

New York employers - Are you compliant with new Wage Theft Protection Act?

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Earlier this year, the Wage Theft Protection Act (WTPA) went into effect, imposing new notice and recordkeeping requirements on New York employers – at the time of hire, annually, and with each paycheck – with stiff penalties for non-compliance or for retaliation against employees who make complaints about wages.

New Notice and Recordkeeping Requirements

In addition to the pre-existing employee notice requirements, the WTPA requires New York employers to give all new employees a separate written notice containing the following information at the time of hire:

- Employee's rate(s) of pay
- Overtime rate of pay, for non-exempt employees
- The basis of wage payment (i.e. hourly, per shift, weekly, piece rate, commission, etc.)
- All allowances to be claimed against the minimum wage (i.e. tips, meals, lodging)
- The employer's established pay day
- The employer's name and any name under which the employer conducts business
- The physical address of the employer's main office or principal place of business (if different from the mailing address)
- The employer's phone number

This information also must be provided annually, with written notice to be given to all New York-based employees between January 1 and February 1 of each year of employment.

Notice containing this information must be given at least 7 days prior to any change in pay (or any other information required to be in the notice) unless the information is provided in the employee's next paystub.

Paystubs must include:

- The employee's name
- The employer's name, address and telephone number
- Dates covered by the payment
- A written explanation of how wages were computed to any employee who requests it

All notices required under the WTPA must be in English and the employee's primary language.

Employers also are required to obtain from each employee a signed and dated acknowledgement (in English and the employee's primary language, with an acknowledgement that the employer correctly identified the employee's primary language if it is not English), confirming receipt of each notice. The employee must be given a copy of each notice. Employers are now required to keep these notices for six years.

Enhanced Civil and Criminal Penalties

The WTPA contains harsher penalties for noncompliance and the improper payment of wages:

- An employee who does not receive the required wage notice within the first 10 days of employment may sue to recover \$50 for each week that the violation occurred (up to \$2,500). For employers that fail to provide proper paystubs, an employee may recover damages of \$100 for each week that the violation occurred (up to \$2,500). Costs and reasonable attorneys' fees are also recoverable.
- An employer may be liable for liquidated damages up to 100% of unpaid wages unless it can show a good faith basis for non-compliance. The Department of Labor is authorized to assess an additional 15% if the employer fails to pay the employee in full within 90 days of a judgment.
- Employers and their officers and agents will be subject to criminal penalties for failing to pay the minimum wage or overtime compensation, including fines or imprisonment.

Penalties for Anti-Retaliation

The WTPA has broadened the definition of retaliation to include "threats" against employees who complain, in good faith, or whom the employer believes has complained, about any violation of New York Labor Law. The Commissioner of the Department of Labor is empowered to fine retaliatory employers up to \$10,000 and another \$10,000 in liquidated damages, and order injunctive relief, including rehiring or reinstatement of the employee or "front pay"¹ in lieu of reinstatement. Employers who retaliate also may be subject to criminal penalties.

Compliance with WTPA

Compliance with the notice and record-keeping requirements of the WTPA is thus essential.

Withers Bergman has developed a package designed to assist New York-based employers in implementing procedures to ensure complete and timely compliance with the WTPA.

For more information about the WTPA and recommended compliance procedures, please call your usual Withers' contact or any member of the US employment team.

Front pay is money awarded for lost compensation during the period between judgment and reinstatement, or if reinstatement is not feasible, instead of reinstatement.

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