

LABOR & EMPLOYMENT

>> ALERT

NEW YORK PAYDAY/PAY RATE NOTICE LAW REQUIRES SEPARATE FORM

A recent New York Department of Labor (NYDOL) opinion letter has taken the position that to satisfy the payday/pay rate notice requirements of the New York Labor Law, employers must provide the required notice in a stand-alone form.

Specifically, the opinion letter states, “An employer may include such forms with a packet or other materials given to an employee in connection with an offer letter, but the acknowledgement must be in a form independent from the letter and other materials included with the letter so as to ensure that the employee directly acknowledges the receipt of that form.” The opinion letter adds, “Expecting a worker to read through or otherwise find this information in a possibly lengthy document, letter, or proposed employment contract does not satisfy these purposes.”

As previously reported by the NYDOL, all employers are required to notify in writing their New York employees hired on or after October 26, 2009 of their:

- 1) regular rate of pay (even where employee is not paid hourly);
- 2) regular payday; and
- 3) overtime pay rate (for non-exempt employees).

Employers must also get written acknowledgment of receipt from the employees.

After the NYDOL originally published a one-size-fits-all form notice and stated that New York employers were obligated to use the form, it later reversed the requirements by publishing several different form notices and stating that use of the forms (as written) is not mandatory. Many employers believed that the information required by the law could be provided in an offer letter or employment agreement. This new opinion letter, however, indicates otherwise.

The NYDOL's form notices are available on its website at <http://www.labor.ny.gov>. The website contains separate sample notices for:

- >> hourly-rate employees,
- >> employees who are paid multiple hourly rates,

THE BOTTOM LINE

In light of this new opinion letter, the safest way to comply with the New York payday/pay rate law is to use the NYDOL's model forms. Employers who prefer to customize their forms should contact counsel to ensure compliance with the law's requirements.

- >> employees who are paid a weekly rate or salary for a fixed number of hours (40 or fewer in a week),
- >> employees who are paid a salary for varying hours, a day rate, a piece rate, a flat rate or other non-hourly pay,
- >> employees who are paid the prevailing rate, and
- >> exempt employees.

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The website also has guidelines for compliance with the law and instructions for the model notices.

Finally, the opinion letter states, “While employers are free to modify those forms or create forms customized to their business, the content and form of those models has been deemed to be appropriate and required by the Commissioner

of Labor. As such, the content of forms created by employers should include, at the very least, all of the elements, questions, and information as the forms promulgated by the Department.”

Although opinion letters do not have the force of law, they are often given great deference by courts when issues of legal interpretation arise.

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