

January 26, 2012

TO: ALL MEMBERS PROMOTION FUND CONTRIBUTORS

RE: **WAGE THEFT PREVENTION ACT –
NEW FEBRUARY 1st ACKNOWLEDGEMENT FORM REQUIREMENT**

* * * * *

Dear Sir:

A New York State Law (Wage Theft Prevention Act) requires employers to provide and obtain certain documentation to/from employees regarding wages, wage rates, paydays, etc. Attached please find a summary of the law prepared by our counsel, Ray McGuire. In particular, please note that at the time of hire and on February 1st of each year (new requirement), each employee must be provided an Acknowledgement Form detailing certain information (wages, payday, etc.) which must be signed by the Employee and retained by the Employer for six years. (Sample Acknowledgement Forms Attached. Please note that there are different Acknowledgement Forms depending under the type of pay rate [hourly, weekly, salary, etc.]). Most of the Act's other requirements are probably already being addressed by your payroll company/paystubs.

Failure to comply can result in serious penalties to the Employer.

NOTE: This law is very extensive and burdensome. It applies to virtually all employees in the State regardless of the type of industry or signatory status.

Sincerely,

Stewart O'Brien
Stewart O'Brien

SO/cvm

| | | | | |
|-----|--------------------|--------------------------|--|---|
| cc: | Eugene Bocchieri | President | Association of Contracting Plumbers of the City of New York, Inc. | |
| | Andru Coren | Vice President | " " " | " |
| | Nick Covino | Treasurer | " " " | " |
| | Reed Rickman | Secretary | " " " | " |
| | Vincent Aspromonte | Immediate Past President | " " " | " |
| | Raymond G. McGuire | Counsel | " " " | " |

I. New York Wage Theft Prevention Act

A. Requirements for Employers

The New York Wage Theft Prevention Act (the “Act”), which took effect on April 9, 2011, amends the New York Labor Law and imposes new obligations on employers. It also enhances employee protections and remedies for violations of the law. Union contractors are not exempt from the notice requirements.

Highlights of the required employer actions under the Act include the following:

1. Employers must notify employees in writing regarding the employees’ rates of pay (straight time and overtime), regular pay days, and certain other new information detailed in Section B below (the “Notice”).

- The Notice must be provided: (a) to employees at the time of hire; and (b) yearly to all employees, by February first of each year (starting in 2012). The notice must be provided each time an employee is hired, even if only after a brief lay off.
- Employers must obtain from employees an acknowledgment of receipt of the Notice, and the Notice and acknowledgment of receipt must be given to employees in English and the language they identify as their primary language.

2. Employers must notify employees if information previously provided under the Act’s notice requirements changes.

- The Act provides that such notice must be given in writing at least seven calendar days prior to the time of any change, unless the change is reflected on the employee’s wage statement.
- The NYSDOL clarified in its recent guidance this provision of the Act with respect to changes in employee pay rates, stating that: (a) for non-hospitality industry employers, notice is not required where there is an increase in a wage rate and the new rate is shown on the wage statement accompanying the next payment of wages; however, (b) for any reduction of a wage rate, an employee must be notified in writing prior to the reduction being implemented.

3. Employers must retain the required employee notices and other payroll information for six years.

The NYSDOL’s website includes: (a) a fact sheet and frequently asked questions about the Wage Theft Prevention Act; (b) model notices that employers may use to comply with their notice obligations under the Act; and (c) instructions and guidelines regarding employers’ use of the NYSDOL’s model notices. These materials can be found at <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm>. (For the

model forms, we have provided only the English versions. Forms in several other languages are available on the NYSDOL's website).

B. Checklist for New York Employee Pay Stubs

New York employers must furnish each employee with a statement with every payment of wages, listing the following:

1. dates of work covered by that payment of wages;
2. name of employee;
3. name, address and phone number of employer including any d/b/a name under which the business operates;
4. rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other;
5. gross wages;
6. deductions;
7. allowances, if any, claimed as part of the minimum wage; and
8. net wages.

For all employees who are not exempt from overtime, the statement must also include:

9. regular hourly rate or rates of pay;
10. overtime rate or rates of pay;
11. number of regular hours worked; and
12. number of overtime hours worked.

For all employees paid a piece rate, the statement shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate.

Upon the request of an employee, an employer shall furnish an explanation in writing of how such wages were computed.



New York State Department of Labor
Division of Labor Standards

Guidelines for Written Notice of Rates of Pay and Regular Payday

Effective April 9, 2011 Section 195.1 of the Labor Law, requires all employers, other than government agencies, to give employees at the time of hire (before work is performed) and on or before February 1 of each year, notice of the following:

1. the employee's rate or rates of pay
2. the overtime rate of pay, if the employee is subject to overtime regulations
3. the basis of wage payment (per hour, per shift, per week, piece rate, commission, etc.)
4. any allowances the employer intends to claim as part of the minimum wage including tip, meal, and lodging allowances
5. the regular payday
6. the employer's name and any names under which the employer does business (DBA)
7. the physical address of the employer's main office or principal place of business and, if different, the employer's mailing address
8. the employer's telephone number

Employers must provide the notice in English and the employee's primary language.

Employee Acknowledgement

The employer must have the employee sign a statement acknowledging receipt of the written notice in English and the employee's primary language. Employees must also acknowledge that they have properly identified their primary language to their employer. The employer must keep the signed and dated notice and acknowledgement for six years and provide a copy to the employee.

Notice and Acknowledgement Templates

The Department of Labor (DOL) has prepared templates for several common types of pay agreements, including dual language versions in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish. An employee acknowledgement of receipt section is included in the templates prepared by the Department. Templates are available on the Department's web site at www.labor.ny.gov and in hard copy.

If the Department of Labor does not make a template in a particular language available, employers may provide notice to that employee in English only.

