

NEW YORK STATE WAGE THEFT PREVENTION ACT

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Effective April 9, 2011, the New York Wage Theft Prevention Act (“WTPA”) will amend Section 195 of the New York State Labor Law (“Labor Law”) to require that New York employers provide employees hired on or after this date with a written acknowledgment concerning their rates of pay, wage allowances, pay dates, and related matters. The following is a summary of the WTPA’s wage payment reporting and payroll record retention requirements. Employers need to ensure that they are in full compliance with the new wage and hour notice requirements of the Labor Law in order to avoid the imposition of the expanded civil and/or criminal penalties set forth in Sections 197 and 198, also effective on April 9, 2011.

A. Pay Notices and Employee Acknowledgements

1. Effective Date and New Hires

Effective April 9, 2011, the Labor Law will require that employers provide employees hired on or after this date with a written acknowledgment containing the following information:

- (1) the employee’s rate or rates of pay (including the overtime rate of pay for non-exempt employees), and the basis thereof;
- (2) whether the employee will be paid by the hour, shift, day, week, salary, piece, commission or otherwise;
- (3) whether the employer will claim any allowances as part of the minimum wage (*e.g.*, tip, meal or lodging allowances);
- (4) the employer’s regular pay day;
- (5) the physical address of the employer's main office or principal place of business, and a mailing address if different;
- (6) the telephone number of the employer; and
- (7) such other information as the commissioner deems material and necessary (the “Pay Notice”).

2. Annual Notice Requirement

Employers must provide all employees, including those hired on or after April 9, 2011, with this written Pay Notice on or before February 1, 2012 and by February 1st of each subsequent year of the employee's employment.

3. Required Language of Notice

The Pay Notice must be provided to employees either in English and in the language identified by each employee as his/her primary language at the time of their hiring.

4. Employee Acknowledgement Requirement

Each time the employer provides a Pay Notice to an employee, the employer shall obtain from the employee a signed and dated written acknowledgement ("Employee Acknowledgement"), in English and in the primary language of the employee, of his/her receipt of the Pay Notice. Such Acknowledgement shall include:

- (1) an affirmation by the employee that the employee accurately identified his or her primary language to the employer;
- (2) that the Pay Notice provided by the employer to such employee pursuant to this subdivision was in the language so identified or otherwise complied with applicable law; and
- (3) shall conform to any additional requirement established by the New York State Commissioner of Labor with regard to content and form.

3. Document Retention Requirement

Employers are required to preserve and maintain the Pay Notice and Employee Acknowledgement for six (6) years.

4. Pay Notice Changes

Effective April 9, 2011, an employer must notify its employees in writing of any changes to the Pay Notice information set forth above, at least seven (7) calendar days prior to the time of such changes, unless such changes are reflected on the wage statement furnished in accordance with Section B of this summary.

5. Costs/Remedies

If an employer fails to provide an employee with the required Pay Notice within ten (10) business days of his/her first day of employment, then the employee may recover \$50 for each work week during which the violation occurred or continues to occur up to a maximum of \$2,500 together with attorneys' fees and costs.

6. Pay Notice and Employee Acknowledgement Templates

The Commissioner of Labor has been directed to issue template notices that comply with the Labor Law's new reporting requirements.

B. Pay Statements and Payroll Records

1. Required Payroll Information

The WTPA further requires employers to provide employees with a statement in connection with *every* payment of wages that lists the following information:

- (1) the dates of work covered by that payment of wages;
- (2) name of employee; name of employer;
- (3) address and phone number of employer;
- (4) rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other;
- (5) gross wages;
- (6) deductions;
- (7) allowances, if any, claimed as part of the minimum wage; and
- (8) net wages.

2. Overtime Pay Rate

For non-exempt employees, the pay statements must also include;

- (1) the employee's regular hourly rate or rates of pay;
- (2) the employee's overtime rate or rates of pay;
- (3) the number of regular hours worked; and
- (4) the number of overtime hours worked.

3. Piece Rate Employees

For all employees paid a piece rate, the pay statement must include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. Upon the request of an employee, an employer must furnish a written explanation of how such wages were computed.

4. Costs/Remedies

If an employer does not provide an employee with a required pay statement, then the employee may recover \$100 for each work week during which the violations occurred or continues to occur up to a maximum of \$2,500, together with attorneys' fees and costs.

5. Payroll Record Retention Requirements

Employers must establish, maintain and preserve for not less than six (6) years contemporaneous, true, and accurate payroll records for all employees showing for each week worked the hours worked; the rate or rates of pay and basis thereof, whether 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 for each employee

For all employees who are *not* exempt from overtime compensation, the payroll records 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.

For all employees paid a piece rate, the payroll records must include the applicable piece rate or rates of pay and number of pieces completed at each piece rate.

C. Anti-Retaliation Provisions

If an employer is found to have retaliated against an employee because the employee complained that the employer engaged in conduct that the employee, reasonably and in good faith, believed violated any provision of the Labor Law, then the employee may be entitled to reinstatement, back pay and front pay. The employee may also recover up to \$10,000 in liquidated damages.

D. Civil Remedies

Employees have the right to recover full wages, benefits and wage supplements, and liquidated damages accrued during the six (6) years previous to the commencing of an action for a wage payment or reporting violation, whether such action is instituted by the employee or by the Commissioner of Labor.

Under current New York law, liquidated damages (penalties for failing to pay wages) are limited to 25 percent of wages due. WTPA increases the potential amount of liquidated damages

to 100 percent of wages due, unless the employer is able to show that it had a “good faith basis” that the challenged payment method was lawful.

The WTPA further provides that if an employer is found to have violated New York’s wage payment laws, such employer may be required to post a notice of the violation for up to one (1) year in an area visible to employees. If the employer’s violation is deemed to have been willful, then the employer must post the notice in an area that is visible to the general public for up to ninety (90) days.

E. Criminal Penalties

Employers who fail to pay employees minimum wage or overtime compensation shall be guilty of a class B misdemeanor and upon conviction shall be fined an amount between \$500 and \$20,000 or imprisoned for up to one (1) year. If the employer is convicted of a subsequent offense within six (6) years of the prior offense, then such employer shall be guilty of a felony and upon conviction shall be fined an amount between \$500 and \$20,000 or imprisoned for up to one year and one day.

Additionally, although businesses are criminally punishable for violations of the New York Labor Law, only corporations and their officers and agents are currently subject to criminal penalties. The WTPA extends criminal liability to both partnerships and limited liability corporations.

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