

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.**

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ASSIST *the Unemployed*

CONNECT *Employers and Workers*

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**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.)

2. Notice given:

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

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.



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: _____

- 2. Notice given:**
- At hiring
 - On or before February 1st
 - Before a change in pay rate(s), allowances claimed or payday

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

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
Under Section 195.1 of the New York State Labor Law
Notice for Multiple Hourly Rate Employees

<p>1. Employer Information</p> <p>Name: _____</p> <p>Doing Business As (DBA) name(s): _____</p> <p>FEIN (optional): _____</p> <p>Physical Address: _____</p> <p>Mailing Address: _____</p> <p>Phone: _____</p>

3. Employee's rate(s) of pay for each type of work or shift:

\$ _____ per hour for _____

\$ _____ per hour for _____

\$ _____ per hour for _____

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(s) for each type of work or shift:

This must be at least 1½ times the worker's weighted average of the multiple rates of pay for the week, with few exceptions. The weighted average is the total regular pay divided by the total hours worked in the week. The overtime rate may vary from week to week depending on how many hours you worked at

2. Notice given:

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

each rate of pay. The overtime rate may vary from week to week.

8. Employee Acknowledgement:

On this day I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated payday 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 Name and Title

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 Under Section 195.1 of the New York State Labor Law
Notice for Employees Paid Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate or Other Non-Hourly Pay

1. Employer Information

Name: _____

Doing Business As (DBA) Name(s): _____

FEIN (optional): _____

Physical Address: _____

Mailing Address: _____

Phone: _____

4. Employee's Pay Rate:

\$ _____ per _____
Specify the basis for the rate paid, i.e. salary for varying hours, day rate, etc.

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

5. Allowances taken:

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

6. Pay is:

- Weekly
- Bi-weekly
- Other

7. Overtime Pay Rate:

In most cases the overtime rate will be 1½ times the regular rate of pay for the week. The regular rate of pay is the total weekly pay divided by the hours worked in the week.

In most cases, it is illegal to pay a fixed weekly rate for varying hours worked over 40 per week. The Department of Labor strongly discourages weekly rates for non-exempt employees, since underpayments often result.

2. Notice given:

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

3. Regular payday: _____

8. 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 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.



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

1. Employer Information

Name: _____

Doing Business As (DBA) Name(s): _____

FEIN (optional): _____

Physical Address: _____

Mailing Address: _____

Phone: _____

4. Prevailing Rate Jobs Pay Rate(s): Your rate of pay will be the posted rate for the occupation(s). _____

Occupation: _____

5. Prevailing Rate Jobs Overtime Pay Rate: Your overtime rate(s) are payable after 8 hours in a day and after 5 days in a week, or as noted in the applicable prevailing wage schedule. Overtime rates will be those posted for the occupation. _____

6. Non-Prevailing Rate Jobs Pay Rate: \$ _____ per hour.

7. Non-Prevailing Rate Jobs Overtime Pay Rate: \$ _____ per hour.

8. Overtime for Prevailing Rate and Non-Prevailing Rate Jobs in the Same Week: For most employees in NYS the overtime rate will be 1 1/2 times the regular pay rate for the work you are performing for hours over 40 in a workweek. Any overtime premium earned on a prevailing rate job during the same week can be credited toward non-prevailing rate overtime pay.

9. Allowances taken:

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

2. Notice given:

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

3. Regular payday: _____

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10. Pay is:

- Weekly
- Bi-weekly
- Other: _____

11. Employee Acknowledgement: On this date, 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 only, 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.



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

1. Employer Information

Name: _____

Doing Business As (DBA) Name(s): _____

FEIN (optional): _____

Physical Address: _____

Mailing Address: _____

Phone: _____

8. 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 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.

3. Employee's pay rate(s): State if pay is based on an hourly, salary, day rate, piece rate, or other basis. _____

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:

Most workers in NYS must receive at least 1½ times their regular rate of pay for all hours worked over 40 in a workweek, with few exceptions. A limited number of employees must only be paid overtime at 1½ times the minimum wage rate, or not at all.

This employee is exempt from overtime under the following exemption (optional): _____