

ALERT

January 2012

NEW EMPLOYER ANNUAL NOTICE REQUIREMENT

As most New York employers already know, they are required to give written notice of certain information to every new employee at the time of hiring. Effective January 1, 2012, New York's Wage Theft Prevention Act ("WTPA") requires employers to provide this information to employees both at the time of hire and annually between January 1 and February 1 of each year of an employee's employment. The required information includes:

- The employer's name (including any "d/b/a/" used by the employer).
- The employer's physical address (main office or principal place of business), a mailing address (if different) and telephone number.
- The employee's regular rate of pay and the basis for the rate (e.g., hourly, piece work, salary or commission basis).
- The rate of overtime pay for nonexempt employees.
- The pay day designated by the employer.
- If applicable, allowances taken as part of the minimum wage (e.g., tips, meals or lodging deductions).

The New York State Department of Labor ("DOL") may require other information as it "deems material and necessary." Employers must also obtain a signed, dated acknowledgment from the employee regarding receipt of this notification and maintain it for six years.

All New York employers, regardless of the number of persons they employ, are required to comply with the WTPA. Further, employers must provide the notice to all of their employees, have the employee sign and date the notice and provide the employee with a copy. The notice must appear both in English and the employee's primary language (if the DOL offers a translation).

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Moritt Hock & Hamroff LLP is a broad based commercial law firm with 45 lawyers and a staff of paralegals. The firm's practice areas include: commercial foreclosure; construction; corporate, securities & financial services; creditors' rights & bankruptcy; employment & labor; equipment & vehicle leasing; healthcare; intellectual property, unfair competition & licensing; landlord & tenant; litigation; marketing, advertising & promotions; not-for-profit; real estate; tax; trusts & estates; and white collar defense, government investigations, compliance & internal investigations.

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Employers who fail to provide the above information may be subject to damages per employee in the amount of \$50 per week up to a maximum of \$2,500 plus costs and attorney's fees. Further, the DOL may bring an action against an employer and the recovery is not capped.

While the DOL has created templates for providing this notice (available at www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm), employers are not required to use the DOL's forms. Under the WTPA, employers cannot retaliate against employees who complain in good faith about their employer's non-compliance with wage payment laws. "Retaliation" includes "threats" against employees, and there can be enhanced penalties, including liquidated damages. The WTPA also requires certain pay statement information to be provided. For nonexempt employees, this information includes, but is not limited to, the overtime rate of pay, the number of regular hours worked and the number of overtime hours worked in the pay period.

Implications for Employers

Many employers may understandably consider the requirement of annual notice to be an unnecessary and highly burdensome administrative obligation. Employers may, however, turn the requirement into an advantage by conducting an internal audit of their pay practices. For example, employers may find that they have misclassified employees as "exempt" from overtime requirements, or that individuals whom they have previously considered to be independent contractors are, in fact, employees under applicable law. More immediately, employers should consider whether they will accept the DOL's form for compliance with the WTPA, or prefer to design their own.

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It's important that employers understand their exposure under the WTPA and how to comply with it. MH&H can assist you in understanding and addressing these issues.