

## CLIENT UPDATE

**Note:** This updates our posting on [June 2, 2010](#).

April 4, 2011. As a result of the enactment of the New York Wage Theft Prevention Act (“WTPA”), all New York employers must provide each of their employees with annual written notice of their wages, and must, as an integral part of statutory compliance, retain written acknowledgment confirming receipt of this notice.

### New Notification Requirements:

New York Labor Law Section 195(1) previously required employers to advise newly hired employees of their rate of pay, overtime rate (if eligible) and the day of the week on which they are typically paid. The WTPA significantly increases employer notice requirements.

Commencing April 9, 2011, employers must also notify employees in writing at the time of their hire whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or on some other basis, and whether the employer intends to claim allowances, such as tips, meals, or lodging against the minimum wage. In addition, the WTPA mandates that employers provide this information to all existing employees by February 1, 2012, and in every subsequent year.

Employers will also be required to provide this information in the language identified by the employee as his or her primary language (in addition to providing such notice in English). The WTPA further provides that the employer obtain a signed and dated written acknowledgment from each employee confirming that this notice was provided each and every year on or before February 1. These signed acknowledgments must be maintained by the employer for a minimum of six (6) years. The New York State Department of Labor (“NY DOL”) has issued new template notices for both [Hourly Rate Employees](#) and [Multiple Hourly Rate Employees](#) that comply with the new requirements of the WTPA. The NY DOL has also prepared dual language version of the template notices in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish and are available on the NY DOL website at [www.labor.ny.gov](http://www.labor.ny.gov).

### Pay Stubs:

The WTPA also amends the notice requirements that are to be provided in every pay stub. All wage statements must include the dates of work covered by the payment of wages; the employee’s name; the employer’s name, address and phone number; pay rate and basis of rate (*i.e.*, hourly, weekly, salary, etc.); gross wages; deductions; allowances claimed, if any; and net wages. If the employee is non-exempt and eligible for overtime, the pay stub must include the regular and overtime rates of pay and the number of regular and overtime hours worked for that period. Employers must keep all payroll records for a minimum of six (6) years.

Penalties:

The WTPA provides new civil penalties for employers who do not comply with these notice requirements. Employers can be liable for damages in the amount equal to any underpayment, plus interest and attorneys' fees. The WTPA also increases the amount recoverable as liquidated damages from 25% to 100% of the unpaid wages (thereby equating it more closely with the liquidated damage provisions set forth in the federal Fair Labor Standards Act, as amended. A newly hired employee can also recover damages of \$50 for each workweek during which the notice violation continued to occur, not to exceed \$2,500 in the aggregate. In addition, failure to provide an adequate pay stub can result in damages of \$100 for every week the violation continues, up to a maximum of \$2,500. The WTPA also imposes new criminal penalties for nonpayment of wages and failure to keep adequate payroll records. Repeat offenders can be punished with a fine of up to \$20,000 and up to one year in prison.

Anti-Retaliation:

The WTPA also increases penalties against employers for retaliating against employees who complain of conduct that they reasonably believe violates the New York Labor Law. An employee who is a victim of unlawful retaliation for the exercise of "protected rights" is entitled to reinstatement, front pay, lost compensation, damages, costs, and attorneys' fees. In addition, an employer can be liable for liquidated damages in the amount of \$10,000 for each violation. There is a two (2) year statute of limitations for commencing an action based upon unlawful retaliation, which period is tolled if the employee files a complaint with the NY DOL.

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We expect that the WTPA will cause a significant increase in administrative enforcement proceedings as well as individual and class action claims. It is very important that employers review and revise their payroll policies as well as their record-retention policies to ensure full compliance with these amendments to the New York Labor Law.

If you have any questions concerning this Client Update, please contact:

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