

ALERT

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NEW YORK LAW REQUIRES ADDITIONAL EMPLOYEE NOTIFICATIONS

Effective October 26, 2009, an amendment to New York Labor Law Section 195 ("Amendment") requires New York employers to give written notice to every new employee, at the time of hiring, of the rate of pay and the regular pay day, as well as the rate of overtime pay. The Amendment also requires employers to obtain a written acknowledgment from the employee regarding receipt of this notification. Penalties for failure to comply range from \$1,000 for a first violation to \$3,000 for a third and each subsequent violation.

The legislative reasoning behind the Amendment is set forth in "The Statement in Support of the Bill" ("Statement"). The Statement noted that (prior to the Amendment) many employees who are covered by New York's wage and hour laws were paid on a weekly basis, making it difficult for them to discern what the overtime rate of pay should be, and further noted that the Amendment permits both the employee and the Commissioner of Labor to compute the overtime to which the employee is entitled based on the stated rate. According to the Statement, "[t]hese changes will ensure that employees understand a critical feature of the employment relationship with their employers and will help to prevent confusion between an employer and employee regarding overtime pay."

Even prior to the Amendment, Labor Law Section 195 required employers to disclose to their employees at the time of hire the employee's rate of pay and the regular pay day.

The New York Department of Labor has posted on its website an advisory to employers that states, in part: "This notice must be given on an official form from the New York State Department of Labor." As of the date of this Client Alert, however, the agency has only posted one form on its website, and that form assumes that the employee is paid "per hour." We understand that additional forms will be forthcoming.

Implications for New York Employers

Until the Department of Labor issues a complete set of forms, employers involved with new hires must consider how to comply with such guidance as the Department of Labor has provided. Beyond such technical concerns, however, complying with the Amendment requires employers to confront an

ALERT

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important decision: is the employee being hired subject to the overtime provisions of the Fair Labor Standards Act ("FLSA") and New York law?

Determining whether a particular employee is "exempt" (as opposed to "nonexempt") under the FLSA and New York law can be difficult, and lawsuits for unpaid overtime for allegedly misclassified employees are not uncommon. As an exempt employee is not entitled to an overtime wage, the new amendment to Labor Law Section 195 implicitly requires employers to take a written position on this important issue at the inception of the employment relationship.



We can assist you in complying with the Amendment and with the proper classification of employees as "exempt" or "nonexempt" under the FLSA and New York law. We can also discuss with you other provisions that can provide further protection for your company.