

ATTENTION TRAINERS AND BOOKKEEPERS...

YOU MUST BE IN COMPLIANCE WITH CHANGES IN THE NYS DEPARTMENT OF LABOR LAW!

New York's Department of Labor Law, called the Wage Theft Prevention Act (WTPA), requires all employers (except government) with New York employees to provide their employees with a Written Notice of Rates of Pay and Regular Payday, at the time of hire AND each year before Feb. 1.

In addition, there has been a change to the existing law regarding pay stubs. Currently, the pay stub must reflect wage rate, hours worked, gross wages, deductions and net pay, and must be given to each employee with their pay. Now the pay stub ALSO must reflect the employers name, address and phone number; and the beginning and ending date for the period covered by that payment.

If employers are not in compliance with these laws, fines from \$50 to \$100 per employee per week can be assessed.

Enclosed are the Guidelines for Written Notice of Rates of Pay and Regular Payday; the Fact Sheet; Frequently Asked Questions; and templates for the Written Notice and Acknowledgement in English and Spanish.

Additional templates, and templates in other languages, are available online at <http://labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>.

For more information, go to:

<http://www.labor.state.ny.us/workerprotection/laborstandards/employer/wage-theft-prevention-act.Shtm>

New York State Department of Labor WAGE THEFT PREVENTION ACT

A law passed in 2010 gives more protection to workers in New York State. This law, the Wage Theft Prevention Act (WTPA), took effect on April 9, 2011. Here are some key provisions of the new law that employers need to know.

What is New?

Public Notice of Violations

If an employer breaks certain parts of the law, the Labor Department (DOL) 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, DOL 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.*

What Are Changes to Existing Law?

Enhanced Rules against Retaliation

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

- 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.**
- In the past, we could only cite employers for retaliation. **Now, it is illegal for any person to retaliate.**
- In the past, penalties for breaking this rule meant we could fine an employer up to \$10,000. **Now, DOL can order the employer or the person who acted against the employee to pay liquidated damages. The payment can be up to \$10,000.**
- DOL may order the employer to reinstate the worker's job. **Or the employer may have to pay the person for lost salary or pay a lump sum in lieu of reinstatement.**
- **Retaliation carries criminal penalties for employee complaints about any section of the Labor Law.**
- 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.*

- **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 and to all employees by February 1 each year.** The notice must include:
 - Rate or rates of pay, including overtime rate of pay (if it applies)
 - **How the employee is paid:** by the hour, shift, day, week, commission, etc.
 - Regular payday
 - **Official name of the employer and any other names used for business (DBA)**
 - **Address and phone number** of the employer's main office or principal location
 - **Allowances taken as part of the minimum wage (tip, meal and lodging deductions)**
- 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 Labor Department offers a translation).**
- Employers must have each employee sign and date the completed notice. Employers must provide a copy to each employee.

- 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.
- Employers that do not give notice may have to pay damages of up to \$50 per week, per employee, unless they paid employees all wages required by law. (This stops at \$2,500 per employee in civil lawsuits filed by workers.)

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 the 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:

- 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

- 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 \$100 per week, per employee, unless they paid employees all wages required by law. (This stops at \$2,500 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.

- 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 DOL issues an Order to Comply, it includes 100% liquidated damages, as well as other civil penalties and interest.**
- If the violation is for other than wages, benefits or wage supplements, DOL 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.
- 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, DOL 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, DOL may impose a penalty of up to \$10,000.**
- **The WTPA permits DOL 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.**

PROTECT *all Workers*

ASSIST *the Unemployed*

CONNECT *Employers and Workers*



Guidelines for Written Notice of Rates of Pay and Regular Payday

Effective April 9, 2011 Section 195.1 of the Labor Law, requires all employers, other than government agencies, to give employees at the time of hire (before work is performed) and on or before February 1 of each year, notice of the following:

1. the employee's rate or rates of pay
2. the overtime rate of pay, if the employee is subject to overtime regulations
3. the basis of wage payment (per hour, per shift, per week, piece rate, commission, etc.)
4. any allowances the employer intends to claim as part of the minimum wage including tip, meal, and lodging allowances
5. the regular payday
6. the employer's name and any names under which the employer does business (DBA)
7. the physical address of the employer's main office or principal place of business and, if different, the employer's mailing address
8. the employer's telephone number

Employers must provide the notice in English and the employee's primary language.

Employee Acknowledgement

The employer must have the employee sign a statement acknowledging receipt of the written notice in English and the employee's primary language. Employees must also acknowledge that they have properly identified their primary language to their employer. The employer must keep the signed and dated notice and acknowledgement for six years and provide a copy to the employee.

