

Employment, Labor and Benefits Alert: New York Employers Should Begin Issuing Offer Letters to All New Hires To Comply with Amended Provisions of the New York Labor Law

8/20/2009

Effective on October 26, 2009, New York employers will be obligated to notify new employees, in writing, about certain terms and conditions of employment, and to obtain an employee's written acknowledgement confirming his or her receipt of this information. Employers that do not comply with the new law are subject to monetary penalties. As a practical matter, employers would be well-served by addressing these terms and conditions of employment at the outset of the relationship, to avoid future disagreements with employees.

What To Include and When To Send

Beginning October 26, 2009, amended Labor Law §195 will require that an employer notify new employees, at the time of hiring and in writing, about the following:

1. The rate of pay and the regular pay day that the employer designates (the latter in accordance with N.Y. Lab. Law §191); and
2. The regular hourly rate and overtime rate of pay for all non-exempt employees.

Additionally, employers must obtain from each new employee a written acknowledgement confirming that he or she received the foregoing information. The acknowledgment must satisfy any content and form requirements that the Commissioner of Labor will publish.

Penalties of Noncompliance

If the Commissioner of Labor determines that an employer has not complied with amended §195, he or she may issue a compliance order to the employer and the following monetary penalties, as applicable: 1) \$1,000 for the first violation; 2) \$2,000 for the second violation; and 3) \$3,000 for the third or subsequent violation. (N.Y. Lab. Law §218(1)).

Best Practices

Where an employee acknowledges, in writing, his or her receipt of a notice specifying the regular and overtime rate of pay and the pay day, the possibility of a future disagreement concerning the terms and conditions of employment is diminished. Thus, providing new employees with this information is advisable as a best practice for employers, even aside from the prospect of having to pay statutory penalties for noncompliance with §195. Although amended §195 does not become effective until October 26, 2009, employers should consider crafting compliant offer letters immediately. In addition, beginning October 26, 2009, employers should get, from each new employee, a written acknowledgment that satisfies any content and form requirements that the Commissioner of Labor publishes.

For assistance in this area, please contact one of the attorneys listed below *or any member of your Mintz Levin client service team.*

Andrew J. Bernstein
(212) 692-6742
AJBernstein@mintz.com

Richard H. Block
(212) 692-6741
RHBlock@mintz.com

James R. Hays
(212) 692-6276
JRHays@mintz.com

David R. Lagasse
(212) 692-6743
DRLagasse@mintz.com

Jennifer B. Rubin
(212) 692-6766
JBRubin@mintz.com

Michael S. Arnold
(212) 692-6866
MArnold@mintz.com

Gregory R. Bennett
(212) 692-6842
GBennett@mintz.com

Jessica W. Catlow
(212) 692-6843
JCatlow@mintz.com

Jennifer F. DiMarco
(212) 692-6260
JFDiMarco@mintz.com

David M. Katz
(212) 692-6844
DKatz@mintz.com