

Client Alert

Latham & Watkins
Litigation & Tax Departments

Compliance Alert: State Wage Theft Prevention Laws

In what appears to be a growing trend, at least 16 states have enacted laws requiring private employers to provide specific information to employees concerning the manner in which their wages will be calculated and paid. This *Client Alert* focuses on New York and California, which have enacted laws (collectively, the "Wage Theft Prevention Laws"), requiring all private-sector employers, regardless of size, to make certain written disclosures to newly hired employees. In addition, New York law requires annual updates, and California law requires written disclosure within seven calendar days of changes in the information contained in the initial disclosures. A number of the required disclosures are not found in form offer letters or employment agreements commonly used by employers. The following lists summarize the information that private-sector employers in New York and California must include in their written offers of employment pursuant to the Wage Theft Prevention Laws.

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New York State's Wage Theft Prevention Act

New York's Wage Theft Prevention Act requires all private-sector employers to provide to every employee, both at the time of hire and on or before February 1 of each year (regardless of exempt status), a written notice of the basis for the employee's wage. Such notice must include:

- The employee's rate or rates of pay (including overtime rate of pay if non-exempt)
- The basis of the wage payment (*e.g.*, per hour, per shift, per week, piece rate, commission, etc.)
- The employer's regular payday
- Any allowances the employer intends to claim as a part of the minimum wage including tip, meal and lodging allowances
- The employer's name and any names under which it does business (*i.e.*, any DBA's)
- The employer's telephone number and physical address of its main office or principal place of business and, if different, the employer's mailing address

Employers should note that employees cannot waive the written notice requirement under New York's Wage Theft Prevention Act. Additionally, the obligation to provide the annual written notice of wage rates applies regardless of whether any of the information from previous years has changed.

New York's Wage Theft Prevention Act does not require the use of any particular forms; however, the New York State Department of Labor (the "NY DOL") has issued various template notices.¹ Additionally, New York's Wage Theft Prevention Act requires employers to provide the written notice of wage rates both in English and in the employee's primary language, provided that the NY DOL offers a translation of the form in that language. Currently, the NY DOL offers dual language translations in Chinese, Haitian Creole, Korean, Polish, Russian and Spanish.

New York's Wage Theft Prevention Act requires employers to obtain a signed and dated acknowledgment of the notice from each employee and requires employers to retain copies of the notice and accompanying acknowledgment for a period of six years. Employers that do not comply with New York's Wage Theft Prevention Act's requirements are subject to enhanced fines and may in certain circumstances be subject to criminal prosecution.²

All New York private-sector employers that routinely use form offer letters and employment agreements should update such forms to include the information required by New York's Wage Theft Prevention Act, or include as part of their new-hire paperwork the form notices developed by the NY DOL for compliance with this law. These forms are available in Chinese, Haitian Creole, Korean, Polish, Russian and Spanish, in order to meet the legal requirement that notice be given in each employee's primary language. New York private-sector employers that choose to instead include the information required by New York's Wage Theft Prevention Act in their form offer letters and employment agreements will need to offer translations to prospective or existing employees whose primary language is Chinese, Haitian Creole, Korean, Polish, Russian or Spanish. In addition, employers that use written offers of employment that do not require execution by the prospective employee should amend such forms to include a signature line for the newly hired employee.

California's Wage Theft Prevention Act of 2011

The California Wage Theft Prevention Act of 2011 differs significantly from the New York law in that it requires notices be given only to non-exempt (hourly) employees. Private-sector employers are required to notify new, non-exempt employees of:

- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable
- Any allowances taken as part of the minimum wage (*e.g.*, tips, meal and lodging deductions)
- The regular payday designated by the employer
- The name of the employer, including any DBA names used by the employer
- The physical address of the employer's main office or principal place of business, and a mailing address, if different
- The telephone number of the employer
- The name, address, and telephone number of the employer's workers' compensation insurance carrier
- Any other information the California Labor Commissioner deems material and necessary

The law also requires that employers notify *existing* non-exempt employees, in writing, of any change to the information set forth in the above-described new-hire notice within seven calendar days after the time of the change, unless the changes are reflected on a wage statement or other written document otherwise issued to the affected employee(s) within seven calendar days of the change. The California Labor Commissioner is empowered to add to the required disclosures.

Notices must be given in the language that the employer normally uses to communicate employment-related information to the employee. The California Department of Industrial Relations (the "DIR") has developed forms containing the required notices in English, Spanish, Chinese, Korean, Vietnamese and Tagalog.³ To ensure compliance with the law, and in light of the California Labor Commissioner's ability to add to the required disclosures, we recommend employers use the DIR's form, rather than attempt to comply with this new law by amending their form offer letters and employment agreements. Copies of signed notices should be retained in employee personnel files.

Other States

In addition to New York and California, Alaska, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Maryland, New Hampshire, North Carolina, Pennsylvania, South Carolina, Utah, and West Virginia have enacted similar legislation. Employers in those jurisdictions should review their forms of offer letter and employment agreement to ensure compliance with all applicable requirements.

Endnotes

- ¹ The NY DOL template notices can be found at <http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>.
- ² A more detailed description of New York's Wage Theft Prevention Act can be found at http://www.lw.com/upload/pubContent/_pdf/pub3871_1.pdf.
- ³ The notice forms can be found at http://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html.

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