

## WAGE THEFT PROTECTION ACT

This change is relevant to your business if you have employees who reside in the state of New York. This is to make sure you are aware of the Wage Theft Prevention Act that takes effect on April 12, 2011 and are aware of the new compliance measures it entails.

The Wage Theft Prevention Act (WTPA) is intended to protect employees from potential employer wage violations by making the basis and rates of wage payment more transparent. One provision of the Act defines the payment data that must be included on employee earnings statements as summarized below:

Furnish each employee with a statement with every payment of wages, listing the following:

- The dates of work covered by that payment of wages
- Name of employee
- Name of employer
- Address and phone number of employer
- Rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other
- Gross wages
- Deductions
- Net wages
- Allowances, if any, claimed as part of the minimum wage (i.e. tips or meals)

For all employees who are not exempt from overtime, the statement shall include the:

- Regular hourly rate or rates of pay
- Overtime rate or rates of pay
- Number of regular hours worked
- Number of overtime hours worked

For all employees paid a piece rate, the statement shall include:

- The applicable piece rate or rates of pay and number of pieces completed at each piece rate. .

### **The act further requires:**

All New York employers, to provide all employees with a written pay notice at the time of hire, and or before February 1<sup>st</sup> of each year that includes the following information:

- The employee's rate or rates of pay
- The overtime rate of pay, if the employee is nonexempt

- The basis of wage payment (e.g., per hour, per shift, per week, piece rate, commission, etc.)
- The allowances to be claimed against the minimum wage (e.g., tip, meal, and lodging allowances)
- The regular pay day
- The employer's name and any name under which the employer conducts business
- The physical address of the employer's main office or principal place of business (if different from the mailing address)
- The employer's telephone number
- The above disclosures must be given in English as well as the employees native language

Attached please find a template released by NYS Department Of Labor. You can also download the form in different languages or different type of employee pay arrangements by visiting the following link.

<http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>

The WTPA provides greater protection and rights to employees who have complained about wage and hour violations or whom the employer believes to have made such complaints.

The WPTA also provides for stiffer penalties for employers who violate New York wage and hour laws. For example, for violations of the act's notice requirements, failure to provide the written notice within ten business days of an employee's hire date subjects the employer to a penalty of \$50 for each work week during which the violation occurred, or continues to occur, up to a maximum of \$2,500, plus attorneys' fees, costs and injunctive relief. If an employer fails to provide employees with the required wage information in each payroll statement, the penalty is \$100 for each week the statute is violated, up to a maximum of \$2,500, plus attorneys' fees, costs and injunctive relief.

Before the WTPA, the Commissioner of Labor could seek attorneys' fees and liquidated damages of 25% of the total unpaid wages due an employee, in an action to compel payment of unpaid wages. Now, an employer's exposure from liquidated damages has been increased to 100% of unpaid wages, unless the employer can show that it had a "good faith basis" to believe that its method of payment was lawful.

If an employee proves that retaliation for lodging a complaint about wage and hour violations has occurred, the employer will be subject to increased liquidated damages (up to \$10,000) plus reinstatement as well as both back and front pay. Finally, the WTPA imposes a variety of criminal penalties upon non-compliant employers. Those found to have violated the act will be required to post a notice of the violation in the workplace and, if the violation is deemed "willful," post that notice in an area visible to the general public for a period of up to 90 days.



### Notice and Acknowledgement of Pay and Payday for Hourly Rate Employees

**Employer Information**

Name: \_\_\_\_\_

Doing Business As (DBA) name(s): \_\_\_\_\_

FEIN: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

#### Employee Acknowledgement:

On this day, I received notice of my pay rate, overtime rate (if eligible), allowances and designated payday. I told my employer what my true primary language is.

#### Check one:

- I accepted this pay notice in English, because it is my primary language.
- My primary language is \_\_\_\_\_, I accepted this pay notice in English because the Department of Labor does not yet offer a pay notice form in this language on its web site.

\_\_\_\_\_  
Print Employee Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Preparer Name and Title

**The employee must receive a copy of this signed form. The employer must keep the original for 6 years.**

#### Employee's rate (s) of pay:

\$ \_\_\_\_\_ per \_\_\_\_\_  
\$ \_\_\_\_\_ per \_\_\_\_\_  
\$ \_\_\_\_\_ per \_\_\_\_\_

#### Allowances taken:

- None
- Tips \_\_\_\_\_ per hour
- Meals \_\_\_\_\_ per meal
- Lodging \_\_\_\_\_
- Other \_\_\_\_\_

Regular payday: \_\_\_\_\_

#### Pay is:

- Weekly
- Bi-weekly
- Other

#### Overtime Pay Rate:

\$ \_\_\_\_\_ per hour (This must be at least 1 ½ times the workers' regular rate with few exceptions.)

#### Notice given:

- At hiring
- On or before February 1
- Before a change in pay rate(s), allowances claimed or payday.