

IN NEW YORK STATE, NEW MANDATORY NEW-HIRE PROCEDURES REGARDING RATES OF PAY

Labor & Employment Alert
September 23, 2009

The New York Legislature recently amended the New York labor law in a way that places additional obligations on employers when hiring employees. Under prior law, at the time of hire, an employer was required only to notify its employees of their rate of pay and regular payday. There was no requirement that this notice be in writing, that it contain the employee's overtime rate, or that the employee acknowledge receipt of this notice.

But beginning on October 26, 2009, employers will be required to notify all new employees **in writing** of their rate of pay and regular payday at the time of hire. In addition, if new employees are eligible for overtime under applicable law, this written notice must inform them of their overtime rate.

Another significant provision of the new law is that it requires employers to obtain a **written acknowledgement** from all new employees confirming that they have received written notice of their regular rate of pay, regular payday, and, if applicable, overtime rate. The legislation authorizes the Commissioner of Labor to issue regulations regarding the "content and form" of this acknowledgement, but the Commissioner has yet to establish a model acknowledgement form or to offer any guidance on what must be included in such a form.

The legislative history of this law makes clear that its primary purpose is to assist employees and the Commissioner of Labor in computing the overtime rate that employees are entitled to. Thus, employers should expect that the Commissioner will seek to hold them responsible for paying employees in accordance with the notice given to employees, including, if applicable, the identified overtime rate.

The Bottom Line for Employers:

This amendment to the labor law places three new requirements on employers: (1) employers must notify employees of their overtime rate, if applicable, (2) the notice of regular and overtime rates and payday must be provided to employees in writing, and (3) employers must obtain a written acknowledgement from each new hire confirming that he or she received the required written notice. While these requirements do not become effective until October 26, 2009, employers should update their offer letters to include the newly required written notice and acknowledgement or develop standard written notice and acknowledgement forms that can be used with new hires.

Attorneys

Joseph Braccio

John Godwin

Practices & Industries

Labor & Employment

Wage & Hour