



## **New York Wage Theft Prevention Act (WTPA)\***

\*Effective April 9, 2011.

### I. New Hire and Annual Notices/Acknowledgments

Employees must be provided, in writing in English and in the language identified by the employee as his/her primary language, *at the time of hiring AND between January 1 and February 1 of each subsequent year* (beginning with 2012<sup>i</sup>), a notice containing the following information:

- the rate or rates of pay;
- [for non-exempt employees:] the regular hourly rate and the overtime rate of pay;
- the basis of pay (e.g., by the hour, shift, day, week, salary, piece, commission);
- allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- the regular pay day designated by the employer in accordance with NYLL § 191;
- the name of the employer;
- any “doing business as” names used by the employer;
- the physical address of the employer’s main office or principal place of business (and a mailing address if different);
- the telephone number of the employer;
- such other information as the Commissioner of Labor – i.e., the New York State Department of Labor (NYSDOL) – deems “material and necessary.”<sup>ii</sup>

Each time the employer provides such notice to an employee, the employer must obtain a signed and dated written acknowledgment (in English and the employee’s primary language) of receipt of this notice, which the employer must keep for six (6) years. This acknowledgment must include an affirmation by the employee that the employee accurately identified his or her primary language to the employer, and that the notice provided by the employer was in that language.<sup>iii</sup> (*Note: In order to comply with this requirement, an employer will have to ask each new employee to identify his/her primary language before the notice is provided. To avoid discrimination issues, employers should only request this information once an offer of employment has been made.*)

The NYSDOL has prepared dual language notice templates for employers to use.<sup>iv</sup> When an employee identifies his/her primary language as one for which a template is not available from the NYSDOL, the employer need only provide the employee a notice in English.<sup>v</sup> Notice templates are available in English, Spanish, Chinese, Korean, Creole, Polish and Russian on the NYSDOL’s website at [www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm](http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm). Employers do not have to use the NYSDOL’s templates, and may develop their own notices so long as they contain all of the information required by the law.<sup>vi</sup> Notices included in letters and/or employment agreements must be on their own form.<sup>vii</sup>



According to the NYSDOL's WTPA Frequently Asked Questions (FAQ), which can be found at [www.labor.ny.gov/workerprotection/laborstandards/PDFs/wage-theft-prevention-act-faq.pdf](http://www.labor.ny.gov/workerprotection/laborstandards/PDFs/wage-theft-prevention-act-faq.pdf), as well as several NYSDOL opinion letters, the notices may be provided electronically if: (1) the employer ensures that the employee has access to a computer with printing capabilities so that the employee is able to access and print a copy of the notice at the time of hire and at any time throughout the employment relationship at no cost to the employee; (2) the notice is in a format that the employee is able to review at the computer in which he/she has access (e.g., web page, word processing document, etc.); and (3) affirmative steps are required by the employee to acknowledge receipt of the notice (the form of the acknowledgment must be sufficient to guarantee that the employee has received and reviewed the notice, and the employee must be made aware that his/her actions have legally significant consequences).<sup>viii</sup>

Employees must also be notified in writing of any changes to the information above at least seven (7) days prior to the time of the changes unless the changes are reflected on the employee's wage statement (see below).<sup>ix</sup> The one exception is for employees in the hospitality industry, who must be given a new notice every time his/her wage rate changes.<sup>x</sup>

## II. Wage Statements

With every payment of wages, each employee must receive a statement listing the following information:

- the dates of work covered by that payment of wages;
- name of employee;
- name of employer;
- address and phone number of employer;
- rate or rates of pay and basis of pay (e.g., paid by the hour, shift, day, week, salary, piece, commission);
- [for non-exempt employees:] the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked;
- [for employees paid on piece rate:] the applicable piece rate or rates of pay and number of pieces completed at each piece rate;
- gross wages;
- deductions;
- allowances, if any, claimed as part of the minimum wage; and
- net wages.<sup>xi</sup>

Upon the request of an employee, an employer must provide an explanation in writing of how the employee's wages were computed.<sup>xii</sup>

Employers must keep payroll records reflecting the above information for six (6) years.<sup>xiii</sup> The NYSDOL's sample wage statement can be found on its website at [www.labor.ny.gov/workerprotection/laborstandards/images/sample\\_wage\\_statement.jpg](http://www.labor.ny.gov/workerprotection/laborstandards/images/sample_wage_statement.jpg).



