

WE ARE YOUR DOL



Department
of Labor

WAGE THEFT PREVENTION ACT

The Wage Theft Prevention Act (WTPA), which gives more protection to workers in New York State, took effect on April 9, 2011. Here are some key provisions of the law that employers need to know.

PUBLIC NOTICE OF VIOLATIONS

If an employer breaks certain parts of the law, the New York State Department of Labor may post the violation in a place where employees can see it for up to a year.

For a willful failure to pay all wages under this law, the New York State Department of Labor may post a summary of violations in a place where the public can see it, for up to 90 days. It is a misdemeanor to remove or tamper with this notice without permission.

ENHANCED RULES AGAINST RETALIATION

The WTPA extends the protections under Labor Law Section 215. It also gives the Department of Labor more power to enforce this law.

1. It was always illegal to discharge, penalize and/or discriminate against an employee who makes a complaint; threats are now included as a form of retaliation.
2. In the past, we could only cite employers for retaliation; now, it is illegal for any person within an organization/company to retaliate.
3. In the past, penalties for breaking this rule meant we could fine an employer up to \$10,000. Now, the Department of Labor can order the employer or the person who acted against the employee to pay liquidated damages. The payment can be up to \$20,000.
4. The Department of Labor may order the employer to reinstate the worker's job. The employer may have to pay the person for lost salary, or pay a lump sum in lieu of reinstatement.
5. Retaliation carries criminal penalties for employee complaints about any section of the labor law.

6. The protection applies to any worker who alleges that the employer has done something that the employee thinks breaks a labor law or an order issued by the Commissioner. This applies even if the employee is mistaken about the law, if they acted in good faith. It applies even if the employee does not cite a specific part of the labor law.
7. This law protects employees even if the employer incorrectly believes they made a complaint.

WRITTEN NOTICE

The law already required employers to give notice to employees of their wage rates at the time of hire. Now, the WTPA requires employers to give a written notice to each new hire. The notice must include:

1. Rate or rates of pay, including overtime rate of pay (if it applies).
2. How the employee is paid – by the hour, shift, day, week, commission, etc.
3. Regular payday.
4. Official name of the employer and any other names used for business (DBA).
5. Address and phone number of the employer's main office or principal location.
6. Allowances taken as part of the minimum wage (tip, meal and lodging deductions).
7. In the past, the notices were in English; now, the notice must appear both in English and in the employee's primary language (if the Department of Labor offers a translation).
8. Employers must have each employee sign and date the completed notice; employers must provide a copy to each employee.

9. If any data in the notice changes, the employer must tell employees at least a week before it happens unless they issue a new paystub that carries the notice. The employer must notify an employee in writing before they reduce the employee's wage rate. Employers in the hospitality industry must give notice every time a wage rate changes.
10. Employers that do not give notice may have to pay damages of up to \$50 per day, per employee, unless they paid employees all wages required by law (This stops at \$5,000 per employee in civil lawsuits filed by workers.)

11. PAYROLL RECORDS

Under prior law, some of the recordkeeping requirements were in the statute, while others were in the regulations. Now, the requirements are part of the law, which makes it easier for employers to understand their obligations. However, industry-specific regulations will still have some additional requirements. Employers must:

- Keep records for six years; records include the new notice and acknowledgment and payroll records
- Keep accurate records of hours worked by employees and wages paid; now, the law clarifies that employers must keep the records on an ongoing basis; the employer may not make up the records after the fact at the end of the week, month or year

For each week an employee works, the payroll records must contain:

- Hours worked (regular and overtime)
- Rate or rates of pay (regular/overtime)
- How the employee is paid – by the hour, shift, day, week, commission, etc.
- Pay at the piece rate must show what rates apply and the number of pieces at each rate
- Employee's gross and net wages
- Itemized deductions
- Itemized allowances and credits claimed by the employer, if any (tip, meal and lodging allowances or credits)

WAGE STATEMENTS

Under the new law, employers must:

1. Give each employee a wage statement or pay stub each payday that lists all of the above payroll data plus:
 - Employee's name
 - Employer's name, address and phone number
 - Dates covered by the payment
2. Give any employee who asks a written explanation of how they computed wages.

Employers that do not give wage statements may have to pay damages of up to \$250 per day, per employee, unless they paid employees all wages required by law. (This stops at \$5,000 per employee in civil lawsuits filed by employees.)

