



NY Labor Department Clarifies New-Hire Rules

Insights

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New York's state law requires employers to notify newly-hired individuals – before they start work – of their pay rates, pay dates, and overtime rates (assuming eligibility for overtime) in writing, and to obtain written acknowledgment from these new employees that such information has been provided. But up until now, the law provided no guidance on how such notices were to be delivered or the acknowledgments were to be obtained. No forms, no rules.

Last year, the New York Department of Labor (NYSDOL) published guidelines, instructions and model forms, but upon examination, the forms were not really usable for employees who were not paid on a simple hourly basis. Numerous attorneys who regularly represent employers, and employer groups, submitted comments to the NYSDOL concerning the deficiencies, and the agency has now responded.

NYSDOL recently published new guidance, instructions and "model forms" that employers can use to comply with the law's requirements. These new forms recognize the variety of compensation arrangements that exist between employers and employees. Thus, there are model forms for individuals who are paid 1) an hourly rate; 2) under multiple hourly rates; 3) a weekly rate or salary for a fixed number of hours (40 or fewer in a week); 4) a salary for varying hours (including day rate, piece rate, flat rate or other non-hourly pay); 5) the prevailing rate on a public works project; or 6) on an exempt basis.

Clarifying The Clarification

The new guidelines state that employers are not **required** to use these model forms and are free to either create their own or adapt those model forms to their particular business. Regardless of which forms are used, the guidelines require that notice must be given **before** the individual starts work; that the employee be given a copy of whatever written notice is provided; and that the employer obtain from the individual, and retain for six years, a signed acknowledgment that the notice was given.

Several other points are worth noting about the new guidelines. First, although the requirement does not appear in the statute, the NYSDOL guidance requires that any notice provided to an individual who is going to be considered exempt from overtime pay must state "the specific exemption that applies." The guidelines also describe how notices can be drafted for individuals who will be paid on a commissioned basis, so as to satisfy all of the law's requirements. Finally, the

NYSDOL has dropped the requirement in its initial guidelines that the employer certify under penalty of perjury that the contents of the notice are true and accurate.

If you contemplate any new hiring in New York, it's important to be familiar with these requirements and determine whether you'll use the NYSDOL's model forms, modify and adapt them, or create your own. The forms themselves can be found at the [NYS Department of Labor](#) website. For questions or guidance about using them contact your regular Fisher Phillips attorney.

This Legal Alert provides highlights of the requirements of one specific statute. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.