### III. Civil Penalties for Failure to Comply with Labor Law

***Failure to provide the notice within 10 business days of the date of a newly hired employee's commencement of employment*** – Employee may file a civil action for damages in the amount of \$50 for each work week in which such violation occurred or continues to occur, up to a maximum of \$2,500, plus costs and reasonable attorneys' fees.<sup>xiv</sup> As an alternative, the Commissioner of Labor may bring legal action (including an administrative action) against an employer who fails to provide the notice within 10 days of the employee's commencement of employment OR who fails to provide the notice on or before February 1 of each subsequent year of the employee's employment, and may assess against the employer damages of \$50.00 for each work week that the violations occurred or continue to occur.<sup>xv</sup> If the Commissioner of Labor brings the action, there is no cap on damages.

***Failure to provide the information required on the wage statement*** – Employee may file a civil action for damages in the amount of \$100 for every work week of the violation, up to a maximum of \$2,500, plus costs and attorneys' fees.<sup>xvi</sup> As an alternative, the Commissioner of Labor is authorized to bring an action against the employer on behalf of the employees and may assess against the employer damages of \$100.00 for each work week that the violations occurred or continue to occur.<sup>xvii</sup> If the Commissioner of Labor brings the action, there is no cap on damages.

***Wage Payment Violations*** – For wage payment violations, such as non-payment or underpayment of wages, employers may be subject to the following penalties:

- Liquidated damages equal to 100% of unpaid wages (unless the employer can establish a good faith basis for its belief that its actions complied with the law).<sup>xviii</sup>
- Additional assessment of damages for willful or egregious violations in the amount of up to double the total amount of wages, benefits, or wage supplements found due.<sup>xix</sup>
- Employees or the Commissioner may recover prejudgment interest (i.e., interest from the date of underpayment to the date of payment), as well as attorneys' fees and costs incurred in enforcing any court judgment.<sup>xx</sup>
- Additional penalty in the amount of 15% of the total judgment due and owing for employers who failure to comply within 90 days of final judgments.<sup>xxi</sup>
- Offending employer may be required by the Commissioner to post a notice summarizing the violations found in the workplace in an area visible to employees for up to one year.<sup>xxii</sup> If the violation was willful, the employer must post the notice in an area visible to the general public for up to 90 days.<sup>xxiii</sup>

***Statute of Limitations*** – An action to recover wages must be commenced within 6 years. Investigation by the Commissioner is not a prerequisite to nor a bar against a person bringing a civil action to recover for unpaid wages.<sup>xxiv</sup>



#### IV. Criminal Penalties for Failure to Comply with Labor Law

Employers (including corporations, officers and agents of corporations, partnerships and LLCs) may face potential criminal prosecution for failure to properly pay employee wages. Any employer that pays less than the amount of wages owed may be guilty of a class B misdemeanor and, if convicted will be fined between \$500 and \$20,000, or imprisoned up to one year. An employer convicted of a second violation within six years of a first conviction will result in a felony conviction and a fine of between \$500 and \$20,000 or imprisoned for up to one year and one day.<sup>xxv</sup>

Employers (including corporations, officer and agents of corporations, partnerships and LLCs) may also face potential criminal prosecution for failure to preserve accurate payroll records<sup>xxvi</sup> and for retaliation<sup>xxvii</sup>.