Notice and Acknowledgement Templates

The Department of Labor (DOL) has prepared templates for several common types of pay agreements, including dual language versions in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish. An employee acknowledgement of receipt section is included in the templates prepared by the Department. Templates are available on the Department's web site at www.labor.ny.gov and in hard copy.

If the Department of Labor does not make a template in a particular language available, employers may provide notice to that employee in English only.

Employers will not be penalized for errors in the prepared templates issued by DOL.

The Department reserves the right to require use of DOL forms in the future, if employer notices do not meet requirements.

See LS 53 Instructions: Templates for Notice of Pay Rates, Paydays and Employee Acknowledgement under Section 195.1 of the NYS Labor Law to find a template that may be appropriate for your particular pay agreement.

Overtime Rate

Most employees must receive overtime pay at 1½ times their regular rates of pay for all hours worked over 40 in a workweek. In a few occupations that are exempt from overtime under the federal Fair Labor Standards Act, New York State Labor Law requires the employees be paid at least 1½ times the minimum hourly rate for their overtime hours. A few occupations are exempt from the overtime pay provisions of the both state and federal law.

Exempt Employees

The notice to exempt employees may state the specific exemption that applies.

Payday

The regular payday must be at least weekly for manual workers, at least twice a month for clerical and other workers, and at least monthly for commissioned salespeople.

Other Notice Requirements

For the following types of employees there are additional notice provisions required by Labor Law and or Regulation. Please refer to the sections cited below for more information.

- Commissioned Sales Employees (191.1c)
- Farm Employees (190-6.1)
- Hospitality Industry Employees (146-2.2)

Temporary Help Firms

The Department has developed a notice form and separate guidelines for use by temporary help firms (LS 50). It is available at the Department's web site or in hard copy. The use of those guidelines and form is strictly limited to employers that meet the definition of the term "temporary help firms" in Section 916.5 of the Labor Law.

For more information or assistance, please contact the NYS Department of Labor, Division of Labor Standards office nearest you or visit our web site at www.labor.ny.gov.

Albany District

State Office Campus
Bldg. 12, Rm. 185A
Albany, NY 12240
(518) 457-2730

Garden City District

400 Oak St., Suite 101
Garden City, NY 11530
(516) 794-8195

Syracuse District

333 East Washington St., Rm. 121
Syracuse, NY 13202
(315) 428-4057

Binghamton Sub-district

44 Hawley St., Rm. 909
Binghamton, NY 13901
(607) 721-8014

Buffalo District

65 Court St., Rm. 202
Buffalo, NY 14202
(716) 847-7141

White Plains District

120 Bloomingdale Rd.
White Plains, NY 10605
(914) 997-9521

New York City District

75 Varick St., 7th Floor
New York, NY 10013
(212)775-3880

Rochester Sub-district

109 S. Union St., Rm. 318
Rochester, NY 14607
(585) 258-4550



New York State Department of Labor, Division of Labor Standards
Instructions: Templates for Notice of Pay Rates, Pay Days and Employee Acknowledgement
Under Section 195.1 of the NYS Labor Law

The Department of Labor provides templates for several common types of pay agreements including dual language notices and acknowledgements in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish. Employers may create their own notices, use or adapt the Labor Department forms, as long as the:

- Required information appears in English and the employee's primary language (if template available)
- Employee receives a copy
- Employee signs an acknowledgment of receipt, and identifies their primary language to the employer
- Employer keeps a copy of the notice and acknowledgement for 6 years

Below are instructions for choosing among the templates. For details or help, see the Guidelines (LS 52) or contact the Division of Labor Standards.

LS 54 Notice for Hourly Rate Employees

This form is for hourly employees who are not exempt from coverage under the applicable State and Federal overtime provisions. For example, use for an employee whose regular rate of pay is \$10 per hour and overtime rate is \$15 per hour.

LS 55 Notice for Multiple Hourly Rate Employees

This form is for employees who are paid more than one rate for different types of work or different shifts. For example, use this form for an employee who is paid \$10 per hour for work as a janitor and \$12 per hour for work as a landscaper, or an employee who is paid one rate for working the day shift and another rate for the night shift.

LS 56 Notice for Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)*

This form is for employees who receive a weekly rate or a salary for a fixed number of hours (40 or fewer in a workweek).

- The employee's regular rate is the weekly rate or salary divided by the number of hours it intends compensate.
- The overtime rate is 1½ times the regular rate.

Except in very limited circumstances, it is illegal to pay a fixed (unchanging) weekly rate for work weeks that vary over 40 hours. Even where there is a standard work week, there are usually occasions when work hours vary. For this reason, we have not provided a template for weekly rates for workweeks of over 40 hours. To avoid overtime violations, the Department strongly recommends that employers pay an hourly rate to overtime eligible employees whose standard workweek is over 40 hours.

