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Wage Theft Prevention Act (WTPA) - NEW YORK STATE

As you may know, we audit for compliance with respect to the new TILA loan originator compensation rule. In the course of doing such audits for New York companies, we look for compliance with the Wage Theft Prevention Act (WTPA) and its implementing regulations. These WTPA requirements are administratively cumbersome.

The Wage Theft Prevention Act (WTPA) annual notice requirement is effective as of January 1, 2012 and must be complied with by February 1, 2012. Thus, the implementation period is exceedingly short.

If you are a New York company or have affiliates and branches in New York or own companies in New York, you must comply with the current notification requirement of the WTPA.

Please be sure to discuss this matter with your firm's accountant or financial adviser. Be prepared to implement the WTPA procedures immediately.

Even if you are not a New York company or subject to this regulation, a review of the notification requirement provides a useful tool in implementing the TILA loan originator compensation rule.

In This Newsletter

- [Requirements](#)
- [Deadlines](#)
- [Examinations](#)
- [Exemption](#)
- [Overtime](#)
- [Forms and Processing](#)
- [Penalties](#)
- [Library](#)

Requirements

Employers must provide all New York employees with an annual written notice known as a Notice of Pay Rate and Payday (Notice) beginning January 1, 2012.

Previously, employers were required to provide this notice only to new employees when certain changes in compensation were made.

Now all employees must receive this notice on an annual basis and it must be signed every year as it is an annual requirement.

Deadlines

The Notice must be provided between January 1 and February 1 of each year beginning in 2012.

The form must be signed by the employee and dated prior to the deadline of February 1, 2012. The signature is necessary as proof that the employee received the Notice.

The employer must sign as preparer, and complete the information in box one of the Notice.

In addition, the employer must retain the signed and dated original copy for six (6) years.

Examinations

New York's Department of Labor will be conducting random compliance audits, in which very significant penalties for failure to comply will be assessed.

It is also possible that this Notice will be either called for or referred to in a banking department examination or a CFPB state-affiliated audit for compliance with the TILA loan

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Exemption

There is no exemption for small employers.

As long as a business has a single employee in New York State, the Notice is required.

Independent contractors are not covered by this law.

Overtime

Regardless of an employee's method of compensation and entitlement to overtime, the Notice must be provided. This means that all employees, both exempt from overtime requirements and non-exempt, must receive the Notice.

Since there are different forms to use, depending on the method of pay for an employee, several accepted variations and required forms are:

- Notice for employees paid a weekly rate or salary for 40 hours or less.
- Notice for employees paid at multiple hourly rates, for various work.
- Notice for hourly rate employees.
- Notice for employees paid salary for varying hours, day rate, piece rate, etc.
- Notice for employees exempt from overtime, usually applying to administrative persons.
- Notice for other jobs.
- Revised Federal form W-4 for 2012
- Updated Federal form I-9

Forms & Processing

There are several issues that relate to both the required forms and payroll processing in general:

- The payroll service companies are not maintaining these signed forms. It is the responsibility of the employer to maintain the original signed forms, updated annually for all employees, and maintained for the six year requirement.
- In addition to the retention of these Notices, the employer must maintain signed Federal form W-4 and Federal form I-9. A file should be maintained for each employee with the required forms. Although voluntary, a policy statement should be enacted and maintained for each employee with specific vacation, personal, and sick time available and utilized.
- Any employee hired after the Notices are submitted (i.e., after February 1, 2012), must sign the required Notice and provide forms W-4 and I-9 at the time of hiring. Similarly, the form required by the WTPA must be updated when there is a change in pay rate.
- New York State requires Disability and Worker's Compensation insurance to be in force at all times if there are employees. The only exception is for employers having no employees other than one or two corporate officers. Note: once there are more than two corporate officers, these policies are required.
- The Notice does not apply to independent contractors meeting the appropriate legal standards, as they are not considered employees. Note: the criteria for classification of an independent contractor are very narrow, and several government agencies may aggressively seek to reclassify many current independent contractors to employees.
- Make sure that a written and fully executed loan originator compensation plan or employment agreement exists for all affected employees, including for all loan officers, producing and non-producing branch managers, salesperson employees paid on a commission basis (as required by NYS Labor Law), and attach that plan or employment agreement to the pay notice.
- Make sure that employees designated as exempt from overtime requirements meet the legal requirements for such exemption and identify the particular exemption upon which the employer will rely.
- Ensure that where overtime is applicable the overtime rate is correctly calculated with respect to all employees eligible for overtime pay.
- In addition, every employee must receive with their pay check a corresponding pay stub. Be sure that the pay stub states computations and withholdings. Penalties could result for the failure to provide such documentation.

Penalties

Employers will be assessed \$50 per week per worker by the Department of Labor if the Notice is not provided and in addition, an individual worker can institute a private action.

Where an individual sues, damages are capped at \$2,500. Additionally, the notice must be provided in the employee's primary language.

Additionally, there may be class action certification available to plaintiffs.

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Department of Labor
New York State

Wage Theft Prevention Act - Fact Sheet
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Wage Theft Prevention Act – FAQ's



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