

## First Annual Written Pay Notice under the New York Wage Theft Prevention Act Due by February 1, 2012

2012 is the first year that private-sector New York employers must provide the annual written pay notice required by the Wage Theft Prevention Act. Although the initial passage of the Wage Theft Prevention Act over a year ago garnered significant attention, it is worth reiterating now that the February 1 deadline for provision of the annual notice is rapidly approaching and employers should use the remaining time to ensure compliance with the new notice obligations.

On December 14, 2010, then-Governor David Paterson signed the [Wage Theft Prevention Act, S. 8380/ A. 11726](#) (the "Act"), into law in New York State, which amended [Section 195](#) of the [New York Labor Law](#). Joining a growing number of states with similar wage theft legislation, the Act sought to address classification of employees and payment of statutorily-mandated minimum wages and overtime, and included enhanced civil and criminal penalties for non-compliance. In effect since April 9, 2011, the requirements applies to all private-sector employers in New York.

Under the Act, every employee, whether full or part-time, whether covered by a union contract or not, and regardless of exempt status, must receive a written pay notice between January 1 and February 1 of each year, including the following information:

- the employee's rate of pay, including overtime rate of pay, if non-exempt;
- the basis of the wage payment (*e.g.*, by the hour, shift, day, week, salary, piece, commission, or other);
- the regular payday;
- the allowances taken as part of the minimum wage (*e.g.*, tip, meal and lodging deductions);
- the employer's official name and any other "doing business as" names; and
- the address and phone number of the employer's main office or principal location, and mailing address if different.

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2012 is the first year that employers must provide the annual written pay notice, which applies even if none of the information has changed from the prior year.


Under the Act, the notice must be provided in English and in the employee's primary language if the New York Department of Labor ("NY DOL") offers a translation. Currently, the NY DOL offers dual language translations in Chinese, Haitian Creole, Korean, Polish, Russian, and Spanish, all of which are available here. Employers with seasonal employees on layoff between January 1 and February 1 must furnish the notice as soon as the employees return from layoff. The notice may be distributed electronically, but only if employees' receipt of the notice and acknowledgment is verifiable and if the employee is able to print a copy for their records.

In addition, the Act requires employers to obtain a signed and dated acknowledgment of the notice from each employee. Employers must retain copies of the notice and accompanying acknowledgment for six years, and provide them to the NY DOL upon request. If an employee refuses to acknowledge the notice, an employer should still give the notice and note the refusal on its retained copy. Moreover, an employee cannot waive the written notice requirement. The NY DOL can assess penalties of \$50 per week per employee if a proper written notice is not provided, and employees can sue for not receiving a proper written notice with damages capped at \$2,500 per employee.

With the February 1, 2012 deadline rapidly approaching, employers should take any remaining steps necessary for to meet the annual notice requirements. The NY DOL provides web-based, printable model templates for employers seeking guidance, which are available here. The Act does not require the use of these particular forms, and employers may develop their own forms so long as all the information legally required is included. The NY DOL has also published a Fact Sheet on the Act, available here, and a set of FAQs, available here.

This post was authored by Matt Lampe, Joseph Bernasky, and Jenny Ma 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.

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