



EMPLOYMENT LAW ALERT

APRIL 5, 2011

New York Department of Labor Issues Guidance on Wage Notice Requirements

As the April 9, 2011 effective date for the New York Wage Theft Prevention Act approaches, the New York Department of Labor ("NY DOL") has issued guidance and sample templates that employers can use to comply with the wage notice requirements now codified in New York Labor Law Section 195(1). With the passing of the New York Wage Theft Prevention Act, New York employees are now entitled to receive written notice, both at the time they are hired and each year between January 1 and February 1, of their regular rate of pay, regular pay day, overtime rate of pay (if overtime eligible), basis of pay (e.g., whether the employee will be paid by the shift, hour, day, week, salary, piece, commission, or by another basis), any allowances (like tips) claimed as part of the minimum wage, and the employer's main address and phone number. (See [Orrick's January 3, 2011 client alert](#)). Notifying an employee of his or her wage rate during the year will not relieve an employer of its obligation to provide written notice, and obtain written acknowledgment, from each employee between January 1 and February 1, beginning in 2012.

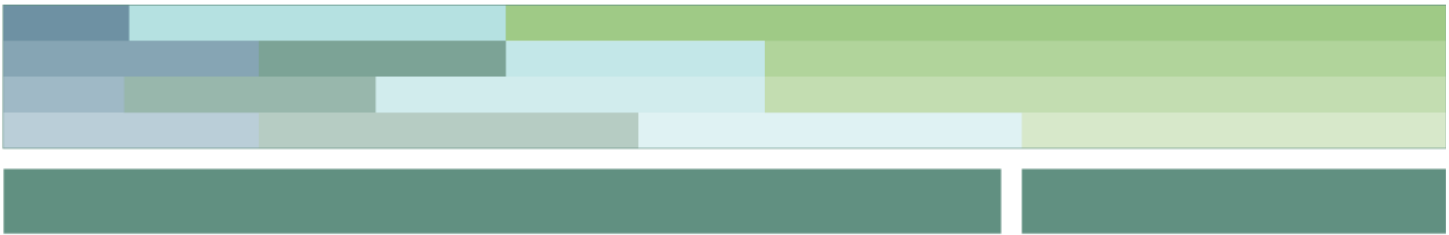
The NY DOL has now issued template wage notices for exempt employees, hourly employees, multiple hourly rate employees, employees paid on a weekly rate or a salary for a fixed number of hours, employees paid a salary based upon piece rate or flat rate, and employees working on public work projects. (The NY DOL templates can be [found here](#)). The NY DOL explicitly states that employers are not required to use these templates and can modify and adapt their own forms, so long as the information required by law is included in the forms distributed to employees. In addition, while an employer can choose to distribute the required wage notice to new hires with an offer letter, in the Wage Theft Prevention Act Frequently Asked Questions just released by the NY DOL, the department states that the notice must be on its own form and not simply incorporated into the offer letter.

Even if employers develop their own wage notice forms, employers should consider using the templates to provide notice to employees whose primary language is not English. Templates have been issued in Spanish, Korean, and Chinese, and will be issued in Haitian-Creole, Polish, and Russian. Employers will be deemed to have satisfied their statutory obligation by providing English notice to those employees whose primary language is not one for which the NY DOL has issued a template, and will not be held responsible for any translation errors on the NY DOL's forms.

Additionally, the NY DOL has endorsed the use of electronic notice and acknowledgment. Electronic wage notices will comply with the amended Section 195(a) provided that (i) the employee has access to a computer with printing capabilities and there is no charge to print a copy of the notice, (ii) the notice is in a format that can be reviewed at the computer to which the employee has access, and (iii) the form of the acknowledgment is sufficient to guarantee that the employee has received and reviewed the notice, and that the employee is aware that acknowledging the notice will have legally significant consequences. For example, the NY DOL has suggested that an electronic response that affirmatively states that the employee acknowledges receipt of the notice would satisfy the statutory requirement.



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