

New York Wage Theft Prevention Act Annual Notices Due by February 1, 2012

2012-01-10

Employers with New York employees must ensure that they provide them with an annual wage notice form by February 1, 2012, as required by the New York Wage Theft Prevention Act (the Act). This Act, which became effective in April 2011, significantly increases employers' wage notice obligations to New York employees. The Act requires private sector employers to provide each New York employee, upon hire and every year, with a detailed notice form setting forth that employee's pay rate and the employer's pay practices. Notice to current employees must be provided between January 1 and February 1 of each year, beginning January 1, 2012. Notice must also be given to employees within seven days following a reduction in their wages (or, if an employee works in the hospitality industry, following any wage change). Notice must be given to both non-exempt and exempt employees, and must contain the following information:

- the employee's rate of pay and, if non-exempt, overtime rate of pay;
- the basis of the employee's rate of pay (e.g., salary, commission or hourly);
- the employee's regular pay day (employees are also advised to state the frequency of pay periods—e.g., weekly, bi-weekly or other);
- the employer's name and any "doing business as" names;
- the employer's telephone number and the address of its main office or principal place of business (and, if different, mailing address); and
- any allowances the employer intends to claim as part of the minimum wage (e.g., tip, meal or lodging allowances).

This means that, no later than February 1, 2012, all private sector employers must give ALL of their New York employees a written notice containing the above information.

Employers may provide this notice by hard copy or electronically, provided that employees are able to print out a copy of the notice. Employers must also obtain a signed acknowledgement from employees, acknowledging that they have received the notice. Although an employee's email response confirming receipt of the notice is sufficient for acknowledgement purposes, an automated "read receipt" would not be sufficient. All notices must be retained by employers for six years.

The New York Department of Labor (the DOL) requires that employers provide the notice in an employee's primary language for workers whose primary language is English, Spanish, Chinese, Korean, Creole, Polish or Russian. The DOL has notice templates available on its website for each of these languages. However, employers are not required to use the DOL-created templates. They can develop their own notice forms, provided that they contain all of the legally-required information described above.

Employers should be aware that the notice must be a separate form. As such, new hires should receive a separate, stand-alone notice form in addition to (or attached to) any offer letter or employment agreement they may receive. Moreover, if an employee works on a commission basis, the commission agreement should be attached to the notice form.

An employer who fails to provide required notices to its employees may be subject to significant penalties. Individual employees may recover up to \$2,500 in a lawsuit, and the DOL may assess a penalty of \$50 per week, per worker.

Employers are also advised that, in addition to the new stringent notice requirements, the recently enacted Act also contains provisions regulating recordkeeping, payroll records and paystubs. For assistance in complying with the Act's new requirements and/or drafting compliant notices, please contact our [Labor and Employment Group](#).

Authors



**Jonathan
Rosenfeld**

RETIRED PARTNER

✉ jonathan.rosenfeld@wilmerhale.com

☎ +1 617 526 6000

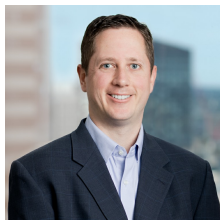


Ariella Feingold

PARTNER

✉ ariella.feingold@wilmerhale.com

☎ +1 617 526 6140



Andrew Stauber

SPECIAL COUNSEL

✉ andrew.stauber@wilmerhale.com

☎ +1 617 526 6815