#### V. Retaliation Complaints

The WTPA prohibits employees from being retaliated against because of any complaints to any person (including but not limited to the employer, the Commissioner of Labor or the attorney general) “*that the employer has engaged in any conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or any order issued by the commissioner.*”<sup>xxviii</sup> The WTPA also protects employees from retaliation because of any such complaints that the employer *believes* the employee made (whether or not that belief is accurate)<sup>xxix</sup> or because the employee is about to institute a proceeding under the Labor Law.<sup>xxx</sup>

Under the WTPA, the Commissioner of Labor is authorized to remedy retaliation by taking the following actions:

- Assessing a civil penalty of between \$1,000 and \$10,000;
- Awarding compensatory damages;
- Enjoining the offending conduct;
- Ordering the payment of liquidated damages up to \$10,000; and
- Ordering injunctive relief (rehiring, reinstatement, or front pay in lieu of reinstatement and lost compensation).<sup>xxxi</sup>

Employees may also file a civil action against an employer for retaliation within two years of the retaliatory conduct.<sup>xxxii</sup> The potential damages in a civil action are the same as listed above, plus costs and reasonable attorneys’ fees. <sup>xxxiii</sup>

An investigation by the Commissioner of Labor is not a prerequisite to or a bar against a person bringing a civil action for retaliation.<sup>xxxiv</sup>



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*Information contained in this summary is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. If you have specific questions regarding a particular fact situation, we urge you to consult legal counsel.*

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<sup>i</sup> WTPA FAQ #9-10. The yearly notice must be given to current employees between January 1 and February 1, and cannot be given at other times of the year.

<sup>ii</sup> N.Y. Labor Law § 195(1)(a).

<sup>iii</sup> N.Y. Labor Law § 195(1)(a).

<sup>iv</sup> N.Y. Labor Law § 195(1)(b).

<sup>v</sup> N.Y. Labor Law § 195(c).

<sup>vi</sup> WTPA FAQ #7.

<sup>vii</sup> WTPA FAQ #11.

<sup>viii</sup> WTPA FAQ #14; NYSDOL Opinion Letter RO-09-0135 (December 18, 2009) and RO-09-0186 (January 14, 2010).

<sup>ix</sup> N.Y. Labor Law § 195(2).

<sup>x</sup> WTPA FAQ #17.

<sup>xi</sup> N.Y. Labor Law § 195(3).

<sup>xii</sup> N.Y. Labor Law § 195(3).

<sup>xiii</sup> N.Y. Labor Law § 195(4).

<sup>xiv</sup> N.Y. Labor Law § 198(1-b).

<sup>xv</sup> *Id.*

<sup>xvi</sup> N.Y. Labor Law § 198 (1-d).

<sup>xvii</sup> *Id.*

<sup>xviii</sup> N.Y. Labor Law § 198(1-a).

<sup>xix</sup> N.Y. Labor Law § 218(1).

<sup>xx</sup> N.Y. Labor Law § 198(4).

<sup>xxi</sup> N.Y. Labor Law § 198(4).

<sup>xxii</sup> N.Y. Labor Law § 219-c(1).

<sup>xxiii</sup> N.Y. Labor Law § 219-c(2).

<sup>xxiv</sup> N.Y. Labor Law § 198(3).

<sup>xxv</sup> N.Y. Labor Law § 198-a(1).

<sup>xxvi</sup> N.Y. Labor Law § 198-a(2)-(3).

<sup>xxvii</sup> N.Y. Labor Law § 215(3).

<sup>xxviii</sup> N.Y. Labor Law § 215(1)(a)(i).

<sup>xxix</sup> N.Y. Labor Law § 215(1)(a)(ii).

<sup>xxx</sup> N.Y. Labor Law § 215(1)(a)(iii).

<sup>xxxi</sup> N.Y. Labor Law § 215(1)(b).

<sup>xxxii</sup> N.Y. Labor Law § 215(2)(a).

<sup>xxxiii</sup> *Id.*

<sup>xxxiv</sup> *Id.*