

"Wage Theft Prevention Act" Annual Notice Requirement for Existing Employees Due February 1

January 24, 2012

In April 2011, the New York State Labor Law was amended to impose new requirements on employers and to impose greater penalties for violations. There are three critical parts to the law: (i) Notices for new hires; (ii) Notices for existing employees; and (iii) New information required on paystubs. Employers must ensure that they provide the annual wage notice form to existing employees by February 1.

NOTICE REQUIREMENTS FOR ALL NEW HIRES

When a new employee is hired, you must, within 10 business days from the first day of work, provide the employee with a written notice.

The notice must be: (a) separate and apart from any offer letter that you may use; (b) in both English and the employee's primary language (if other than English); and (c) signed by the employee. The employee must be given a copy, and the original must be retained by the employer for 6 years.

The notice must contain the following information:

- The complete and correct name (and telephone number) of the employer (including any "doing business as" name of the employer if there is one);
- The physical address of the employer's main office or physical place of business (or mailing address if it is different);
- The regular payday (note that this must be weekly for manual workers, at least twice a month for clerical and other workers, and at least monthly for commissioned salespeople);
- The rate or rates of pay and whether paid by the hour, shift, day, week, salary, piece, commission, etc.... (Remember that under a separate law all commission agreements must be in writing);
- For exempt employees, the exemption for which they qualify (e.g., professional, executive, administrative);
- For non-exempt employees, the regular rate of pay and overtime rate;
- Any allowances claimed towards the minimum wage (such as tips, meals or lodging).

ANNUAL NOTICE REQUIREMENT FOR EXISTING EMPLOYEES

The law now requires that employers provide the above-described notices to all employees (not just new hires) between January 1 and February 1 of each calendar year beginning in 2012. Thus, notices for existing employees must be completed by February 1, 2012. As with the new hire notices, the employer's copy must be retained for 6 years.

Forms and FAQ from the Department of Labor

The Department of Labor has created forms that are compliant with these new obligations. This is the link to those forms, as well as a FAQ sheet:

<http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtml>

NEW PAYSTUB REQUIREMENTS

Paystubs will now be required to provide more information than they had in the past. As of April 9, paystubs (which must be retained for 6 years) must contain the following information:

- The name of the employee;
- The name, address and telephone number of the employer;
- The dates covered by the payroll period;
- The amount of gross wages; deductions and net pay;

- Any allowances taken towards the minimum wage;
- The rate or rates of pay, and the manner of pay (e.g., hourly, weekly, salary, commission, etc.);
- For non-exempt employees the paystub must now show the number of regular and overtime hours worked.

UPDATED NOTICES ARE REQUIRED WHEN CHANGES OCCUR

If any of the information required by the “New Hire Notice” or “Annual Notice” changes during the year, a new notice must be provided unless the changed information is shown on the next paystub. For example, if the employer’s address changes, a new notice is not required (until the following calendar year) so long as the paystub for the payroll period after the move contains the employer’s new address.

PENALTIES / VISITS FROM THE DEPARTMENT OF LABOR

The mandate from the New York legislature is that employers are to be penalized severely for wage and hour violations occurring under the Labor Law. For example, with the passage of the new amendments, employees who are owed back wages may become entitled to additional damages equal to the amount of any underpayment, plus interest and attorneys’ fees. The Labor Law also permits enforcement actions both by the Department of Labor and through private lawsuits.

The Department of Labor is also conducting many more unscheduled field visits to places of employment both to ensure that the proper notices are being displayed and to speak with employees about compliance issues. The amendments to the Labor Law now require that employers permit agents of the Department of Labor to meet with employees at the workplace during working hours (we expect this aspect of the law will be tested in the courts).

These new amendments to the Labor Law will likely fuel this continued aggressive enforcement both by the Department of Labor and the plaintiffs’ bar. Accordingly, it is extremely important that you take measures to ensure that you are in compliance with the law. Corrective actions taken now can reduce your exposure to drastic economic liability later.

Our labor and employment law department is available to answer your questions and to guide you through the process of becoming compliant and/or maintaining practices that are compliant with your legal obligations. If there was ever a time to take the “ounce of prevention,” it is now.

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