

November 30, 2011

REMINDER: Employers Must Provide New York State Employees With Labor Law Notice In Early-2012

The New York State Wage Theft Prevention Act (the "Act"), which went into effect on April 9, 2011, as described in detail in [our previous client alert](#), requires, among other things, that employers provide a written notice between January 1st and February 1st of each year to each employee working in New York State. Employers should begin preparing to comply with this notice requirement right away to ensure that it is timely provided and to avoid the risk of incurring potentially significant penalties for non-compliance.

The Act's Notice Requirements

The Act requires employers to provide written notices to each employee working in New York State (1) at the time the employee is hired (the "New Hire Notice"), (2) between January 1st and February 1st of each subsequent year of the employee's employment (the "Annual Notice"), and (3) in some cases, at least seven days in advance of changes to be made to the information in the notice (the "Notice of Changes"). These notices must provide the following information to each employee (regardless of whether the employee is "exempt" or "non-exempt" under the overtime laws):

- the employee's regular rate of pay, overtime rate of pay if applicable, and regular payday;
- whether the employee is paid by the hour, shift, day, week, salary, piece, commission or other basis;
- allowances, if any, claimed as part of the minimum wage (e.g., tips, meal, or lodging allowances);
- the employer's name and any "doing business as" names used by the employer;
- the employer's physical and mailing addresses and telephone number; and
- such other information as the New York State Commissioner of Labor may require.

The Annual Notice

As noted above, this written notice must be provided annually, in addition to at the time of hiring. The first Annual Notice is required to be provided between January 1, 2012 and February 1, 2012 to each employee working in New York State. This notice must be given during this timeframe in order to satisfy the Act's requirements, even if none of the information being provided to an employee has changed since he or she last received a notice. For example, if an employee was hired on December 1, 2011, and received a New Hire Notice at the time of hiring as required by the Act, that employee must still be provided the Annual Notice between January 1, 2012 and February 1, 2012, even if it will be identical to the New Hire Notice. An employee cannot waive the right to receive these notices.

Provision of Notice and Model Templates

These notices must be provided in English and the language identified by the employee as his or her primary language. The employer must obtain a signed and dated written acknowledgement of receipt of these notices from each employee, both in English and the employee's primary language (if different), which must include an affirmation by the employee that he or she accurately identified his or her primary language. This acknowledgement must be preserved by the employer for six years. The employer must keep the original signed notice, and each employee must receive a copy of the signed notice.

The New York State Department of Labor ("DOL") has issued model templates that employers can use to satisfy these notice requirements (available at <http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>). Employers are not required to use the model templates issued by the DOL and can develop their own templates, as long as they contain all of the information required by the Act and are provided on separate forms and not within another agreement. Employers will not be penalized for any errors in the DOL's model templates if they elect to use them. If an employee identifies as his or her primary language a language for which a template has not been provided by the DOL, an employer can comply with the Act's requirements by providing only an English language notice.

The DOL has stated that these notices can be provided electronically, as long as there is a system for the employee to acknowledge receipt of the notice and print out a copy of the notice. The DOL has also advised that, in the event an employee refuses to sign the notice, the employer should still provide the employee with the notice and note the employee's refusal to sign on the employer copy of the notice.

Penalties For Failure to Provide Annual Notice

If an employer fails to timely provide the Annual Notice, in addition to other remedies and penalties that may be available under law, the DOL can assess damages against the employer of \$50 per week per employee, with no cap on the amount of damages that can accrue.

In proceedings against an employer to recover these damages, it will be an affirmative defense that (i) the employer completely and timely paid all wages due to the employee who was not provided the Annual Notice, or (ii) the employer reasonably believed in good faith that it was not required to provide the employee with the Annual Notice.

Action Required

Employers should prepare to provide each employee working in New York State with the Annual Notice between January 1st and February 1st. Employers may need to take the following actions:

- Determine which employees work in whole or in part in New York State, and classify these employees based on how they are compensated (e.g., exempt or non-exempt; paid on an hourly, salaried, commission or other basis);
- Determine whether the DOL model templates will be used or whether the employer will create its own templates, and determine which employees will receive which templates;
- Determine how the Annual Notice will be distributed (e.g., via standard mail, via inter-office delivery, or electronically) and make arrangements for distribution;
- Determine how the employer will establish each employee's primary language and arrange to provide dual-language notices to employees for whom English is not the primary language;

- Ensure all information required to be furnished on the Annual Notice is available and included;
- Ensure procedures are in place to collect signed acknowledgements of the Annual Notice from each employee, which must be preserved by the employer for six years, and provide each employee with a copy of his or her signed Annual Notice; and
- Train supervisors and human resources personnel in the Act's requirements and their responsibilities under the Act, particularly so that they are able to answer employee questions about the Annual Notice.

We would be happy to answer any questions you may have about the requirements of the Act, and assist you with preparations for providing the Annual Notice to your employees.

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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