



One Minute Memo[®]

New York Wage Theft Prevention Act Takes Effect on April 9, 2011

Employers should be aware that the New York Wage Theft Prevention Act (the "Act") takes effect beginning on Saturday, April 9, 2011. As previously reported (click [here](#) to read), the Act makes a number of critical changes to the New York Labor Law, including harsher penalties for Labor Law violations and expanded enforcement powers for the New York Department of Labor ("DOL").

Of most immediate concern for New York employers are the Act's provisions regarding notice to employees. For each employee located in New York, employers must provide a notice advising the employee of his/her rate of pay, the basis of pay, any minimum wage allowances, the regularly designated pay date, the employer's name (including any d/b/a's), the employer's physical address or place of business, the employer's telephone, and (for non-exempt employees) the regular hourly rate and overtime rate of pay.

The notice must be provided upon the employee's hire and at minimum every year between January 1 and February 1. Notice must also be provided whenever there is a change in the above information, especially a decrease in pay, although the Act permits employers to include any changes on paystubs provided that they otherwise comply with the Labor Law's requirements.

The notice must be provided in English and, in certain cases, in the language identified by the employee as his/her primary language. The latter is required only where the DOL has determined that the language is predominantly spoken in New York State and has provided a template notice in that language. As of April 6, 2011, the DOL has published notices in English, Spanish, Chinese and Korean; it has stated that future templates will be in Russian, Haitian Creole and Polish. The DOL recently posted form notices and a FAQ its website, available [here](#).

Employers must obtain signed acknowledgments of all notices and retain them for six years. The DOL has indicated that electronic signatures, including emails, will suffice as acknowledgments, provided that employees are able to print a copy of the notice at work. Failure to provide notices may result in assessments of \$50 per week per worker. In addition, workers can sue for damages and recover up to \$2,500.

Other important changes implemented by the Act include the following:

- Section 198.1-a of the Labor Law now permits liquidated damages of 100% of wages due (up from 25%) for willful violations.
- Section 215 of the Labor Law now permits the DOL to order additional remedies in the event of retaliation, including injunctions, liquidated damages up to \$10,000, reinstatement with back pay, and/or front pay instead of reinstatement. Unlawful retaliation is also deemed a class B misdemeanor.
- Section 218 of the Labor Law now subjects employers engaged in continuous or egregious violations to financial penalties up to double the total amount of wages due. Further, if an employer fails to make payments owed more than 90 days after an order by the DOL, it may be assessed an additional 15% penalty.
- Section 663 of the Labor Law now requires an award of attorneys' fees, interest, and liquidated damages rather than leaving such an award to the court's discretion.

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