

**Reminder to New York Employers:
Annual Notices Under the Wage Theft Prevention Act
Must Be Distributed Between January 1 and February 1, 2012**

November 28, 2011

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For the first time, in 2012, New York employers must provide *all* New York employees with an annual notice and acknowledgment of pay rate and pay date (“Notice”) pursuant to the Wage Theft Prevention Act (“WTPA”), which amended the New York State Labor Law (“Labor Law”), effective April 9, 2011.

As we previously reported (see *Act Now Advisory* “[Governor Paterson Signs Overhaul of New York State Labor Law](#)” (Dec. 15, 2010), and *Act Now Advisory* “[They’re Here – New York State Department of Labor Issues Updated 195.1 Templates and WTPA Frequently Asked Questions](#)” (April 4, 2011)), the WTPA requires employers to provide their newly hired employees with Notices. Employers must also provide New York employees with written notice of certain changes in their wage rate and/or pay dates.¹ In addition, the requirement that New York employers must provide Notices to *all* employees, annually, between January 1 and February 1 of each year, first becomes applicable in 2012.

The Notice must contain the following information:

- The rate or rates of pay and basis thereof (whether paid by the hour, shift, day, week, salary, piece commission, etc.);
- For non-exempt employees, the regular rate and overtime rate of pay;
- Allowances, if any, claimed as part of the minimum wage (such as tip, meal, or lodging allowances);
- The regular pay day designated by the employer;
- The name of the employer (including any “doing business as” names used);

¹ Employers in the hospitality industry must provide employees with notice of both positive and negative changes in pay rates. Employers in other industries, however, need only provide employees with notice of negative changes in pay rates, so long as the employers’ wage statements comply with the requirements set forth in the WTPA.

- The physical address of the employer’s main office or physical place of business, and a mailing address, if different;
- The employer’s telephone number; and
- “Other information as the Commissioner [of Labor] deems material and necessary.”

The Notice must be provided to each employee in not only English but also the employee’s “primary language,” if that language has been designated by the New York State Department of Labor (“DOL”) for publication of dual-language forms. Dual-language templates are currently available in Spanish, Chinese, Korean, Haitian Creole, Polish, and Russian. If the employee identifies a primary language other than one of these six, the employer may provide the Notice in English only.

The various templates can be accessed on the DOL’s [website](#).

Employers must keep the original Notice for six years and provide the employee with a copy. Further, the DOL has indicated that electronic distribution of the Notice will be permissible, provided that the employer complies with certain requirements, including that employees must be able to affirmatively acknowledge receipt, and must have access to review and print the Notice.

Damages and Penalties

Failure to comply with the Notice requirements pursuant to the WTPA can result in penalties to employers. Both individual employees and the Commissioner of Labor (“Commissioner”) can bring legal actions to enforce the section of the Labor Law requiring Notices. For example, if the Commissioner brings a claim against an employer for noncompliance, the employer may be liable for damages of \$50 for each workweek of noncompliance. The Labor Law is purposefully silent as to whether this penalty will be applied so that the employer is penalized \$50 per week in each week that it does not comply with the statute, or, alternatively, \$50 *for each employee* who does not receive the Notice during each week of noncompliance. Thus, penalties can be significant.

What Employers Should Do Now

- Prepare the Notice with sufficient time for it to be delivered to employees between January 1 and February 1, 2012.
- Provide the Notice in English and employees’ “primary languages,” as applicable:
 - As one option, ask employees to identify their primary language prior to distributing the Notice, so that Notices can be distributed in the proper primary languages within the permissible time window; and
 - As an alternative option, distribute the Notice in English, with a note to employees that if their primary language is not English, they must notify you within a certain period of time; if this option is selected, ensure that Notices in English are issued shortly after January 1, so that a second

Notice, in the proper primary language, can still be issued to the applicable employees on or prior to February 1.

- Be aware that the Notice carries liability for noncompliance, so contact your employment counsel if you have any questions or concerns regarding compliance.
- Train managers on how to respond to inquiries about the meaning of “primary language.”

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