



LABOR & EMPLOYMENT DEPARTMENT

ALERT

NEW YORK LAW INCREASING RECORD KEEPING BURDENS ON EMPLOYERS AND ENHANCING PENALTIES FOR WAGE AND HOUR VIOLATIONS TAKES EFFECT APRIL 9, 2011

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The Wage Theft Prevention Act (WTPA) takes effect later this week on April 9, 2011. Briefly, the WTPA amends the New York Labor Law (NYLL) and increases employers' record keeping requirements, increases penalties on employers that violate New York's wage and hour statutes and expands the powers of the New York Commissioner of Labor. In advance of the effective date of the new law, the New York State Department of Labor (DOL) published sample rate of pay notice forms in English and in three foreign languages. In addition, the DOL answered a series of frequently asked questions about the WTPA and posted all of this information on its web site. The URL can be found at <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm>. The DOL has also provided six sample forms designed to address the varying payment requirements applicable to exempt and non-exempt employees. Those forms can be found at <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm> as well. Finally, recognizing the particular problems that "temporary help firms" have had in ascertaining the applicability of the new requirements to their industry, the DOL has offered some clarity through the issuance of the "Guidelines for Notice and Acknowledgement of Wage Rates for Temporary Help Firms." This document can be found at the same URL and is Form LS 50.

Following is a brief summary of several key provisions of the WTPA and of the recent DOL updates concerning the WTPA.

- The WTPA applies to all private sector employers whose employees work in New York State. No employee may opt out of the WTPA's rate of pay notice requirement.
- The rate of pay notice must contain the following information: (1) the employee's rate(s) of pay, including overtime pay if applicable; (2) the basis of the employee's rate(s) of pay (e.g., by the hour, week, salary, commission or other); (3) whether the employer intends to claim allowances as part of the minimum wage, including tip, meal or lodging allowances, and the amount of those allowances; (4) the employee's regular pay day designated by the employer in accordance with the frequency of pay requirements in the NYLL; (5) the name of the employer and any "doing business as" names used by the employer; (6) the physical address of the employer's main office or principal place of business and a mailing address if different; (7) the telephone number of the employer; and (8) any "such other information as the commissioner deems material and necessary."
- The rate of pay notice must be provided to employees on several different occasions, including: (1) at the time of hire; (2) at least once a year between January 1 and February 1; and (3) any time when the information on the rate of pay notice form changes (although the DOL has opined that a new notice is not required where there is an increase in an employee's rate of pay and the new rate appears on the next wage statement, except in the

hospitality industry when it must always be updated). The first time the yearly rate of pay notice will have to be distributed to existing employees will be between January 1, 2012, and February 1, 2012.

- While the notice may be included in letter and/or employment agreements provided to new hires, it must be on its own form.
- Employers can give the notice electronically so long as there is a system where the worker can acknowledge the receipt of the notice and print out a copy as well.
- The WTPA requires employers to provide the rate of pay notice in English to all employees and in Spanish, Korean or Chinese to any employee whose primary spoken language is one of these languages. At present, the DOL has translated the rate of pay notice forms into Spanish, Korean and Chinese, and these documents are available on the DOL's web site. The DOL has also indicated it will be translating the rate of pay notice form into Creole, Polish and Russian, but those versions are not yet available. There is no requirement for employers to independently translate and disseminate rate of pay notice forms into languages that the DOL has not yet translated.
- Employers must retain signed acknowledgments of the rate of pay notice form for six years. If an employee refuses to acknowledge the form, the DOL will accept an acknowledgement from the employer that the employee refused to sign.
- Workers who are exempt from the state's overtime requirements must receive a rate of pay notice form, but the notice does not have to identify the specific exemption that the employee falls into.

- Employers are not required to use the rate of pay notice forms posted on the DOL's web site and can draft their own forms, provided the employers' forms contain all of the information required by the WTPA.
- Employees have standing to enforce the rate of pay notice provisions of the WTPA, but the maximum amount that an individual worker can recover is \$2,500. In addition, the DOL can enforce the rate of pay notice provisions in the WTPA and can assess employers with penalties of \$50 per week, per worker, if proper notice is not given.
- The WTPA requires employers to provide employees with wage statements that identify: (1) wage rates; (2) hours worked; (3) gross wages; (4) allowances and deductions taken; (5) net wages; (6) the name, address and phone number of the employer; and (7) the beginning and ending date for the period covered by the payment. Pay stubs can be provided electronically as long as employees can access and print the stub from a work computer.
- Employees have standing to enforce this wage statement provision, but the maximum amount that an individual worker can recover is \$2,500. However, the DOL can enforce the wage statement provision in the WTPA and can assess employers with penalties of \$100 per week, per worker, if proper notice is not given.

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