is for hourly employees who are not exempt from coverage under the applicable State and Federal overtime provisions. For example, use for an employee whose regular rate of pay is \$10 per hour and overtime rate is \$15 per hour.

LS 55 Notice for Multiple Hourly Rate Employees

This form is for employees who are paid more than one rate for different types of work or different shifts. For example, use this form for an employee who is paid \$10 per hour for work as a janitor and \$12 per hour for work as a landscaper, or an employee who is paid one rate for working the day shift and another rate for the night shift.

LS 56 Notice for Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)*

This form is for employees who receive a weekly rate or a salary for a fixed number of hours (40 or fewer in a workweek).

- The employee's regular rate is the weekly rate or salary divided by the number of hours it is intends compensate.
- The overtime rate is 1½ times the regular rate.

Except in very limited circumstances, it is illegal to pay a fixed (unchanging) weekly rate for work weeks that vary over 40 hours. Even where there is a standard work week, there are usually occasions when work hours vary. For this reason, we have not provided a template for weekly rates for workweeks of over 40 hours. To avoid overtime violations, the Department strongly recommends that employers pay an hourly rate to overtime eligible employees whose standard workweek is over 40 hours.

LS 57 Notice for Employees Paid a Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate, or Other Non-Hourly Basis*

This form is for non-exempt employees who are paid a salary for varying hours of work, a daily rate, piece rates, flat rates, or any other pay that is not based on actual hours worked. In each overtime week, the employer must:

- Calculate the regular rate (total regular pay divided by total hours worked)
- Calculate the overtime premium (1/2 the regular rate)
- Multiply the overtime premium by the number of overtime hours and
- Pay the overtime premium in addition to the salary, day rate, piece rate, flat rate, or other pay

LS 58 Notice for Prevailing Rate and Other Jobs

Use this form when the employee:

- Works on public work projects (i.e., projects covered by the prevailing wage provisions in State and Federal Law) or
- Does mixed prevailing rate and non-prevailing rate work

There is space on the form for the employer to enter the regular and overtime rates to be paid for the other (non-prevailing wage) work. The form explains to the employee that any premium pay received on prevailing wage jobs in a week will be credited toward any overtime premium due for working over 40 hours in the week.

LS 59 Notice for Exempt Employees *

Use this form for employees who are exempt from premium overtime pay under either State regulations or the Federal Fair Labor Standards Act. The employer should identify the overtime exemption or, if an employee is outside of the definition of the term "employee" in Article 19 of the New York State Labor Law, the employer should identify the minimum wage exemption.

* Employers in the Hospitality Industry may not pay a non-exempt employee a non-hourly rate, except for commissioned salespeople.