

EMPLOYMENT LAW ALERT

March 2011

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Reminder: New Pay Rate Notice & Pay Stub Rules Effective in April

By: Kimberly B. Malerba

In our [December 2010 Employment Alert](#), we informed you of the passage of the Wage Theft Protection Act, which becomes effective in April. Most immediately, new pay rate forms are expected to be issued by the Department of Labor prior to implementation on April 12. As soon as the forms are published we will let you know.



The law also mandates that certain information be included in pay stubs and increases penalties substantially for violations of these provisions as well as other wage-related noncompliance. Because the stakes are now much higher, we urge all employers who have not already done so to review your wage-related policies and recordkeeping protocols to ensure that they are in compliance by the effective date. Your failure to do so could cause substantial financial damage to your business.

New Regulations for the Hospitality Industry

In addition to the obligations imposed on all employers by the Wage Theft Protection Act, we want to ensure that all of our friends and clients in the hospitality industry are also in compliance with the new Department of Labor Wage Order that came into effect earlier this month. The new Wage Order, which has the effect of law, significantly alters the way in which employers compensate employees in the hospitality industry. The hospitality industry includes places of lodging, restaurants and restaurant concessions.

Perhaps one of the most significant changes involves hourly pay. Non-exempt employees may no longer be paid on any basis other than hourly. Employees may be not be paid on a salary basis, nor on a weekly or daily basis.

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In addition, the tip credit has been reduced. The tip credit allows the employer to reduce the minimum wage payable to a covered employee. For a food service worker, the tip credit is now a maximum of \$2.25 per hour. Therefore, food service workers must be paid a base wage of at least \$5.00 per hour.

Further, tip sharing (where employees share only a certain percentage of their tips) as well as tip pooling (where the entirety of tips are pooled and then redistributed) is permitted, whether voluntary or employer-mandated. However, employers are required to provide employees with written notice of their policies, as well as maintain records of the tips received and distributed. Additionally, where an employer adds a gratuity to a bill, that amount must be provided in full to the employee.

A summary of the Wage Order can be obtained by clicking on the following link: [Wage Order Summary](#)

For those to whom this new Wage Order applies, it is imperative that you obtain guidance in order to come into compliance as soon as possible.

If we can be of assistance on these or any other employment law issues, please do not hesitate to contact us.



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