

They're Here – New York State Department of Labor Issues Updated 195.1 Templates and WTPA Frequently Asked Questions!

April 4, 2011

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Just in time for April 9, 2011, the effective date of the Wage Theft Prevention Act (“WTPA”), the New York State Department of Labor (“NYSDOL”) has issued [templates](#) for employers to use in order to comply with the WTPA. Also available on the NYSDOL’s website is a document, entitled [Frequently Asked Questions](#) (“FAQ”), addressing common employer questions about compliance with Sections 195.1 (notice of pay rates and pay dates), 195.3 (wage statements), and the anti-retaliation provisions of the New York State Labor Law (the “Labor Law”).

As we reported last December (see “[Act Now Advisory: Governor Paterson Signs Overhaul of New York State Labor Law](#)”), in addition to increasing the amount and scope of information that must be provided to employees pursuant to Section 195.1 of the Labor Law, the WTPA now requires employers to provide written notices *both* in English and in the language identified by each employee as his or her “primary language,” with certain exceptions, as described in this Advisory. Further, employers must provide written notice not only to all *new* employees, but also to *all* employees on or before February 1 of each year, starting in 2012. Under Section 195.3 of the Labor Law, rules pertaining to the contents of wage statements (pay stubs) have also been modified.

Frequently Asked Questions

The FAQ document clarifies certain aspects of the Labor Law, and makes some changes from the NYSDOL’s prior rules in its Guidelines and Instructions documents. Most significantly, the FAQ document states that:

Section 195.1 of the Labor Law

- Employers are no longer required to identify which exemption(s) from applicable overtime rules apply to their exempt employees – this information is now optional;
- Under the new annual notification rule, notices *must* be provided to employees between January 1 and February 1 of each year, and not at any other time of the year;

- Templates for compliance with Section 195.1 of the Labor Law will be provided in English, Spanish, Chinese, Korean, Creole, Polish, and Russian (however, for now, templates are available in English, Spanish, Chinese, and Korean only);
- Employers need not use the NYSDOL's forms in order to comply with Section 195.1 of the Labor Law;
- If employers use their own forms, however, the information must be provided in a stand-alone document – if the required information is simply included within the offer letter, the NYSDOL will not consider this to be compliant with Section 195.1;
- Notice can be provided electronically, but there must be a system where the employee can acknowledge receipt of the notice and print out a copy of it;
- If an employee refuses to sign the notice, the employer will comply with the requirements of Section 195.1 if it notes the refusal on the notice and then provides the employee with a copy;
- For employers outside the hospitality industry, no notice need be provided in case of a wage increase, so long as the pay raise is noted in the next wage statement, but notice *must* be provided in case of a wage decrease;
- Employers in the hospitality industry must provide notices in case of any change to the wage rate (increase or decrease);
- Employees who work in states outside New York are not covered by the WTPA;
- For commissioned salespersons, a copy of their commission agreement should be attached to the notice; and
- Notice requirements *do* apply to employees covered by a collective bargaining agreement.

Section 195.3 of the Labor Law

- If an employer has multiple pay rates, all pay rates must be included on the wage statement (pay stub), but only the rates actually used to determine the employee's pay need be shown on the pay stub for that period; and
- The NYSDOL will provide a model wage statement (pay stub) that demonstrates the types of entries that may be necessary.

Templates

Templates are available for: hourly rate employees ([LS 54](#)); multiple rate employees ([LS 55](#)); employees paid a weekly rate or salary for a fixed number of hours (40 or less in a week) ([LS 56](#)); employees paid a salary for varying hours, day rate, piece rate, flat rate or other non-hourly pay ([LS 57](#)); prevailing rate and other jobs ([LS 58](#)); and exempt employees ([LS 59](#)).

In addition to the items required by the WTPA, these templates have spaces for certain optional information, such as a federal employer identification number (“FEIN”) and the applicable exemption (for exempt employees). In addition, and similar to the prior forms, these templates also provide a space for the employer to identify the name and title of the person who prepared the form.

