

# LEGAL UPDATE

January 2012 By: Joshua Zuckerberg

## URGENT REMINDER

### **WAGE NOTICE REQUIREMENTS FOR ALL EMPLOYEES MUST BE DISTRIBUTED BY FEBRUARY 1, 2012**

By February 1, 2012, all private-sector New York employers must provide each of their employees with a written notice pertaining to pay rates and pay dates (the “Notice”). Under the Wage Theft Protection Act (“WTPA”), the Notice must be provided to all employees, even those the employer considers “exempt” from certain wage and hour laws due to their managerial, administrative, or professional status.

#### **NOTICE OF PAY RATE AND PAYDAY**

As detailed in two earlier Legal Updates, since April 12, 2011, employers have been required to furnish each newly hired employee with the Notice (1) at the time of hiring, (2) on or before February 1 of each subsequent year of employment, and (3) within seven days of any change in the information contained in the Notice. This Notice must include the following:

- The rate or rates of pay and the basis of the rate, including overtime rates;
- Whether the employee is being paid by the hour, shift, day, week, salary, piece, commission, or in some other method;
- Allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- The regular pay day designated by the employer;
- The name of the employer, and any “doing business as” names used by the employer;

- The physical address of the employer’s main office or principal place of business and the mailing address, if different; and
- The telephone number of the employer.

Employers must provide this Notice in English and in the language identified by the employee as his or her primary language at the time of hiring. To assist employers, the New York State Department of Labor (NYSDOL) has provided guidance on its website at:

[www.labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm](http://www.labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm)

In addition, the NYSDOL has provided specific forms which employers may use as the required Notice at:

[www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm](http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm)

The employee must (1) sign and date a written acknowledgment of receipt of the Notice each time that the employer provides the employee with it, (2) affirm that he or she identified his or her primary language to the employer, and (3) affirm that he or she received a copy of the Notice in his or her primary language. The Notice can be provided electronically as long as the employee can acknowledge receipt of the Notice and print a copy. The required written acknowledgments must be retained for six years.

**The WTPA requires that employers provide the same Notice to all current employees (not just**

**new hires) by February 1, 2012, and by February 1 in every subsequent year.**

### **WAGE STATEMENTS**

Employers should also ensure that Wage Statements, which are provided to employees with their paychecks, include, at a minimum, the following information:

- The dates of work covered by the wage payment;
- The name of the employee;
- The name, address and telephone number of the employer;
- The rate or rates of pay and basis thereof;
- Whether the employee was paid by the hour, shift, day, week, salary, piece, commission or other;
- Gross wages;
- Deductions;
- Allowances (if any claimed as part of the minimum wage); and
- Net wages.

Employers should pay special attention to the additional requirements for the Wage Statements of non-exempt employees, which must include: **the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked.** If the employee is paid on a piece rate, the statement must include the applicable piece rate or rates of pay and the number of pieces completed at each piece rate.

### **RETENTION OF PAYROLL RECORDS**

Employers must maintain all payroll records for six years.

### **PENALTIES FOR NONCOMPLIANCE**

An employer that fails to provide the required Notice on a timely basis is subject to an action for damages of \$50 per workweek per employee, up to a maximum of \$2,500 per employee, plus costs, attorneys' fees and injunctive relief. Also, employers that fail to provide employees with the

required information in each Wage Statement will be penalized \$100 for each week per employee, up to \$2,500 per employee, plus costs, attorneys' fees and injunctive relief.

### **CONCLUSION**

The WTPA provides for other penalties in other wage and hour areas, so a close review of our previous Legal Updates on this issue is recommended: [New York Wage Theft Prevention Act Goes Into Effect This Week](#) and [New Wage Rate Notice Requirements Affecting All New York Employers](#). It is anticipated that the WTPA will lead to increased activity by the New York State Department of Labor and plaintiffs' attorneys. It is therefore recommended that employers of all sizes consult with counsel to ensure that they are compliant with the WTPA.

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*The foregoing is merely a discussion of The New York Wage Theft Protection Act. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Joshua Zuckerberg at (212) 326-0885 [jzuckerberg@pryorcashman.com](mailto:jzuckerberg@pryorcashman.com).*

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Joshua Zuckerberg has been with Pryor Cashman since 2000 and became a partner in January 2007. His practice covers the entire spectrum of labor and employment issues. He has extensive experience representing and counseling employers on all matters affecting the workplace, including discrimination, harassment, and disability claims, restrictive covenants, wage and hour issues, and termination and severance practices.

In addition, Mr. Zuckerberg represents employee associations whose membership includes physicians, professors, stage directors and fire officers. Mr. Zuckerberg has developed considerable expertise in arbitration, mediation, collective bargaining, and federal and state litigation.

Mr. Zuckerberg is a 1997 graduate of Brooklyn Law School, where he was a member of the Brooklyn Journal of International Law and the Moot Court Honors Society. He was awarded an Edward V. Sparer Public Interest Law Fellowship.