



JASPER SCHLESINGER
Attorneys at Law — LLP

MEMORANDUM

TO: Our Valued Clients
DATE: November 18, 2009
SUBJECT: New York Labor Law — Amendment to Notice and Record Keeping Requirements

As we noted in our memo of October 6, 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. We are writing to inform you that the New York State Department of Labor has prepared an official form of notice which is **required** to be used for all new hires. A copy of the notice is attached to this memo, along with fact sheets prepared by the DOL. The notice may also be accessed at the DOL's web site, <http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/lshmpg.shtm>, under the heading "NEW LABOR LAW - Notice of Pay Rate and Payday for New Hires."

The DOL has created a "one size fits all" form that will not easily work for all situations. The DOL plans to post new forms for use with employees paid on other bases other than hourly, such as commissioned salespersons and exempt employees, in the near future. Until the new forms are posted, the DOL has advised employers to use the attached form, deleting any language that does not apply to the employee's compensation structure and attaching a complete statement describing such structure. If an attachment is used, we suggest that the DOL form clearly refer to the existence of the attachment and that the attachment be initialed by the employer and the employee.

As noted on the DOL form, the overtime rate for many hourly employees is 1½ times the regular hourly rate. However, determining the overtime compensation for non-exempt salaried employees (and some hourly employees) may depend on a number of factors. For example, overtime rates may vary from week to week based on the number of hours worked, the nature of the compensation paid, the type of work performed and other considerations. Employers may also pay premiums, such as for night shifts, special work, and weekend or holiday work. All of these variables should be listed on the DOL form and factored into the calculation of an employee's overtime rate of pay.

Please note that the law requires employers to retain the signed notice and acknowledgment for at least six years. We suggest that employers retain these documents for at least six years from an employee's termination, not merely from when the document was signed. While the new law does not require that employees be provided written notice of changes to regular and overtime rates, we suggest that such notice be given by providing affected employees with a new form of notice and obtaining the employee's acknowledgement.

The DOL is also expected to issue additional written guidance regarding employers' obligations under this new law, and we will advise you if and when such guidance is made available.

Please contact us if you have any questions regarding this matter. We will be happy to assist you.



Labor Law Section 195(1)
Notice and Acknowledgement of Wage Rate and Designated Payday
Hourly Rate Plus Overtime

<u>Employer</u>	<u>Employee</u>
Company Name _____	Name _____
FEIN _____	Street address _____
Street address _____	Apt. _____ City _____
City _____ State _____	State _____ Zip: _____
Zip _____	Phone (_____) _____ - _____
Phone (_____) _____ - _____	
Preparer's Name _____	
Preparer's Title _____	

Your rate of pay: _____ per hour.

Your overtime rate of pay: _____ per hour.

Designated pay day: _____

I hereby certify that I have read the above and the information contained in this form is true and accurate to the best of my knowledge and belief. Any false statements knowingly made are punishable as a class A misdemeanor (Section 210.45 of the New York State Penal Law).

Date: _____

_____ **[Preparer's Signature]**

General Statement Regarding Overtime Pay in New York:

Almost all employees in New York must be paid overtime wages of 1½ times their regular rate of pay for all hours worked over 40 per workweek. A very limited number of specific categories of employees are covered by overtime at a lower overtime rate or not at all.

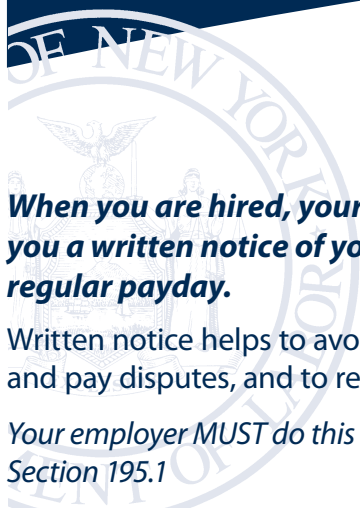
I hereby acknowledge that I have been notified of my wage rate, overtime rate, and designated pay day on the date set forth below.

Date: _____

_____ **[Employee's Signature]**

A duplicate signed copy of this form is to be provided to the employee. Original must be kept by the employer.

Workers



Notice of Pay Rate and Payday for New Hires

A New Labor Law

When you are hired, your employer must give you a written notice of your pay rate and the regular payday.

Written notice helps to avoid misunderstandings and pay disputes, and to resolve them if they occur.

Your employer **MUST** do this to comply with Labor Law, Section 195.1

Pay Rate

Starting on October 26, 2009, New York State Labor Law requires employers to give new employees a written notice of:

- Your rate of pay, including overtime rate of pay.
- Your regular payday.

You must get this notice when you are hired, before you do any work.

Overtime

If you qualify for overtime, the written notice also must include:

- Your overtime rate of pay.

Most workers must receive overtime pay at 1½ times their regular pay rate for all hours of work over 40 in a week. For example, if your regular rate is \$8 per hour, you must receive \$12 per hour for all hours over

40 per week. If you are covered by the overtime requirement, then you must receive overtime pay, even if you are paid a weekly rate.

Several very limited groups of workers are not covered by overtime, such as farm workers and professionals.

Payday

The regular payday must be at least:

- weekly for manual workers,
- twice a month for clerical and other workers, and
- monthly for commissioned salespeople.

Signed Receipt

The employer must have you sign a paper that says you got the written notice. The employer must keep your signed statement for six years.

Save the written notice of your pay rate that the employer gave you when you were hired. It will help if there is ever a question about your wages.

For more information, contact the NYS Department of Labor, Division of Labor Standards:

Phone: 1-888-52-LABOR

E-mail: labor.sm.ls.ask@labor.state.ny.us

For employer information, see other side.

PROTECT *all Workers*

ASSIST *the Unemployed*

CONNECT *Employers and Workers*

www.labor.ny.gov



Employers

Notice of Pay Rate and Payday for New Hires A New Labor Law

When hiring new workers, employers must give them written notice of their rate of pay and the regular payday. This notice must be given on an official form from the New York State Department of Labor.

Written notice helps to avoid misunderstandings and pay disputes, and to resolve them if they occur.

The written notice is required to comply with Labor Law, Section 195.1

Employers can view guidelines and download the required form on our web site at www.labor.ny.gov.

Pay Rate

Starting on October 26, 2009, New York State Labor Law requires employers to give newly hired employees a written notice of:

- Their rate of pay, including overtime rate of pay.
- Their regular payday.

You must give the employees this notice at the time of hiring, before they do any work.

Overtime

Written notice must state the overtime rate of pay, if it applies.

If the employee is covered by an overtime provision of the labor law, the written notice also must include:

- The overtime rate of pay.

Most employees must receive overtime pay at 1½ times their regular rates of pay for all hours of work over 40 in a given week. For example workers who are paid \$8 per hour must receive \$12 per hour for all hours of work over 40 per week. This applies to all workers who are covered by the overtime requirement even if they receive a weekly rate.

Several very limited occupations are not covered by the overtime pay provisions of the Labor Law, such as farm workers and professionals.

Payday

The regular payday

The regular payday must be at least:

- weekly for manual workers,
- twice a month for clerical and other workers, and
- monthly for commissioned salespeople.

Signed Receipt

The employer must have the employee sign a statement acknowledging receipt of the written notice and must keep the signed statement for six years.

For more information, contact the NYS Department of Labor, Division of Labor Standards:

Phone: 1-888-52-LABOR

E-mail: labor.sm.ls.ask@labor.state.ny.us

For employee information, see other side.

PROTECT *all Workers*
ASSIST *the Unemployed*
CONNECT *Employers and Workers*

www.labor.ny.gov

