



Alert

Labor & Employment Client Service Group

To: Our Clients and Friends

November 4, 2009

Notice of Pay Rate and Payday for New Hires: New Mandatory Form of Written Notice

The New York Department of Labor (“NYDOL”) has issued a new required form for providing notice to new employees under the recent amendments to the New York Labor Law Section 195.

As was covered in a [prior alert](#), dated September 15, 2009, the New York Labor Law Section 195 was amended, effective on October 26, 2009, to require that employers notify all new employees in writing, before they do any work, of their rate of pay and of the regular pay day. For employees who are eligible for overtime pay, the notice also must include the overtime rate of pay. The text of the amendment requires that employers obtain a written acknowledgement from each employee that they have received notice and retain the acknowledgement for a period of six (6) years.

The NYDOL has now taken the position that employers must use a form available from the NYDOL, LS 52, for the required written notice and acknowledgement to satisfy the requirement of Section 195 as amended. A copy of Form LS 52 is attached. One limitation of the form is that it is written for use with hourly employees and not for those paid with a salary or other compensation arrangements. The NYDOL, in response to inquiries, has indicated that employers should modify the existing form for employees who will be paid on a basis other than a single hourly rate of pay.

The NYDOL Form LS 52 and a general Fact Sheet on the Notice of Pay Rate and Payday for New Hires may be obtained through the NYDOL website. Links to these publications are set out below.

Form - [Notice & Acknowledgement of Wage Rate and Designated Payday - LS 52](#)

Fact Sheet - [Notice of Pay Rate and Payday for New Hires - P705E](#)

While at this time the basis for requiring the use of the new Form LS 52 is unclear and there is no indication as to what the penalty might be for not using it, it is prudent for employers to begin using the form for hourly employees who are paid at a single rate of pay, and to modify the form for employees paid by a salary, commission or other pay method. New York employers should consult with their legal counsel now to ensure that their modifications of Form LS 52 to cover other compensation

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arrangements are accurate and complete. The NYDOL has indicated that it is working on forms to cover salaried employees and others, but the requirements to provide written notice to new employees regarding their rate of pay and overtime pay and to obtain written acknowledgements is in effect and must be followed.

For information about anything contained in this [Labor and Employment](#) Alert, please speak with your regular Bryan Cave LLP contact, or contact anyone in the Bryan Cave Labor and Employment Client Service Group.



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.