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THE NYDOL ISSUES MODEL NOTICES UNDER AND CLARIFIES THE NEW YORK WAGE THEFT PREVENTION ACT

April 8, 2011

In a recent [March 2011 client alert](#), we advised that the New York State Wage Theft Prevention Act ("WTPA"), which becomes effective on April 9, 2011, imposes on employers additional notice and record-keeping requirements under the wage and hour provisions of the New York Labor Law and significantly stiffens the civil and criminal penalties for failing to comply with the WTPA and other Labor Law violations. In the alert, we advised that the New York Department of Labor ("NYDOL") would be issuing notice templates in English and certain foreign languages. The NYDOL has just published some such templates, as well as guidelines and a FAQ sheet, which clarify the WTPA. (See <http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/lshmpg.shtm>.)

As stated in our March 2011 alert, the new hire and annual notices required by the WTPA must be provided to an employee in English and the employee's primary language (if other than English), provided that the NYDOL has published notice templates in such other language. The new guidelines advise that dual language versions of the notice templates will be issued in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish. As of April 7, 2011, only Chinese, Korean and Spanish templates have been published. (See <http://www.labor.state.ny.us/formsdocs/wp/ellsformsandpublications.shtm>.)

Among other things, the new guidelines and FAQ sheet provide the following clarifications:



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- The NYDOL has modified its prior position that employers *must* identify the specific exemption that applies in the new hire and annual notice forms for exempt employees; providing such information is now optional.
- The WTPA does not apply to employees who work outside of New York.
- As under the old law, an employer does not need to use the notice templates published by the NYDOL, provided that its notice contains all the required information. Somewhat ambiguously, the NYDOL advises that the required notice may be included in letters and/or employment agreements given to new hires, provided that such notice is “on its own form.”
- The required annual notices must be given each year between January 1 and February 1, beginning in 2012.
- The required notices and wage statements may be provided to an employee electronically, provided that the employee is able to print a copy for his or her record and, with respect to the notices, there exists a system where the employee can (as required) acknowledge receipt thereof.
- If an employee refuses to sign a required notice, the employer should still give the employee the notice and note the employee’s refusal to sign on its copy of the notice.

If you have any questions about this client alert, please contact [Mark J. Goldberg](#) or any other member of Loeb & Loeb’s [Employment and Labor](#) practice group.

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