

NYS DOL Changes Its Tune On 195(1) Notice Requirement

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We advised in our October 30, 2009, Client Alert that the New York State Department of Labor (“DOL”) had taken the stance that in order to comply with Section 195(1) of the New York State Labor Law (*i.e.*, to provide proper notice to employees of their wages, overtime rates (if applicable) and paydays), employers would be required to utilize the DOL’s official forms, which could be accessed at the DOL’s Web site.

The DOL has now decided that, while employers may still elect to utilize the DOL’s forms, employers need not utilize the DOL’s forms in order to comply with Section 195(1). Rather, employers may utilize their own forms. Specifically, the DOL’s Web site now states:

No particular form is required. Employers may create their own forms, or use and/or adapt a sample form available [on the DOL’s Web site].

If employers elect to utilize the DOL’s sample forms, they should understand that the only forms currently available are for hourly non-exempt employees and staffing agencies. The DOL’s Web site, however, notes that “[i]n the near future, sample forms for a variety of pay agreements (salaried, prevailing rate, exempt, and others) will be provided.” We will advise you when such additional sample forms are published by the DOL.

Based on the DOL’s statement, employers will be deemed to be in compliance with Section 195(1), so long as: (i) the employer’s form includes employees’ pay rate, overtime rate (if applicable) and paydays in the applicable document, (ii) the form is given to employees before they perform any work, (iii) the form is signed by the employee, (iv) the original form is maintained by the employer for a minimum of six years, and (v) a copy of the signed form is provided to the employee. While the DOL has informed us that its preference would be for employers to utilize a stand-alone form in order to comply with Section 195(1), it also has confirmed that if an employer includes all of the applicable information required by the statute in an offer letter, and

that offer letter is signed by the employee, kept by the employer, and a copy is provided to the employee, the employer would be in compliance with the statute.

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