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Effective October 26, 2009, New York employers must obtain from all new employees a written acknowledgment that their employer provided them with information about their pay day, pay rate and, if they are nonexempt, their overtime rate.

## N.Y. Law Requires Employers to Obtain a Written Acknowledgment from New Employees on Pay Information

By Gregory B. Reilly

New York Governor Patterson recently signed into law a bill requiring employers to obtain from all new employees a written acknowledgment that their employer provided them with information about their pay day, pay rate and, if they are nonexempt, their overtime rate. This new law takes effect for employees hired on or after October 26, 2009.

The acknowledgment form to be used by employers must conform to requirements established by the New York Commissioner of Labor. As of this writing, the Commissioner has not issued regulations or a model acknowledgment form.

Before this amendment to section 195 of the New York Labor Law, employers merely had to advise employees of their pay day and rate. There was no requirement that this information be placed in writing. The bill's sponsors assert that the law's new requirements "will ensure that employees understand a critical feature of the employment relationship with their employers and will help to prevent confusion between an employer and employee regarding overtime pay."

Although there is no specific penalty tied to the acknowledgment requirement, the New York Labor Law does have a general penalties section that provides any violation of New York's Labor Law may result in a misdemeanor and small fine. Violation of the written acknowledgment requirement also could be used as evidence that the employer failed to pay properly and, accordingly, may owe back pay, liquidated damages or overtime pay under the New York Labor Law. Likewise, it is possible that retaliation claims could arise from employees who have complained about an employer's failure to comply with the amendment.

The new law does not address several issues:

1. How should the employer handle overtime rates that fluctuate on the basis of an employee's receipt of bonuses, shift differentials, etc.;
2. How should employers handle changes in the pay rate during employment, e.g., pay increases; and

3. Whether the acknowledgments should be in English, Spanish or some other language readily understood by the employee.

The Commissioner may attempt to address these issues (and others) with implementing regulations that we anticipate may be forthcoming soon.

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