Foreign Language Templates

In order to comply with its “primary language” rules, the WTPA requires the NYSDOL to issue templates both in English and in certain other languages, based on the number of New York State residents who speak such languages, among other factors. As stated above, [templates](#) are currently available in Spanish, Chinese, and Korean, and will be available in Creole, Polish, and Russian.

Importantly, to the extent that the NYSDOL does not provide a template in a particular primary language, the employer will satisfy the requirements of Section 195.1 by providing the notice to the applicable employee in English only.

Employers must receive signed acknowledgments from employees indicating that (1) the employee has received the notice, (2) the employee identified his or her primary language to the employer, and (3) the notice was provided in that primary language (unless the employee’s primary language is other than one of the languages for which a template is available).

Effective Date

Despite an earlier press release from then-Governor David Paterson’s office regarding the effective date of the WTPA, we have confirmed that the actual effective date is April 9, 2011 – three days earlier than originally reported.

Notice Requirements

Prior to the effective date of the WTPA, Section 195.1 of the Labor Law required employers to provide new employees with a written notice containing the following information:

- The regular payday designated by the employer;
- The employee’s regular rate of pay;
- For non-exempt employees, their hourly overtime pay rates; and
- For exempt employees, which exemption(s) the employee falls under (this rule was never included in the law, but comes from Guidelines and Instructions published by the NYSDOL).

As of April 9, 2011, however, with the effectiveness of the WTPA, only the first three items above are required, and the fourth (identifying the specific exemption(s) under which exempt employees fall) is now optional, and not required. Further, in addition to

those three required items, employers must now include the following information in 195.1 notices:

- The basis of the applicable pay rate (*i.e.*, whether paid by the hour, shift, day, week, salary, piece, or by commission);
- Allowances, if any, claimed as part of the minimum wage (including tip, meal, or lodging allowances);
- 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 physical place of business, and a mailing address, if different;
- The employer’s telephone number; and
- “Such other information as the Commissioner deems material and necessary.”

The WTPA provides that, not only must *new* employees receive 195.1 notices, but, beginning in 2012, *all* New York employees must receive 195.1 notices on or before February 1 of each year. As stated above, the NYSDOL has confirmed that this requirement means that such annual forms must be provided between January 1 and February 1 of each year, and not at any other time.

Wage Statement Requirements

Prior to the effective date of the WTPA, Section 195.3 of the Labor Law required employers to provide employees with wage statements (pay stubs) accompanying every payment of wages that included the following information:

- Gross wages;
- Deductions; and
- Net wages.

Pursuant to the WTPA, in addition to the above information, the wage statement must also now include the following information:

- The name of the employee;
- The name of the employer;

- The address and telephone number of the employer;
- The dates of work covered by the payment of wages;
- The rate(s) of pay and the basis thereof (*i.e.*, whether paid by the hour, shift, day, week, piece, commission, etc.);
- For non-exempt employees:
 - The regular hourly rate(s) of pay and overtime rate(s) of pay;
 - The number of regular hours worked; and
 - The number of overtime hours worked;
- Allowances, if any, claimed as part of the minimum wage (*e.g.*, tips, meal, or lodging); and
- For all employees paid a piece rate, the applicable piece rate(s) and number of pieces completed at each piece rate.

As stated above, the NYSDOL will be providing a model pay stub to demonstrate the types of information that may be required on a pay stub.

Conclusion

Notwithstanding the assistance the NYSDOL has provided in the form of the FAQ document, compliance with the WTPA will be challenging. How will an employer discern the “primary language” of its incoming employees so that it can provide 195.1 notices at or before the time of hiring? Will this process change when the employer needs to obtain “primary language” information from its entire workforce (on or before February 1, 2012)? Will doing so put the employer at risk of national origin discrimination claims? Employers will need to be careful when navigating these and other thorny issues.

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