LS 57 Notice for Employees Paid a Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate, or Other Non-Hourly Basis*

This form is for non-exempt employees who are paid a salary for varying hours of work, a daily rate, piece rates, flat rates, or any other pay that is not based on actual hours worked. In each overtime week, the employer must:

- Calculate the regular rate (total regular pay divided by total hours worked)
- Calculate the overtime premium (1/2 the regular rate)
- Multiply the overtime premium by the number of overtime hours and
- Pay the overtime premium in addition to the salary, day rate, piece rate, flat rate, or other pay

LS 58 Notice for Prevailing Rate and Other Jobs

Use this form when the employee:

- Works on public work projects (i.e., projects covered by the prevailing wage provisions in State and Federal Law) or
- Does mixed prevailing rate and non-prevailing rate work

There is space on the form for the employer to enter the regular and overtime rates to be paid for the other (non-prevailing wage) work. The form explains to the employee that any premium pay received on prevailing wage jobs in a week will be credited toward any overtime premium due for working over 40 hours in the week.

LS 59 Notice for Exempt Employees *

Use this form for employees who are exempt from premium overtime pay under either State regulations or the Federal Fair Labor Standards Act. The employer should identify the overtime exemption or, if an employee is outside of the definition of the term "employee" in Article 19 of the New York State Labor Law, the employer should identify the minimum wage exemption.

* Employers in the Hospitality Industry may not pay a non-exempt employee a non-hourly rate, except for commissioned salespeople.



**Notice and Acknowledgement of Pay Rate and Payday
Under Section 195.1 of the New York State Labor Law
Notice for Hourly Rate Employees**

1. Employer Information

Name:

Doing Business As (DBA) Name(s):

FEIN (optional):

Physical Address:

Mailing Address:

Phone:

3. Employee's rate of pay:

\$ _____ per hour

4. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____

5. Regular payday: _____

6. Pay is:

- Weekly
- Bi-weekly
- Other

7. Overtime Pay Rate:

\$ _____ per hour (This must be at least 1½ times the worker's regular rate with few exceptions.)

8. Employee Acknowledgement:

On this day I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated pay day on the date given below. I told my employer what my primary language is.

Check one:

- I have been given this pay notice in English because it is my primary language.
- My primary language is _____. I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Print Employee Name

Employee Signature

Date

Preparer's Name and Title

2. Notice given:

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

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



**Notice and Acknowledgement of Pay Rate and Payday/Aviso y Acuse de Recibo de Tasa de Pago y Día de Cobro
Under Section 195.1 of the New York State Labor Law/Bajo la Sección 195.1 de La Ley de Trabajo del Estado de Nueva York
Notice for Hourly Rate Employees/Aviso para empleados con tasa de pago por hora**

1. Employer Information/Información del Empleador

Name/Nombre: _____

Doing Business As (DBA) name(s)/
Nombre(s) comercial(es): _____

FEIN (optional)/ Número de Identificación
Federal (opcional): _____

Physical Address/Dirección Física: _____

Mailing Address/Dirección postal u oficial: _____

Phone/Teléfono: _____

- 2. Notice given/Aviso emitido:**
- At hiring/ En la contratación
 - On or before February 1/En o antes del 1 de Febrero
 - Before a change in pay rate(s), allowances claimed or payday. *Antes de un cambio en tasa de pago, créditos tomados, o día de cobro*

- 3. Employee's Pay Rate/Tasa de pago del empleado:**
\$ _____ per hour/por hora
- 4. Allowances taken/Créditos tomados:**
- None/ninguno
 - Tips/Propinas _____ per hour/ por hora
 - Meals/Comidas _____ per meal/ por comida
 - Lodging/ Hospedaje _____
 - Other/Otra _____

- 5. Regular payday/Día de Cobro Regular:**

- 6. Pay is/El pago es:**
- Weekly/ Semanal
 - Bi-weekly/Quincenal
 - Other/Otro _____

- 7. Overtime Pay Rate/Tasa de Pago de Horas Extras (más de 40 horas trabajadas en una semana):**
\$ _____ per hour/por hora (This must be at least 1½ times the worker's regular rate, with few exceptions.)/*Con pocas excepciones, esta tasa debe ser por lo menos 1½ veces la tasa de pago regular para el trabajador.*

8. Employee Acknowledgement/Acuse de Recibo del Empleado: On this day, I received notice of my pay rate, overtime rate if eligible, allowances, and designated payday in English and my primary language. I told my employer that my primary language is **Spanish**. *En esta fecha, se me ha informado de mi tasa de pago, mi tasa de pago de horas extras (si elegible), créditos, y del día de cobro en inglés y en mi lengua materna. Le indiqué al empleador de que mi lengua materna es **español**.*

Print Employee Name/Escriba el nombre del empleado en letra de imprenta

Employee Signature/Firma del Empleado

Date/Fecha

Preparer Name and Title/Nombre y Título del Preparador de este Documento.

