

REMINDER: Annual Notices Required Under New York's "Wage Theft Prevention Act"

In December 2010, New York enacted the "Wage Theft Prevention Act" (the "Act"), which amended various significant provisions of the New York Labor Law effective April 2011. The Act added new affirmative obligations for employers and increased the costs of non-compliance. The Act applies to all New York employers (except governmental agencies, which are not subject to the requirements of the applicable Labor Law provisions).

Covered employers should have already modified their recordkeeping and notice practices to comply with the Act. However, the annual notice requirement takes effect for the first time in 2012. **Between January 1, 2012 and February 1, 2012, New York private sector employers must give written notice of certain pay information and obtain signed and written acknowledgments of receipt from each employee.**

Annual Notices

The Act requires that all of the following information be provided in writing to each employee (including employees exempt from minimum wage and/or overtime requirements) on an annual basis:

- The employee's rate(s) of pay (including both regular hourly rate(s) and the overtime rate(s) for employees subject to overtime payment under New York law);
- Basis of pay (whether by the hour, shift, day, week, salary, piece, commission, or other);
- Allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- The regular pay day;
- The employer's name and any "doing business as" names;
- The physical address of the employer's main office or principal place of business;
- The employer's mailing address if different from the physical address;
- The employer's telephone number; and
- All other information that the Commissioner of Labor "deems material and necessary."

Employers must give the required notice to each employee in English and in the employee's primary language (if other than English). However, notice in a language other than English is only required if a template notice has been issued in such language by the Department of Labor ("DOL"). DOL templates are currently available in English, Chinese, Haitian Creole, Korean, Polish, Russian, and Spanish.

The DOL's template wage notices are available here:

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

Although use of the DOL's templates will often be the preferred way to satisfy the notice requirement, employers must evaluate the sufficiency of the templates for their specific circumstances. As appropriate, employers may add to the DOL's templates or prepare alternative forms that provide all of the required information.

In addition to the annual notice requirement, notices are also required at the time of hire and when there are changes in the information listed above.

Penalties for Failure To Provide Required Notices

Employers who do not provide the required notices and obtain acknowledgment of employee receipt are subject to significant monetary penalties on a per-employee basis. Failure to provide and retain the required notices could also be used against employers in other wage-related proceedings, where severe civil or even criminal penalties may be at stake.

Immediate Action Required

Employers should immediately ensure that they have a plan in place to provide the required notice to each employee by February 1, 2012. Depending on the nature of the workforce, preparing the notices is not always a straightforward task. It often involves intricate interpretation of the Act's requirements and careful consideration of the applicable compensation structure(s), among other issues. Thus, legal counsel experienced in this area should be a component of your compliance efforts.

More information regarding the New York Wage Theft Prevention Act can be found in our prior Alert on this topic, which is available at www.jaeckle.com/WageTheftPreventionAct.

If you have any questions regarding this Alert, please contact Scott P. Horton (716-843-3949; shorton@jaeckle.com) or any of the other attorneys in our Labor and Employment practice group.

Thomas E. Brydges	716.843.3812	tbrydges@jaeckle.com
Melinda G. Disare	716.843.3842	mdisare@jaeckle.com
Scott P. Horton	716.843.3949	shorton@jaeckle.com
Lawrence M. Meckler	716.843.3836	lmeckler@jaeckle.com
Randall M. Odza	716.843.3877	rodza@jaeckle.com
Edward G. Piwowarczyk	716.843.3834	epiwowarczyk@jaeckle.com
James N. Schmit	716.843.3871	jschmit@jaeckle.com
Sharon A. Swift	716.843.3936	sswift@jaeckle.com

This Jaeckle Alert, prepared by the attorneys at Jaeckle Fleischmann & Mugel, LLP, is intended for general information purposes only and should not be considered legal advice or an opinion on specific facts. For more information on these issues, contact one of the attorneys listed above or your existing Firm contact. Prior results do not guarantee a similar outcome. The invitation to contact is not a solicitation for legal work in any jurisdiction in which the contacted attorney is not admitted to practice. Any attorney/client relationship must be confirmed in writing.

© 2011. All Rights Reserved. Jaeckle Fleischmann & Mugel, LLP Buffalo, NY.