

EMPLOYMENT LAW ALERT

January 2012

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The Time is Now: Wage Theft Prevention Act Compliance Tips

By: Jeffrey M. Schlossberg and Kimberly B. Malerba



The hot topic of discussion in all HR circles surrounds the first annual notice that is required to be provided to all employees this month under the Wage Theft Prevention Act. In prior Alerts, we informed you of the various provisions of the Act. In this Alert, we provide you once again with links to some of the most common forms as well as some new compliance pointers that you will not find elsewhere.



Initially, New York law requires that *each year prior to February 1*, every employer distribute to every employee a notice informing employees of certain information regarding their pay rate. This includes employees to whom forms already were given as "new hires" in 2011.

The most common forms are available by clicking on the following links: [Form for Hourly Employees](#), [Form for Exempt Employees](#), [Form for Non-Exempt Employees Paid a Weekly Salary](#).

As a result of our having addressed for our clients numerous issues concerning implementation, we have learned the answers to some widely pressing questions:

Primary Language: Many clients have expressed concern regarding how to determine an employee's "primary language." The Department of Labor will tell you that it is permissible to inquire of the employee directly. We urge some caution in this area. Although someone's primary language is not per se a protected classification, it could lead to impermissible conclusions regarding someone's national origin. Thus, we recommend simply informing employees that the forms are available in the various languages and let the employee contact you. Available languages are Chinese, Korean, Polish, Haitian Creole, Russian and Spanish.

Previous Alerts

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[November 2011](#)
[October 2011](#)
[September 2011](#)
[June 2011](#)
[May 2011](#)

Distribution: Employers may distribute the notices by email but there needs to be a system where the worker can acknowledge the receipt of the notice and print out a copy. Additionally, the Department of Labor advises that employers need to retain hard copies of original signatures for the required 6 years. Therefore, employers must ensure that although distributed electronically, the notices are returned with original signatures.

Out of State Employees: Employers are not required to provide notices to employees who do not work in New York.

Owners: Company owners who also are employees must complete an appropriate notice. Owners with only a passive investment interest and who are not employees would not have to complete the form.

We also take this opportunity to remind you that notices must still be provided to new hires and when there is a pay rate change that results in a reduction in the pay rate. Changes that result in an increase do not require new notices provided the new rate is set forth in the employee's next wage statement.

Penalties for noncompliance can be severe. The Department of Labor can assess a penalty of \$50 per week for each worker who did not receive the notice plus each employee can recover up to an additional \$2,500 as well as attorney's fees.

Finally, because distribution of the notices requires a determination of whether an employee is exempt or not, we strongly encourage employers to review how exemptions are determined. Misclassifying an employee can result in severe financial liability.

A little work now can mean substantial savings for a company later. We urge all employers to review current policies and procedures and ensure that you are in compliance with all of your wage and hour obligations.

As always, we stand ready to assist employers in becoming compliant with all wage and hour and other employment law issues.



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