The employee must receive a signed copy of this form. The employer must keep the original for 6 years./El empleado debe recibir una copia firmada, de este documento. El original debe permanecer con el empleador por 6 años.



**Notice and Acknowledgement of Pay Rate and Payday
Under Section 195.1 of the New York State Labor Law**

Notice for Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)

1. Employer Information

Name:

Doing Business As (DBA) Name(s):

FEIN (optional):

Physical Address:

Mailing Address:

Phone:

3. Employee's Pay Rate:

\$ _____ per _____

Weekly hours _____ (Specify the number of hours for which the weekly rate or salary will be paid.)

Employers may not pay a non-hourly rate to a non-exempt employee in the Hospitality Industry, except for commissioned salespeople.

4. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____

5. Regular payday: _____

6. Pay is:

- Weekly
- Bi-weekly
- Other

7. Overtime Pay Rate:

\$ _____ per hour (This must be at least 1½ times the worker's regular rate, with few exceptions.)

8. Employee Acknowledgement:

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

Check one:

- I have been given this pay notice in English because it is my primary language.
- My primary language is _____. I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Print Employee Name

Employee Signature

Date

Preparer Name and Title

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

2. Notice given:

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



Notice and Acknowledgement of Pay Rate and Payday/Aviso y Acuse de Recibo de Tasa de Pago y Día de Cobro

Under Section 195.1 of the New York State Labor Law/Bajo la Sección 195.1 de La Ley Laboral del Estado de Nueva York

Notice for Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)/Aviso para Empleados Pagados una Tarifa Semanal o un Salario Fijo por un Número de Horas (40 o menos en una Semana)

1. Employer Information/ Información del Empleador

Name/Nombre: _____

Doing Business As (DBA) name(s)/ Nombre(s) comercial(es): _____

FEIN (optional)/Número de Identificación Federal (opcional): _____

Physical Address/Dirección Física: _____

Mailing Address/Dirección Postal u Oficial: _____

Phone/ Teléfono: _____

- 2. Notice given/Aviso emitido:**
- At hiring/En la contratación
 - On or before February 1/En o antes del 1 de febrero.
 - Before a change in pay rate(s), allowances claimed or payday. *Antes de un cambio en tasa de pago, créditos tomados, o día de cobro.*

3. Employee's Pay Rate/Tasa de Pago del Empleado:

\$ _____ per/por _____

Weekly hours/Horas Semanales _____

(Specify the number of hours for which the weekly rate or salary will be paid.)/(Especifique el número de horas pagadas por la tarifa semanal o salario.)

Employers may not pay a non-hourly rate to a non exempt employee in the Hospitality Industry, except for commissioned salespeople./Los empleadores no pueden pagar una tasa de no-hora a un empleado no exento en la industria hotelera, a excepción de los vendedores encargado.

- 4. Allowances taken/Créditos tomados:**
- None/Ninguno
 - Tips/Propinas _____ per hour/por hora
 - Meals/Comidas _____ per meal/por comida
 - Lodging/Hospedaje _____
 - Other/Otro _____

5. Regular payday/Día de Cobro Regular:

- 6. Pay is/El pago es:**
- Weekly/Semanal
 - Bi-weekly/Quincenal
 - Other/Otro _____

7. Overtime Pay Rate/Tasa de Pago de Horas Extras:

\$ _____ per hour/por hora (This must be at least 1½ times the worker's regular rate with few exceptions.)/(Con pocas excepciones, esta tasa debe ser a lo menos 1½ veces la tasa regular de pago del trabajador.)

8. Employee Acknowledgement/Acuse de Recibo del Empleado: On this day, I received notice of my pay rate, overtime rate (if eligible), allowances, and designated payday in English, and in my primary language. I told my employer that my primary language is Spanish./ En esta fecha se me ha informado de mi tasa de pago, mi tasa de pago de horas extras (si elegible), créditos, y del día de cobro en inglés y en mi lengua materna. Le indiqué al empleador que mi lengua materna es **español**.

Print Employee Name/Escriba el nombre del empleado en letra de imprenta

Employee Signature/Firma del empleado

Date/Fecha

Preparer Name and Title/Nombre y Título del Preparador de este Documento

The employee must receive a signed copy of this form. The employer must keep the original for 6 years./El empleado debe recibir una copia firmada de este documento. El original debe permanecer con el empleador por 6 años.