
Reminder: NY Employers Must Provide Wage Notices On or Before February 1, 2012

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New York employers must soon, for the first time, provide employees the annual wage statements required under the state Wage Theft Prevention Act (“WTPA”), which took effect on April 12, 2011. The WTPA requires all employers to issue such notices every January. The start of a new calendar year also provides an opportunity for New York employers to review their payroll practices to confirm that they are in full compliance with the detailed payroll requirements found in the New York Labor Law and the various industry-specific wage orders issued by the New York Department of Labor (“NYDOL”).

Under the WTPA, New York employers must provide an annual written notice to each employee containing certain information about the employee’s wages. Employers must provide such notices between January 1, 2012 and February 1, 2012.

The notice must include: the employee’s rate of pay, the regular pay day, the basis of the employee’s rate of pay (e.g., by the hour, shift, week, salary, commission, or other), allowances claimed as part of the minimum wage, the employer’s name, any “doing business as” names used by the employer, the employer’s address and telephone number, and “other information as the commissioner deems material.” Written acknowledgments of receipt must be secured from each employee and must be retained by employers for six years.

While employers are free to create their own notice and acknowledgment forms (provided they include the necessary information), the NYDOL’s website¹ currently provides templates for the notice and acknowledgment in English, Spanish, Chinese, Korean, Creole, Polish, and Russian. Employers must provide the notice and acknowledgment in English and, if applicable, also in the language identified by an employee as his or her primary language, if a template is available in the employee’s primary language. If no template is available in the employee’s primary language, the employer may provide the notice in English only.

 ¹ <http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>

Employers who fail to provide this required notice could be liable for damages of up to \$50 per week per employee, up to a maximum of \$2,500 per employee.

New York Employers Should Ensure Full Compliance with the New York Labor Law

While preparing the required annual notices, New York employers should also take time to consider whether their current payroll practices are in full compliance with the New York Labor Law and any industry-specific wage order that is applicable. The WTPA and the recent Hospitality Industry Wage Order issued by the NYDOL have quickly and dramatically changed the legal landscape, and failure to comply with any of the new requirements could lead to fines or litigation. The NYDOL has also issued Wage Orders that are applicable to the building services industry, household employers, domestic workers, and a “miscellaneous industries” wage order applicable to all industries not covered by other wage orders, with the exception of certain nonprofit employers.²

In addition to the annual notices discussed above, the WTPA has also imposed new notice requirements applicable upon the hiring of new employees and added stronger penalties for violations of the New York Labor Law’s anti-retaliation provisions. A full summary of the WTPA’s requirements is available in our earlier client alert, “[New York’s New Wage Theft Prevention Act](#)” (January 20, 2011).

Many New York employers remain unaware of New York’s “spread of hours” requirement, which mandates an extra hour of pay at the minimum wage when an employee’s work day (including meal and rest breaks) lasts longer than ten hours. Hospitality industry employers (such as restaurants and hotels) must be especially careful to comply with the spread of hours requirement, as the new Hospitality Industry Wage Order mandates a spread of hours payment for all non-exempt employees, regardless of the employees’ hourly rate. The Miscellaneous Industries Wage Order does the same. Under the prior wage orders applicable to restaurants and hotels, such employers were only required to make such payments to employees working at or near the minimum wage.

Employers paying a sub-minimum wage to employees who receive tips as part of their compensation should also be especially cautious. The Hospitality Industry Wage Order requires that employers relying on a tip credit to satisfy the minimum wage include a separate line item on each employee’s pay statement listing the amount of the tip credit applicable in each pay period. Simply listing the amount of tips received by an employee will not satisfy this requirement. Rather, each pay statement must separately note the existence and amount of the tip credit. Therefore, all New York employers with tipped employees – even those using outside payroll processors – should check to ensure that their pay statements include this required information. We know of at least one major payroll processor that has yet to implement broad-based compliance with these rules.

In addition, some long-time requirements continue to trip up employers, such as the requirement that all “manual workers” be paid on a weekly basis, unlike the bi-weekly or semi-monthly payroll schedules common for other non-exempt workers. According to the NYDOL, employees who spend more than 25% of their working time performing physical labor are “manual workers” subject to this requirement.

Finally, employers should ensure that they comply with the mandatory meal period provisions under New York law, which are applicable to all employees, whether exempt or non-exempt.³



² http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm#Wage_Orders

³ <http://www.labor.ny.gov/workerprotection/laborstandards/employer/meals.shtm>

Conclusion

New York employers should make certain that they provide their employees the required notices on or before February 1, 2012, and should use this as an opportunity to review and, if necessary, update their wage payment policies, practices, and forms.

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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