



JSPAN SCHLESINGER
Attorneys at Law LLP

MEMORANDUM

TO: Our Valued Clients

DATE: February 15, 2010

SUBJECT: New York Labor Law — Amendment to Notice and Record Keeping Requirements

As we noted in our memos of [October 6](#) and [November 18, 2009](#), employers in New York are now required to provide employees hired on or after October 26, 2009 with written notice of their regular rate of pay, their overtime rate of pay (if the employee is eligible for overtime), and the employer's regular pay days and to obtain the employee's acknowledgement of receipt of such notice. We are writing to inform you that the New York State Department of Labor (DOL) has now **reversed** its earlier position that employers must use the notice forms prepared by the DOL. According to the new guidelines, employers may create their own forms, or use or adapt the model forms prepared by the DOL, as long as: (a) the required information is given at the time of hiring, before any work is performed; (b) the employee is given a copy; and (c) the employee signs an acknowledgment of receipt, which the employer must retain for six years

As mentioned in our November 18 memo, the DOL initially created a "one size fits all" form that did not easily work for all situations. The DOL has now posted new "model" forms that supplement the "one size fits all" form. These new forms deal with several different employee groups, including non-exempt employees who are paid either: (a) an hourly rate; (b) multiple hourly rates; (c) a weekly rate or salary for a fixed number of hours (40 or fewer in a week); (d) a salary for varying hours, day rate, piece rate, flat rate, or other non-hourly pay; or (e) a prevailing rate on a public work project. The DOL has also added a model form for exempt employees. Unlike the original form, these new forms do not require the preparer to certify that the contents are true and accurate under penalty of perjury.

In addition to reversing its position on the use of required forms, that DOL has now taken the position (without support in the statute itself) that notices to exempt employees must state the specific exemption that applies. The guidelines also discuss how employers can prepare notices for commissioned salespersons that will satisfy both Section 195(1) and Section 191(1)(c) of the Labor Law (see our memo of [October 11, 2007](#)).

The new forms are posted at www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm, under the heading "Leaflets and Flyers" (documents LS 50 to LS 59).

Hopefully, this will be the last of our memos on this topic. Please contact us at (516) 746-8000 if you have any questions regarding this matter. We will be happy to assist you.