

Employment, Labor & Benefits Alert



APRIL 8, 2011

The New York State Department of Labor Releases New York Wage Theft Prevention Act Pay Notice Templates and Other Guidance

BY MICHAEL S. ARNOLD

Last December we alerted you to the passage of the New York Wage Theft Prevention Act, which goes into effect this Saturday, April 9, 2011. That law amends the New York Labor Law by, among other things, requiring employers to (1) include additional information on pay notices provided to new hires, (2) provide pay notices to existing employees annually, (3) provide a pay notice to an existing employee if information on the previous pay notice changes and the employee's next earnings statement would not reflect that information, and (4) retrieve acknowledgments from employees regarding receipt of the pay notices. [Read our prior alert about the New York Wage Theft Prevention Act.](#)

With these amendments about to take effect, the New York State Department of Labor (NYSDOL) has finally released pay notice templates, and instructions and guidelines for completing those notices and retrieving acknowledgments, along with a Frequently Asked Questions section seeking to answer the most commonly asked questions by employers. You can access that information [here](#). It includes several notable points, including that employers:

- May include new hire pay notices with other new hire documents (such as offer letters and employment agreements), but they must be provided on their own form.
- Must provide the annual pay notices anytime between January 1st and February 1st of each year. Employers cannot provide the annual pay notices at any other time during the year, and they must provide these notices even if the pay notice information remains the same. Further, any employer whose seasonal employees remain on layoff between January 1st and February 1st must provide annual pay notices to these employees as soon as they return to work from the layoff.
- Do not have to provide a new pay notice any time the information on a previous pay notice changes as long as the employee's earning statement for the pay period following the change includes the information. However, (1) employers must provide a new pay notice if the employee's wage rate *decreases*, regardless of whether the earnings statement reflects the decrease, and (2) hospitality industry employers must always provide a new pay notice regardless of whether the earnings statement includes the changed information.
- Must provide pay notices in the employee's primary language, but only if that employee's primary language is Spanish, Chinese, Korean, Creole, Polish, or Russian. Otherwise, the employer may provide the notice in English. The NYSDOL has released pay notices in these languages.

- Should still provide a copy of the pay notice to the employee refusing to sign the required acknowledgment and indicating on the notice the refusal to acknowledge.
- May provide pay notices electronically as long the employer has a “system where the worker can acknowledge the receipt of the notice and print out a copy of the notice.”
- Must provide commission salespersons with pay notices that attach their statutorily required commission salesperson agreement.
- Do not have to indicate on the notice the specific overtime exemption that may apply to the employee.
- Must note any retroactive wage increase *separately* on the earnings statement during the period in which it is paid.

As the compliance deadline nears, employers are well advised to seek the advice of employment counsel for assistance complying with the Wage Theft Prevention Act.

If you have any questions about this alert, please contact the author or your Mintz Levin attorney.

* * *

[Click here to view Mintz Levin's Employment, Labor & Benefits attorneys.](#)

Boston | London | Los Angeles | New York | Palo Alto | San Diego | Stamford | Washington www.mintz.com

Copyright © 2011 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

This communication may be considered attorney advertising under the rules of some states. The information and materials contained herein have been provided as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; however, the information and materials do not, and are not intended to, constitute legal advice. Neither transmission nor receipt of such information and materials will create an attorney-client relationship between the sender and receiver. The hiring of an attorney is an important decision that should not be based solely upon advertisements or solicitations. Users are advised not to take, or refrain from taking, any action based upon the information and materials contained herein without consulting legal counsel engaged for a particular matter. Furthermore, prior results do not guarantee a similar outcome.

The distribution list is maintained at Mintz Levin's main office, located at One Financial Center, Boston, Massachusetts 02111. If you no longer wish to receive electronic mailings from the firm, please visit <http://www.mintz.com/unsubscribe.cfm> to unsubscribe.

1036-0411-NY-ELB