

Employment Law

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DLSE Issues Updated Guidance on Wage Theft Protection Act and Revised Notice Form

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Effective April 12, 2012, California's Division of Labor Standards Enforcement (the "DLSE") updated the FAQs on the Wage Theft Protection Act, and also posted a revised "Notice to Employee" form providing an updated template that employers can use to satisfy the Act's written notice requirements. The updates reflect a continuing effort by the DLSE to clarify certain ambiguities highlighted by employers in the wake of the Act's January 1, 2012, enactment, which requires employers to provide new hires with written notice specifying, among other items, the employee's rate(s) of pay, designated pay day, whether the employer intends to claim allowances as part of the minimum wage, workers' compensation provider information, and the name, address and telephone number of the employer.

The Revised Notice to Employee Form

The DLSE website provides templates that employers may use to comply with the Act's written notice requirements that contain all of the information that the DLSE deems material and necessary. Employers are not required to use the templates offered by the DLSE so long as the notices they use contain all of the information required by law and contained in the DLSE's template.

The revised Notice to Employee form, effective April 12, 2012, makes certain material changes of which employers should be aware. Most notably, it modifies the prior template's question asking if the "employment agreement" is oral or written, and instead asks the employer to indicate "whether a written agreement exist[s] providing the rate(s) of pay." This change is much welcomed by employers concerned that the prior question could be used adversely in litigation to negate the inference of an "at-will" employment relationship.

The revised Notice to Employee form also changes "Hire Date" to "Start Date," modifies and reformats the sections providing information on the employer, shortens the disclosures at the beginning and end of the form, and clarifies that the employee's signature on the notice is "Optional" and "merely constitutes acknowledgement of receipt."

Importantly, FAQ No. 27 specifies that employers are not required to issue new notices to employees, who were previously provided notices consistent with the prior version upon hire, based upon these updates. However, employers must use the information provided in the updated template for all new hires and upon any substantive change in the provided information.

The Updated FAQs

The DLSE also added FAQ Nos. 27-30 to clarify certain additional

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ambiguities in the Act. The new FAQs primarily address the obligations the Act imposes upon staffing agencies. They specifically address the following questions:

26. When identifying the hiring employer what is the difference between the "legal name" and other names "doing business as"?
27. Does an employer that has previously provided notice to new hires have to issue a new notice based upon the DLSE's updates to the template posted on its website in April 2012?
28. Why does the template require a check box indicating whether the hiring employer is a staffing agency or business?
29. Why must a staffing agency provide information regarding "the other entity for whom this employee will perform work"?
30. Is a new notice required for every new placement of the employee made by a staffing agency/business?

Employers should ensure that they are aware of the revised Notice to Employee form and updated FAQs, and make any necessary revisions to their existing forms going forward.

The updated FAQs, revised Notice to Employee form, as well as prior archived versions can be accessed by clicking [here](#).

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