

# LABOR & EMPLOYMENT

>> ALERT

## NEW YORK REQUIRES WRITTEN DISCLOSURE OF PAY RATES TO NEW HIRES

As of October 26, 2009, New York employers are required to inform all new employees *in writing* of their: (1) Regular rate of pay (even where employee is not paid hourly); (2) Regular pay day; and (3) **Overtime** pay rate (for non-exempt employees).

Because it can be challenging to properly calculate overtime rates under the Fair Labor Standards Act, particularly where such rates vary on a weekly basis, consider including a short explanation of how the overtime rate is calculated to avoid unintentionally violating New York law and/or the Fair Labor Standards Act.

With regard to exempt employees, consider including a statement such as: "You are an exempt employee and therefore not eligible to receive overtime pay." As always, be careful to properly classify exempt and non-exempt employees. If you have concerns about employee classifications, contact your legal counsel.

Employers must also obtain a **signed acknowledgement** from the new hire, confirming his or her receipt of this wage information. The New York State Department of Labor has not yet issued guidance regarding the form and/or substance of this employee

acknowledgement, but may well do so prior to October 26, 2009. Until further guidance is issued, consider adding an acknowledgement block that states:

I specifically acknowledge and agree that I am aware of my rate of pay, regular pay day, overtime rate of pay, if applicable, and any and all other wage information as required by Section 195 of the New York Labor Law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Penalties for failure to comply: \$1,000 for the first violation, \$2,000 for the second violation, and \$3,000 for the third and each subsequent violation.

Employers should immediately update form offer letters to include all required wage information and the above acknowledgement block. This block should be **in addition to** already existing signature blocks where employees acknowledge and agree to the terms of their employment.

For employers that do not currently use offer letters, this is a good opportunity to implement them and to introduce employer protections such as a statement of at-will employment,

confidentiality and/or restrictive covenant obligations, and an acknowledgement that the new employee has not relied on any terms not stated in the offer letter.

### THE BOTTOM LINE

Employers **must** provide a written document to all new hires containing the required wage information, and receive a written acknowledgement confirming receipt.

### FOR MORE INFORMATION

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