

It's That Time of Year: New York Employers Must Issue Annual Wage Notices Under the Wage Theft Prevention Act

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For the second time since the enactment of New York's Wage Theft Prevention Act ("WTPA"), New York employers must issue a written annual notice and acknowledgment of pay rates and pay dates ("Notice") to *all* New York employees between January 1, 2013, and February 1, 2013.

In February 2012, after a flurry of negative feedback from employers statewide, the New York State Senate passed a bill striking the annual Notice requirement from the list of employer responsibilities set forth in Section 195.1 of the New York State Labor Law. However, because the bill remains dormant in the New York State Assembly, the annual Notice requirement is still in effect.

As we previously reported (see the *Act Now Advisory* titled "[Reminder to New York Employers: Annual Notices Under the Wage Theft Prevention Act Must be Distributed Between January 1 and February 1, 2012](#)"), employers must provide Notices to their New York employees containing the following information (current as of the date of the Notice):

- Rate or rates of pay, and basis thereof (whether paid by the hour, shift, day, week, salary, piece, commission¹, etc.);
- For non-exempt employees, the regular rate of pay and overtime rate of pay;
- Allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- The regular pay day designated by the employer;

¹ A salesperson whose wages are based, in whole or in part, on commissions must receive and sign a copy of his or her commission agreement pursuant to Section 191(1)(c) of the New York State Labor Law. According to the Department of Labor's guidance on compliance with Section 195.1 of the Labor Law, that commission agreement should be attached to the Notice, and copies of the commission agreement and Notice must be retained by the employer.

- The name of the employer, including any “doing business as names” used;
- The physical address of the employer's main office or principal place of business and a mailing address, if different;
- The telephone number of the employer; and
- “Other information as the Commissioner [of Labor] deems material and necessary.”

The Notice must be provided to each employee in both English and the “primary language” identified by the employee, if that language has been designated by the New York State Department of Labor (“DOL”) for publication of its dual-language forms. Dual-language templates are available on the DOL’s [website](#) in the following languages: Chinese, Haitian Creole, Korean, Polish, Russian, and Spanish. To the extent an employee identifies a primary language other than one of the six listed above, the employer may provide the Notice in English only.

Employers may use the various templates available on the DOL’s [website](#), or may create their own forms, as long as those employer-created forms contain all the information required by the WTPA.²

What Employers Should Do Now

- Prepare the Notice with sufficient time for distribution to New York employees between January 1, 2013, and February 1, 2013.
- Provide the Notice to each employee in English and in the employee’s “primary language,” as applicable. Since all employees (except those who are hired between January 1 and February 1, 2013) should have received at least one Notice, employers should already be aware of their employees’ primary languages. As such, instead of inquiring about employees’ primary languages in connection with providing the 2013 Notice, with respect to employees who have identified English as their primary language, for example, employers may wish to simply prepare the employee’s Notice in English, along with a cover note that includes a statement such as the following:

Our records reflect that you have indicated English as your primary language. Therefore, this notice has been provided in English. If the language that you deem to be your primary language has changed,

² Additionally, employers must also provide the Notice to all newly hired employees, throughout the year. Further, employers also must provide employees with written notice of certain changes in their wage rate and/or pay dates. Specifically, according to the DOL’s guidance on compliance with Section 195.1 of the New York State Labor Law, employers in the hospitality industry must provide employees with a Notice of both increases and decreases in their wage rates. Employers in other industries, however, need only provide employees with a Notice of reductions in their wage rates, so long as the employer’s wage statements (pay stubs) comply with the requirements set forth in the WTPA.

please notify the company's Human Resources Department by January 20, 2013, so that a new notice can be provided.

- Train managers on how to respond to inquiries about the meaning of “primary language.”

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