

NEW YORK WAGE THEFT PREVENTION ACT

Effective April 9, 2011, New York employers will be subject to a new set of stringent requirements mandating that employers give additional notice to employees regarding their wages. The new set of requirements, codified as the "New York State Wage Theft Prevention Act," (the "Act"), New York Labor Law §195, was signed into law by former Governor David Patterson in December 2010.


The first requirement of the Act relates to notice given to new employees at the commencement of employment. Previously, employers had only to notify new employees of their rate of pay, overtime rate of pay (if eligible), and regular date of pay. The Act now requires employers to furnish two additional "wage disclosures." One, the employer must disclose how the employee is to be paid, whether by the hour, shift, day, month, or some other method. Two, the employer must state whether it intends to take any allowances against the minimum wage. Many employers, particularly in the service sector, can claim allowances for compensation their employees receive, such as tips, or perquisites the employer provides, such as lodging. Of critical note, the Act requires this information to be provided not only in English, but in the language designated by the employee as their native language. This burdensome language requirement will necessitate that employers prepare form documents in several languages so as to be able to respond quickly to inquiries for employment. The Act requires the Commissioner of Labor to prepare the bilingual templates for the notice and acknowledgement, but at present these templates are unavailable. Also required on the notice is the employer's main address and telephone numbers, and additional information about the employer including d/b/a names.

The second requirement of the Act requires employers to provide notice of the above-mentioned wage disclosures not only to new employees, but also mandates that such notice must be given annually to existing employees. Employers must annually obtain a written acknowledgement from each employee and those acknowledgements on file for six (6) years. The Act also requires that notice be given to employees seven days before any changes to the information takes effect unless such information is provided during each pay period. Providing this type of routine notice each pay period is normally and most easily accomplished on an employee's paystub.

Failure to comply with the notice provisions of the Act as they relate to new employees carries a penalty of \$50 per workweek for each violation, with a total fine not to exceed \$2,500. Violations of the Act relating to existing employees carry a penalty of \$100 per workweek violation, with a total fine not to exceed \$2,500.

Employers should be aware that the Act also raises the level of penalties for noncompliance with payment of the minimum wage. Unchanged from current regulations and law, employers are still liable to employees for unpaid wages, plus interest, and reasonable attorneys' fees and costs incurred in recovery of those unpaid wages. However, the Act has increased the liquidated damages award for unpaid wages to 100% of the outstanding wages, absent a showing by the employer of a good faith basis for believing the wages were not due and owing. Employees also remain free to pursue an administrative proceeding against the employer for recovery of unpaid wages.





Employers should take several steps to ensure compliance with the Act. First, wage payment forms should be updated to include the required new wage disclosures. While this type of information may already be included on many wage payment forms, due to the stiff penalties for noncompliance, employers should verify that the information on their forms satisfies the Act. Second, employers must create acknowledgement forms for existing employees. Lastly, employers should develop a recordkeeping system to keep the acknowledgements on file for six (6) years.

We are available to assist employers in navigating the maze of requirements created by this new statute.

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