DAMAGES AND OTHER PENALTIES

The WTPA provides for higher penalties when an employer fails to pay the wages required by law:

1. Under prior law, liquidated damages only covered up to 25% of the unpaid wages. Now, the law provides for liquidated damages on up to 100% of the unpaid wages. Once the Department of Labor issues an Order to Comply, it includes 100% liquidated damages, as well as other civil penalties and interest.
2. If the violation is for other than wages, benefits or wage supplements, the Department of Labor may assess civil penalties for each violation. This means up to \$1,000 for a first violation, \$2,000 for a second, and \$3,000 for third and subsequent violations.
3. If the Labor Commissioner has issued an Order to Comply against an employer who does not pay the money owed, then 10 days after the appeal period ends, the Department of Labor can require them to post a bond and/or provide a list of their assets. If employers fail to do so, the Commissioner may bring a court case against them. For failure to provide the list of assets, the Department of Labor may impose a penalty of up to \$10,000.
4. The WTPA permits the Department of Labor to add 15% in damages to a judgment if the employer fails to pay in full within 90 days of the final Order to Comply.

Wage Theft Prevention Act Frequently Asked Questions (FAQ)

The Wage Theft Prevention Act, which goes into effect April 9, 2011, amends the notice of wage rate requirements and expands the civil and criminal remedies that are available when employers fail to comply with these provisions.

Section 195 of the Labor Law, as amended by the Act, requires that employers provide notice to employees of their rate(s) of pay, designated pay day, the employer's intent to claim allowances (like tip or meal allowances) as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.). The law requires that the notice contain the employer's "doing business as" names, and that it be provided at the time of hiring and within 7 days of a change if the change is not listed on the employee's pay stub for the following pay period. The notice must be provided in the employee's primary language, as identified by the employee, through translated notices provided by the Department of Labor. The Act also amends the recordkeeping and statutory payroll record and paystub requirements to include information currently required pursuant to regulation, and requires employers to maintain copies of payroll records for six years (as is currently required by regulation).

The Act clarifies and expands the Department of Labor's authority to enforce the Labor Law, and expands an employee's ability to bring complaints and private actions for such violations. The protection against prohibited retaliation is strengthened by closing loopholes on what actions constitute retaliation and expands the remedies available to employees.

Based upon inquiries received by the Department in anticipation of the Act's effective date, the following are frequently asked questions regarding the notice requirements of the Wage Theft Prevention Act:

1. What is the Wage Theft Prevention Act?

A new law, effective April 9, 2011, gives greater protection to workers, and makes changes in the way they are notified of their pay rates and receive wage statements.

2. Who is covered by the law?

All private sector employers are covered. If you have employees who work in other states they are not covered. Federal, state and local government employers are also not covered, but it is important to note that charter schools, private schools, and not-for-profit corporations are covered, as they are not public entities.

3. What does the law require?

Workers have to receive pay notices at the time of hire and when there are changes in the information on the pay notices, proper wage statements, and be free from retaliation for complaining about possible violations of the Labor Law.

4. What is required in the pay notice given to workers?

The Notice must contain the following information:

- The employee's rate(s) of pay;
- The basis of the employee's rate(s) of pay (e.g. by the hour, shift, day, week, salary, piece, commission, or other);
- Whether the employer intends to claim allowances as part of the minimum wage, including tip, meal, or lodging allowances, and the amount of those allowances;
- The employee's regular pay day designated by the employer in accordance with the frequency of pay requirements in the Labor Law¹;
- The name of the employer and any "doing business as" 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;
- Any "such other information as the commissioner deems material and necessary."

5. What if a worker's primary language is not English?

Notices need to be given in a worker's primary language if the Department of Labor provides notice templates in that language. Otherwise the notice need only be provided in English. Those templates are available on our website.

6. For what languages will the Department provide templates?

Templates will be available in English, Spanish, Chinese, Korean, Creole, Polish and Russian. They will cover a number of likely situations companies may face. You can choose the one which meets your needs.

¹ Section 191 of the New York State Labor Law regulates how frequently an employee must be paid. Under that Section, "manual workers" must be paid on a weekly basis, "clerical and other workers," must be paid according to the terms of their employment agreement and "not less frequently than semi-monthly on regular pay days designated in advance by the employer," "railroad workers" must be paid on or before Thursday of each week the wages earned during the seven-day period ending in Tuesday of the preceding week; "commission salespersons" must be paid in accordance with their agreed terms of employment but not less frequently than once in each month and not later than the last day of the month following the month in which the wages are earned; and employees employed in a "bona fide executive, administrative or professional capacity whose earnings are in excess of nine hundred dollars a week" must be paid according to the terms of their employment contract.

7. Do I have to use the Department's templates?

No, employers can develop their own notices so long as they contain all the information required by the law.

8. When are pay notices required?

Notices are required at the time of hire, and when there are changes in the information on the pay notices.

9. May the notice be included in letters and/or employment agreements provided to new hires?

Yes, but must be on its own form.

10. Can a worker waive the notice requirement?

No.

