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The New York State Department Of Labor Issues Guidelines, Instructions, FAQ's and Model Notices For the Wage Theft Prevention Act

On April 9, the Wage Theft Prevention Act (“WTPA”) will officially take effect. In connection therewith, the New York State Department of Labor (“NYSDOL”) has issued model notices, as well as guidelines, instructions and frequently asked questions (“FAQ’s”), concerning the WTPA’s requirements.

The WTPA was signed into law on December 10, 2010 and significantly amended the notice requirements of New York Labor Law (“NYLL”) section 195.1. The WTPA instructed the Commissioner of Labor to prepare model notices complying with these amendments. These model notices were recently released along with guidelines, instructions and FAQ’s in order to assist employers in implementing the changes required by the WTPA.

The documents released by the NYSDOL mostly track the WTPA’s amendments to section 195.1. However, the NYSDOL has clarified its position with respect to whether an employer’s section 195.1 notices must specify the overtime exemptions that are being applied to exempt employees.

The NYSDOL’s previous guidelines, instructions and model notices left employers uncertain as to whether they were obligated to tell notify employees regarding which overtime exemptions were being applied to such employees. This confusion stemmed from the NYSDOL’s conflicting language between its guidelines, which stated that the “notice to exempt employees must state the specific exemption that applies,” and its instructions, which suggested that employers “should identify the overtime exemption” that applies.

The NYSDOL’s newly issued information attempts to clarify this issue. More specifically:

- The new guidelines state that employers “may” state the specific exemption that applies to exempt employees;
- The instructions for form LS 59 (which is the new NYSDOL template form for exempt employees) states that the employer “should” identify the overtime exemption that applies to such employee;
- Form LS 59 itself states that it is “optional” to inform the exempt employee what exemption applies to him/her; and
- Finally, the FAQ’s state in pertinent part that employers are not required to identify the specific exemption that is being applied to exempt employees.

Based upon the above it appears that while the NYSDOL would prefer that employers provide exempt employees with information regarding the specific exemption that is being applied, it is not required. The NYSDOL also provides clarification on additional WTPA requirements including, when annual notices must be issued, when employees must be notified of wage rate changes, and how notice may be provided to newly hired employees.

The NYSDOL's guidelines can be found [here](#).

The NYSDOL's FAQ's can be found [here](#).

Additionally, the NYSDOL has created model notices for:

- Employees being paid at a single hourly rate, which can be found [here](#).
- Employees being paid at multiple hourly rates, which can be found [here](#).
- Employees paid a weekly rate or a salary for a fixed number of hours, which can be found [here](#).
- Employees paid a prevailing rate and for other jobs, which can be found [here](#).
- Employees paid a salary for varying hours, day rate, piece rate, flat rate or other non-hourly pay, which can be found [here](#); and
- Employees who are exempt from applicable overtime provisions, which can be found [here](#).

The NYSDOL's instructions for its model notices can be found [here](#).

The NYSDOL does not require employers to use its model notices. Instead, employers can use their own notices so long as the notices provide employees with the information required by the WTPA, employees receive a copy of the notice, employees sign an acknowledgment that they received the notice, and employers keep a copy of the notice and acknowledgement for 6 years.

As we previously wrote in this space in an entry covering the WTPA titled "[New York Enacts The Wage Theft Prevention Act](#)", the WTPA will likely be a useful tool for plaintiffs' counsel to challenge the pay practices of New York employers. It is therefore imperative that employers review their notice and payroll practices to ensure compliance with the WTPA and other portions of the NYLL.

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