

New York State Wage Theft Prevention Act Notice Requirement

January 23, 2012 by Jonathan Stoler and James Hays

We write to remind you of your obligation to provide your New York State based employees with a written notice and acknowledgement of pay rate and payday in compliance with the New York State Wage Theft Prevention Act, as detailed below. This written notice must be provided and acknowledged as received, by **February 1, 2012**.

On December 10, 2010, the New York State Wage Theft Prevention Act ("WTPA") was signed into law, significantly amending the notice requirements of New York Labor Law § 195.1. The WTPA provided, among other things, that a written notice of rates of pay and regular payday be given to employees. Specifically, the WTPA requires that:

1. The written notice provided to employees must contain certain information including, but not limited to: (1) the employee's rate or rates of pay (including the overtime rate of pay for non-exempt employees); (2) whether the employee will be paid by the hour, shift, day, week, salary, piece, commission or otherwise; (3) whether the employer will claim any allowances as part of the minimum wage (e.g., tip, meal or lodging allowances); and (4) the employer's regular pay day.
2. The written notice must be provided to employees at the time of hire **and**, on or before February 1st of each subsequent year of the employee's employment.
3. The written notice must be provided to the employee in English **and** in the language identified by each employee as his/her primary language.
4. The employee must sign written notice acknowledging receipt of the same.
5. The written notices provided to the employees must be preserved and maintained by the employer for **six years**.

The penalty for failing to comply with the WTPA is significant, if an employer fails to provide an employee with the above notice within ten business days of the employee's first day of employment, the employee may be able to recover \$50 for each work week during which the violation occurred, or continues to occur, up to a maximum of \$2,500 together with attorney's fees and costs.

To assist with your compliance of the WTPA's requirements, please review the [Notice and Acknowledgement of Pay Rate and Payday](#) from the New York State Department of Labor, the Department of Labor [Guidelines for Written Notice of Rates of Pay and Regular Payday](#), as well as the [Wage Theft Prevention Act Frequently Asked Questions \(FAQ\)](#). You do not have to use the Notices provided by the Department of Labor, so long as the notice you create contains all of the information the WTPA requires.

If you have any questions concerning your notice obligations under the WTPA or other labor and employment matters facing your organization, please contact either of the following Sheppard Mullin attorneys below:

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