11. Can the notice be given electronically?

Yes, but there needs to be a system where the worker can acknowledge the receipt of the notice and print out a copy of the notice.

12. What if a worker refuses to sign the notice?

The employer should still give the notice to the worker and note the worker's refusal on its copy of the notice.

13. Do employers have to keep a copy of the notice?

Yes. Notices must be kept for six years and be available to the Department upon request.

14. Do I have to give a new notice every time a wage rate changes?

Except for the employers in the hospitality industry, notice is not required where there is an increase in a rate and the new rate is shown on the next payment of wages. For any reduction of wage rate, an employee must be notified in writing prior to the reduction being implemented. Employers in the hospitality industry currently need to give a new notice every time a wage rate changes.

15. What procedures should be followed if an employee has multiple pay rates?

An employer must put all pay rates on the wage statement.

16. Do workers exempt from state overtime requirements still need to get a pay notice?

Yes.

17. Does the employer have to identify the specific state exemption for workers exempt from overtime requirements?

No.

18. What should we do if the worker has multiple hourly or piece rates?

The purpose of the notice is to inform workers of the wage rates that apply to them. Multiple rates need to be identified either on the notice or on a separate sheet attached to the notice. Only the rates used to determine a worker's pay need be shown on the wage statement for that period.

19. What about salespersons whose wages are all or partially based on commissions?

Labor Law Section 191(1)(c) already requires commission salespersons to receive and sign for a copy of their commission agreement. This agreement should be attached to the pay notice and a copy of each document kept by the employer.

20. What if I have a bonus or incentive plan on a weekly or less frequent time period?

So long as the employee initially was given a description or it is clearly shown on the wage statement for the period in which it is paid, no additional notice is required.

21. What about retroactive wage increases?

The amounts need to be noted separately on the wage statement for the period in which it is paid.

22. Does the notice requirement apply to workers covered by a union contract?

Yes. Union contracts may cover wage rates for multiple titles and not give the specific pay date or other information required by the law. Individual workers need to have notices of the wage rates that apply to them.

23. Are exempt employees, including professionals, executives, or administrators, excluded from the notice requirements?

No. Since Section 195 does not contain any exclusions or exemptions from the notice requirements, the notice requirements in Section 195 apply to all employees regardless of their exempt status.

24. What is the penalty for not giving proper notice?

Employers can be assessed damages by the Department of \$50.00 per day per worker if proper notice is not given.

25. Can a worker sue for damages on his/her own?

Yes, but the maximum amount an individual worker can recover is \$5,000.00.

26. How often must wage statements be given?

A statement must be given with each payment of wages.

27. In addition to those items previously required on wage statements such as wage rates, hours worked, gross wages, allowances and deductions taken and net wages paid are there any new requirements?

Yes. The statement has to show the name, address and phone number of the employer as well as the beginning and ending date for the period covered by that payment.

28. Can wage statements be provided electronically?

Yes, but workers must be able to access their statements on a computer provided by the employer and be able to print a copy for their records.

29. Will the Department of Labor provide a model wage statement for employers to use?

Because wage statement entries will vary greatly from employer to employer, the Department will prepare a sample statement showing types of entries which may be necessary.

30. What is the penalty for not providing a proper wage statement?

Employers can be assessed charges by the Department of \$250.00 per day per worker if proper wage statements are not given.

31. Can a worker sue for not receiving a proper wage statement?

Yes, but damages are capped at \$5,000.00 per worker.

32. What is retaliation?

Any action which negatively affects workers such as discharge, suspension, transfer to another shift, reduction in wages or hours, which is done because a worker has engaged in a protected activity. Even threatening an employee can be considered retaliation.

33. What are some of these protected activities?

Employees have the right to complain to their employer, the Department of Labor, or the Attorney General about a possible violation of the Labor Law and regulations issued under it. They can file a complaint about these possible violations and give information about their conditions of employment to the Department or Attorney General and testify at hearings or other proceedings.

34. Does there really have to be a violation for the worker to be protected?

No. If the worker has a good faith belief that there is a problem in the workplace, their activities are protected.

35. What happens if I am accused of retaliation?

The Department will discuss the accusation with you and give you a chance to prove that the negative action was not a result of the workers exercising their rights.

36. What are the penalties for retaliation?

Employers or their agents can be fined up to \$20,000 and assessed another \$20,000 in liquidated damages. The Department can also request reinstatement of the worker and/or compensation for lost wages. There are also potential criminal penalties but those would be prosecuted by an agency other than DOL.

37. What if I have any other questions about the Wage Theft Prevention Act?

You can email your questions to labor.sm.ls.ask@labor.ny.gov. We will address your concerns in a timely manner.