



NEW YORK WAGE THEFT PREVENTION ACT

April 2011

On April 9, 2011, the New York Wage Theft Prevention Act (the "Act") will take effect. The Act amends Labor Law section 195 by significantly increasing New York employers' notice and recordkeeping requirements and providing stiff penalties for failure to comply with the Act.

The Act requires all New York employers to provide each New York employee with a written notice regarding pay rates and pay days (1) at the time of hiring, (2) annually between January 1 and February 1 of each subsequent year of employment (beginning in 2012) and (3) within seven days of any change in the required information not reflected in the employee's wage statements.

The written notice to the employee must include the following information:

- The rate or rates of pay, including any applicable overtime rates;
- The basis of the rate of pay (i.e., whether the employee is being paid by the hour, shift, day, week, salary, piece, commission or by some other method);
- Allowances, if any, claimed as part of the minimum wage, including tip, meal or lodging allowances;
- The regular pay day designated by the employer;
- The name of the employer and any "doing business as" names used by the employer;
- The physical address of the employer's main office or principal place of business and the mailing address, if different; and
- The telephone number of the employer.

Employers must have their employees sign and date an acknowledgement of receipt of the written notice and then provide them with a copy of the acknowledgement. Employers must also keep a copy of the notices and signed acknowledgements for at least six years. Employers may issue the notice electronically as long as each employee acknowledges receipt and can print out a copy of the notice.

The New York Department of Labor (the "Department") has prepared six different notice forms for employers to use, depending on the employee's rate and basis of pay:

- Form [LS 54](#) for hourly rate employees;
- Form [LS 55](#) for multiple hourly rates employees;
- Form [LS 56](#) for employees paid a weekly rate or salary for a fixed number of hours (40 or fewer in a week);
- Form [LS 57](#) for employees paid a salary for varying hours, day rate, piece rate, flat rate or other non-hourly pay;
- Form [LS 58](#) for employees paid the prevailing rate and other jobs; and,
- Form [LS 59](#) for exempt employees (note that identifying the specific exemption is optional).

The Department has prepared these forms in English, [Spanish, Chinese and Korean](#). The Department has advised that it also will prepare the forms in Russian, Polish and Haitian-Creole. Employers must provide each employee with the notice in English and in the employee's primary language if the Department has prepared a template in that language. Otherwise, the employer is only obligated to provide the notice in English.

Employers may use their own forms, as long as those forms include all the necessary information. However, it should be noted that the Department's templates ask for information beyond what is required by the Act. For example, the templates

ask employers to indicate whether the pay periods are weekly, bi-weekly or other. Also, the template for employees earning the prevailing wage requires the employer to identify the occupation as well as the applicable prevailing wage. Given that the Labor Commissioner has the power to require additional information to be included in the notices, employers creating their own forms should also include this additional information.

Penalties for failure to comply with the Act can add up. For example, if an employer fails to provide the appropriate notice within 10 days of an employee's initial date of hire, then the employee may recover \$50 each week until the violation is remedied, up to \$2,500, plus costs and attorneys' fees. Similarly, a failure to provide the required wage statement to current employees can result in damages of \$100 per week until the violation is remedied, up to \$2,500, plus costs and attorneys' fees. The Act also allows for liquidated damages of up to 100% of the total amount of wages due if the employer fails to prove it had a good-faith basis for believing it was acting in compliance with the law.

The Department has issued information that is helpful in understanding and complying with the Act, including:

- General [guidelines](#) concerning the Act;
- [Instructions](#) on how to use the templates; and
- Answers to [frequently asked questions](#).

Gunderson Dettmer's lawyers are available to assist in addressing questions you may have regarding the issues discussed in this Alert. Please contact the Gunderson Dettmer attorney with whom you regularly work. Contact information for our attorneys can be found at www.gunder.com.

If you have any questions regarding the Act or your requirements under the new law, please contact Greg Lemmer (glemmer@gunder.com) or Claudia Renert (crenert@gunder.com) at Gunderson Dettmer.

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