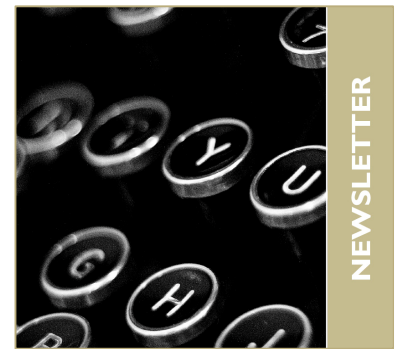


EMPLOYMENT ALERT



In this issue

- Annual Wage Theft Prevention Act Notice Due to New York Employees in January
- California Requires that All New Hires Receive Notice of Pay Details
- New Jersey Enacts New Notice Requirement
- States Crack Down on Independent Contractors – California Enacts Stiff New Penalties

Annual Wage Theft Prevention Act Notice Due to New York Employees in January 2012

Under the recently enacted Wage Theft Prevention Act, all employers are required to provide each of their New York employees with an annual notice containing wage and employer information before February 1 of each year. January 2012 will be the first year such annual notice must be given. We recommend that employees begin preparing now to meet this deadline.

Employers can obtain the notices from the New York Department of Labor's website:

Notice for Hourly Rate Employees:

<http://www.labor.ny.gov/formsdocs/wp/LS54.pdf>

Notice for Employees Paid a Weekly Rate or Salary for a Fixed Number of Hours:

<http://www.labor.ny.gov/formsdocs/wp/LS57.pdf>

Pay Notice for Exempt Employees :

<http://www.labor.ny.gov/formsdocs/wp/LS59.pdf>

Employers should note that the Department of Labor notices are in English and six other languages. If the employee's primary language is not English and the Department of Labor has a dual language form in the employee's primary language, the employee must receive the form in his or her primary language. Dual language forms also are available from the Department of Labor website:

<http://www.labor.ny.gov/formdocs/wp/ellsformsandpublications.shtm>

Employers must ensure that each employee sign the form and return it since employers must keep the form on file for six years. Failure to comply with this law may result in legal actions by the employee or the New York Department of Labor. Employers who fail to compensate employees appropriately are liable for pre-judgment interest, liquidated damages and could face civil and criminal penalties.

For more information on the New York Wage Theft Prevention Law, please see our earlier Alert on www.salans.com.

California Requires All New Hires to Receive Notice of Pay Details

California recently enacted a law requiring employers to provide compensation and other information to employees. Effective January 1, 2012, employers must provide newly hired non-exempt employees with a notice that specifies (1) the pay rate and basis, whether hourly, salary, commission or otherwise, as well as any overtime rate; (2) allowances, if any, claimed as part of the minimum wage, including meals or lodging; (3) the regular payday; (4) the name of the employer, including any "doing business as" names used by the employer; (5) the physical address and telephone number of the employer's main office or principal place of

business, and a mailing address if different; and (6) the name, address and telephone number of the employer's workers' compensation carrier.

In the event of any changes to the above information, the employer must notify each employee in writing within seven days of such change unless the changes are timely reflected in a wage statement or other writing.

The California Department of Labor is required to provide a template that complies with the requirements of the notice, but to date, the template has not been issued.

While similar, the New York and California notices differ in some significant ways: The California notice need only be provided to non-exempt employees who are not covered by a valid collective bargaining agreement, whereas the New York notice must be provided to all employees. The California notice must include the name address and telephone number of the employer's workers' compensation carrier, whereas such information is not required in the New York notice. Additionally, the New York notice must be provided at the time of hiring and annually thereafter, whereas the California notice only must be provided at the time of hiring.

New Jersey Posting Requirement

The New Jersey Department of Labor and Workforce Development ("DLWD") has issued new regulations requiring all public and private sector employers with one or more employees to conspicuously post and distribute a new notice of the employer's obligation to maintain and report certain employment-related records.

The new notice, "Employer Obligation to Maintain and Report Records," Form MW-400 (11/11), provides information on employer record-keeping obligations under the following New Jersey statutes: the Wage Payment Law, the Wage and Hour Law, the Prevailing Wage Act, the Unemployment Compensation Law, the Temporary Disability Benefits Law, the Family Leave Insurance Benefits Law, the Workers' Compensation Law, and the Gross Income Tax Act. The notice also provides contact information to assist employees with filing a complaint regarding possible noncompliance with these laws. The notice is available on the DLWD website at: http://lwd.state.nj.us/labor/forms_pdfs/EmployerPosterPacket/MW-400.pdf.

An employer may satisfy the posting requirement by posting the notice on its internet or intranet site, provided the site is maintained for the exclusive use of its employees and all employees have access. Alternatively, the employer must post the notice in areas commonly used for similar postings.

Employers must also distribute the notice to all existing employees and new hires at the time of hiring. Employers may satisfy this distribution requirement by providing either a physical copy of the notice or an electronic copy via email.

Failure to comply with these notice requirements could result in a fine of up to \$1,000, as well as criminal penalties.

California Enacts Stiff New Penalties for Misclassification of Independent Contractors

Beginning January 1, 2012, California employers who have been found to have "willfully" misclassified an employee as an independent contractor will be subject to civil penalties of \$5,000 to \$15,000 for each violation. If it is found that the employer has a pattern or practice of misclassifying independent contractors, such employers will be subject to penalties of \$10,000 to \$25,000 per violation. Willful misclassification is defined as "voluntarily and knowingly misclassifying the individual as an independent contractor."

The new law also makes it unlawful for the company to deduct any fees or other deductions from compensation of a misclassified individual if such deductions would have been unlawful had the individual been properly classified as an employee (e.g. space rental, equipment, licensing fees).

In addition to financial penalties, employers who violate this law may be required to prominently display on its internet website in an area accessible to employees and the general public, a notice stating (1) the employer committed a serious violation of the law by engaging in the willful misclassification of employees, (2) the employer has changed its business practices to avoid committing further violations, (3) employees who believe they have been misclassified can contact the Labor and Workforce Development Agency, and (4) that the notice is being posted pursuant to state order.

This law significantly increases the penalties for misclassification. In addition, commentators are concerned that any employer who retains a significant number of independent contractors may be vulnerable to class action litigation.

DOL, IRS and States Focus on Misclassification of Independent Contractors

In September 2011, the IRS and the United States Department of Labor entered into a Memorandum of Understanding in which the agencies agreed to work together to combat misclassification of independent contractors. Various states also have entered into Memorandums of Understanding with the IRS and the Department of Labor. This heightened attention by both the federal and state governments for misclassification issues indicates that independent contractor classifications are increasingly subject to scrutiny and second-guessing by government agencies. Accordingly, it is advisable for employers who retain independent contractors to review their independent contractor relationships to ensure that the classification is defensible under federal and state laws.

These materials may be considered attorney advertising under the rules of some states. The hiring of an attorney is an important decision that should not be based solely upon advertisements. Furthermore, prior results do not guarantee a similar outcome.

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