

New York State Department of Labor Releases Wage Theft Prevention Act Guidance & Template Notices

In anticipation of the April 9, 2011 effective date of the Wage Theft Prevention Act (the "Act"), the New York State Department of Labor (the "NYDOL") has published [notification templates](#), [Guidelines](#) and [Instructions for Written Notice of Rates of Pay and Regular Payday](#), and [Wage Theft Prevention Act Frequently Asked Questions](#) on its website to assist employers in complying with the new law. As reported in more detail in our [December 20, 2010 blog post](#), the Act imposes new wage notice, wage statement and recordkeeping obligations on employers, enhances penalties for state Labor Law violations, and expands the scope of retaliation protections, among other things.

Under the Act, which significantly modifies Section 195 of the Labor Law, employers must furnish employees with notices of wage rates at the time of hiring; annually on or before February 1 of each year; and within 7 days of a change, if the change is not listed on the employee's pay stub for the following pay period. In its newly issued guidance, the NYDOL clarifies that while the wage notice provided to new hires may accompany employment agreements and/or offer letters, all wage notices must be provided on a stand-alone document. Further, the NYDOL states that, for any reduction of wage rate, an employee must be notified in writing prior to the reduction being implemented. Employers in the hospitality industry, meanwhile, must notify employees of all pay changes.

The NYDOL has also issued wage notification templates for the following groups of employees: (1) hourly rate employees; (2) multiple hourly rate employees; (3) employees paid a weekly rate or a salary for a fixed number of hours (40 or fewer in a week); (4) employees paid a salary for varying hours, day rate, piece rate, flat rate, or other non-hourly basis; (5) prevailing rate and other jobs; and (6) exempt employees. In conformity with the Act, which requires the notice to be provided in English and the employee's primary language (if a dual-language template is made available), the NYDOL posted dual-language templates in Chinese, Korean, and Spanish. The NYDOL guidelines indicate that additional dual-language templates will be made available in Haitian-Creole, Polish, and Russian.

Each template notice also contains an acknowledgment, which employees must complete as proof of receipt of the notice. Where an employee refuses to sign the acknowledgment, the NYDOL advises that "the employer should still give the notice and note the worker's refusal on its copy of the notice." Under the Act, employers must keep a copy of the notice for 6 years. The Act provides employers with the option of using the appropriate NYDOL template notice or creating their own notice, so long as the employer's version contains the information found in the applicable NYDOL templates.

The Act also mandates that the notice contain certain information, including the regular rate of pay, regular payday and, if applicable, overtime rate of pay; how the wage payment is calculated; the employer's intent to claim allowances (e.g. tip, meal, or lodging); and pertinent information about the employer such as the physical address of the main office or principal place of business, the doing business as name, and the employer's phone number. The Act provides for a catch-all that allows the Commissioner of Labor to require the notice to include other information she deems "material and

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necessary." In light of this provision, the template notices appear to require information beyond what is expressly prescribed by the Act. For example, in each template notice, employers must indicate whether the pay periods are weekly, bi-weekly, or other. Further, the form addressed to employees who earn prevailing wages requires employers to identify the applicable occupation and the non-prevailing pay rate for that occupation.

The recently published NYDOL guidance contains additional noteworthy notice requirements specific to exempt employees. The new guidelines provide that employers "may state the specific exemption that applies," but are not required to do so. Consistent with this guidance, the template Notice For Exempt Employees provides space for the employer to list the applicable exemptions, but additionally states that this information is "optional."

The NYDOL guidance also specifically permits employers to provide the required notice electronically. Employers that choose this option must have a system that allows employees to acknowledge receipt of the notice and print out a copy of the notice.

The NYDOL has also issued [Guidelines for Notice and Acknowledgment of Wage Rate\(s\) for Temporary Help Firms](#). Recognizing that temporary help firms may not be able to supply all of the information required by the Act "because wages and paydays may vary by assignment," the NYDOL imposes more lenient notification requirements on temporary help firms. At the time of the initial hire, temporary help firms must provide employees with, among other things, a range of hourly wages likely to be earned. Moreover, once a temporary help firm assigns an employee to perform specific work for other organizations, the temporary help firm must notify the employee, either verbally or in writing, of "the specific designated payday for the particular assignment; the actual hourly rate of pay for the assignment; and the overtime rate of pay he or she will receive; or, if applicable, inform the employee that the position is exempt from additional overtime compensation and the basis for the overtime exemption."

This post was authored by [Matt Lampe](#), [Craig Friedman](#), and [David Krieger](#) of Jones Day.

The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.