

Risk Control Bulletin

New York Wage Theft Prevention Act: Additional Employer Obligations and Sanctions

JULY 2011

RISK CONTROL



The New York Wage Theft Prevention Act (WTPA), effective April 9, 2011, amended the New York State Labor Law (Labor Law) by increasing pay-notice and record-keeping requirements for all non-governmental employers. The WTPA also expanded civil and criminal remedies for noncompliance. At this time, New York employers should ensure that their practices are in compliance with the WTPA's requirements.



Additional notice requirements

Since 2009, the Labor Law has required that employers provide new employees with a notice containing information regarding their wages. The WTPA amends the Labor Law to require employers to provide such a notice to all existing employees, beginning in 2012. Employers must now provide notice to each employee — exempt and nonexempt:

- At the time of hiring;
- Annually between January 1 and February 1 of each year (notice at other times of the year does not satisfy this requirement); and
- Within seven days of a change in wage rate if the change is not listed on the employee's pay stub for the following pay period, unless:
 - The employee's wage rate decreases, at which time a new pay notice must be issued, regardless of whether it is listed on the pay stub; or
 - The employee is in the hospitality industry. Hospitality employers must always provide new notices when there is a change in wage rate, regardless of what is listed on the employee's pay stub.

The WTPA further requires that:

- The notice must be provided in the employee's primary language if a notice template is available from the New York State Department of Labor (NYSDOL); otherwise the notice may be in English (see the end of this document for links to the NYSDOL templates);
- The employee must acknowledge receipt of the written notice in English and his/her primary language (if available), and must acknowledge that he/she has properly identified his/her primary language to the employer;
- The employer must keep the signed and dated notice for six years and must provide a copy to the employee; and
- The notice must be in a separate, standalone document, although it may be attached to another letter or agreement.

The notice may be delivered electronically, but must meet certain requirements in order to comply with the WTPA. This includes providing a way for the employee to acknowledge receipt of the notice and to print a copy (see NYSDOL links at the end of this document for more information).

Although an employer is not required to use the templates, the notice must contain the following required information:

- Rate of pay and, if eligible for overtime, the hourly and overtime rates of pay;
- The basis for the rate of pay (whether the employee is paid hourly, daily, by salary, by commission or some other method);
- The existence of any allowances claimed as part of the minimum wage (including allowances for tips, meals or lodging);
- The regular pay day;
- The employer's official name and any "doing business as" name(s) the employer uses;
- The physical address of the employer's main office or principal place of business, including a mailing address if different from the physical address; and
- The employer's telephone number.

This information may be included on pay stubs. Sanctions for noncompliance with the notice and pay stub requirements have been increased. Employers may be assessed damages of \$50 per week, per worker, for failure to provide notice; and damages of \$100 per week, per worker, for failure to provide pay stub information. Assessments are capped at \$2,500 per worker. Employees may also recover costs and attorneys' fees if their claims are successful.

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Additional payroll record information

The law clarifies that employers must keep records on an ongoing basis, and may not create records after the fact. Wage statements or pay stubs must be provided to each employee each payday and, in addition to payroll data, must include:

- The employee's name;
- The employer's name, address and phone number; and
- The dates covered by the payment.

Increased sanctions

Prior to the WTPA, liquidated damages could be assessed for up to 25 percent of the unpaid wages. Now, if the NYSDOL issues an Order to Comply, it will include 100 percent of liquidated damages, as well as other civil penalties and interest. The NYSDOL may also add 15 percent in damages to a judgment if the employer fails to pay in full within 90 days of the Order to Comply. The Labor Law now requires a court to award prejudgment interest, liquidated damages equal to 100 percent of the unpaid wages, and all reasonable attorneys' fees. Prior to the WTPA, such an award was within the court's discretion and not required. Employers may be subject to treble damages (up to twice the wages due to the employee, plus liquidated damages of 100 percent of unpaid wages) for initial violations found to be willful or egregious, or for subsequent violations.

The WTPA also increased the available remedies in the event of retaliation. Unlawful retaliation is now deemed a class B misdemeanor, and the labor commissioner may impose additional remedies similar to those available in a private civil action, including:

- Civil penalties up to \$10,000;
- Compensatory damages;
- An injunction;
- Payment of up to \$10,000 liquidated damages; and
- Back pay and reinstatement, or front pay if reinstatement is deemed inadvisable.

What should an employer do now?

- Review employee pay stubs to ensure they contain all information required by the Labor Law, as amended by the WTPA;
- Review employee new-hire notices to ensure they contain all required information in a separate, standalone document;
- Prepare to issue notices to all employees yearly, between January and February, beginning in 2012;
- Ensure that the company's payroll system accurately records and maintains payroll records for a minimum of six years; and
- Train supervisors and managers regarding the changes in the law, particularly with respect to retaliation.

NYSDOL Fact Sheet

www.labor.ny.gov/formsdocs/wp/P715.pdf

Frequently asked questions:

www.labor.ny.gov/workerprotection/laborstandards/PDFs/wage-theft-prevention-act-faq.pdf

NYSDOL Sample Wage Statement

www.labor.ny.gov/workerprotection/laborstandards/Images/Sample_Wage_Statement.jpg

NYSDOL Notice Templates (English and other languages)

www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtml

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