Employers will not be penalized for errors in the prepared templates issued by DOL.

The Department reserves the right to require use of DOL forms in the future, if employer notices do not meet requirements.

See LS 53 Instructions: Templates for Notice of Pay Rates, Paydays and Employee Acknowledgement under Section 195.1 of the NYS Labor Law to find a template that may be appropriate for your particular pay agreement.

Overtime Rate

Most employees must receive overtime pay at 1½ times their regular rates of pay for all hours worked over 40 in a workweek. In a few occupations that are exempt from overtime under the federal Fair Labor Standards Act, New York State Labor Law requires the employees be paid at least 1½ times the minimum hourly rate for their overtime hours. A few occupations are exempt from the overtime pay provisions of the both state and federal law.

Exempt Employees

The notice to exempt employees may state the specific exemption that applies.

Payday

The regular payday must be at least weekly for manual workers, at least twice a month for clerical and other workers, and at least monthly for commissioned salespeople.

Other Notice Requirements

For the following types of employees there are additional notice provisions required by Labor Law and or Regulation. Please refer to the sections cited below for more information.

- Commissioned Sales Employees (191.1c)
- Farm Employees (190-6.1)
- Hospitality Industry Employees (146-2.2)

Temporary Help Firms

The Department has developed a notice form and separate guidelines for use by temporary help firms (LS 50). It is available at the Department's web site or in hard copy. The use of those guidelines and form is strictly limited to employers that meet the definition of the term "temporary help firms" in Section 916.5 of the Labor Law.

For more information or assistance, please contact the NYS Department of Labor, Division of Labor Standards office nearest you or visit our web site at www.labor.ny.gov.

Albany District

State Office Campus
Bldg. 12, Rm. 185A
Albany, NY 12240
(518) 457-2730

Garden City District

400 Oak St., Suite 101
Garden City, NY 11530
(516) 794-8195

Syracuse District

333 East Washington St., Rm. 121
Syracuse, NY 13202
(315) 428-4057

Binghamton Sub-district

44 Hawley St., Rm. 909
Binghamton, NY 13901
(607) 721-8014

Buffalo District

65 Court St., Rm. 202
Buffalo, NY 14202
(716) 847-7141

White Plains District

120 Bloomingdale Rd.
White Plains, NY 10605
(914) 997-9521

New York City District

75 Varick St., 7th Floor
New York, NY 10013
(212)775-3880

Rochester Sub-district

109 S. Union St., Rm. 318
Rochester, NY 14607
(585) 258-4550



New York State Department of Labor, Division of Labor Standards
Instructions: Templates for Notice of Pay Rates, Pay Days and Employee Acknowledgement
Under Section 195.1 of the NYS Labor Law

The Department of Labor provides templates for several common types of pay agreements including dual language notices and acknowledgements in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish. Employers may create their own notices, use or adapt the Labor Department forms, as long as the:

- Required information appears in English and the employee's primary language (if template available)
- Employee receives a copy
- Employee signs an acknowledgment of receipt, and identifies their primary language to the employer
- Employer keeps a copy of the notice and acknowledgement for 6 years

Below are instructions for choosing among the templates. For details or help, see the Guidelines (LS 52) or contact the Division of Labor Standards.

LS 54 Notice for Hourly Rate Employees

This form is for hourly employees who are not exempt from coverage under the applicable State and Federal overtime provisions. For example, use for an employee whose regular rate of pay is \$10 per hour and overtime rate is \$15 per hour.

LS 55 Notice for Multiple Hourly Rate Employees

This form is for employees who are paid more than one rate for different types of work or different shifts. For example, use this form for an employee who is paid \$10 per hour for work as a janitor and \$12 per hour for work as a landscaper, or an employee who is paid one rate for working the day shift and another rate for the night shift.

LS 56 Notice for Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)*

This form is for employees who receive a weekly rate or a salary for a fixed number of hours (40 or fewer in a workweek).

- The employee's regular rate is the weekly rate or salary divided by the number of hours it intends compensate.
- The overtime rate is 1½ times the regular rate.

Except in very limited circumstances, it is illegal to pay a fixed (unchanging) weekly rate for work weeks that vary over 40 hours. Even where there is a standard work week, there are usually occasions when work hours vary. For this reason, we have not provided a template for weekly rates for workweeks of over 40 hours. To avoid overtime violations, the Department strongly recommends that employers pay an hourly rate to overtime eligible employees whose standard workweek is over 40 hours.

LS 57 Notice for Employees Paid a Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate, or Other Non-Hourly Basis*

This form is for non-exempt employees who are paid a salary for varying hours of work, a daily rate, piece rates, flat rates, or any other pay that is not based on actual hours worked. In each overtime week, the employer must:

- Calculate the regular rate (total regular pay divided by total hours worked)
- Calculate the overtime premium (1/2 the regular rate)
- Multiply the overtime premium by the number of overtime hours and
- Pay the overtime premium in addition to the salary, day rate, piece rate, flat rate, or other pay

LS 58 Notice for Prevailing Rate and Other Jobs

Use this form when the employee:

- Works on public work projects (i.e., projects covered by the prevailing wage provisions in State and Federal Law) or
- Does mixed prevailing rate and non-prevailing rate work

There is space on the form for the employer to enter the regular and overtime rates to be paid for the other (non-prevailing wage) work. The form explains to the employee that any premium pay received on prevailing wage jobs in a week will be credited toward any overtime premium due for working over 40 hours in the week.

LS 59 Notice for Exempt Employees *

Use this form for employees who are exempt from premium overtime pay under either State regulations or the Federal Fair Labor Standards Act. The employer should identify the overtime exemption or, if an employee is outside of the definition of the term "employee" in Article 19 of the New York State Labor Law, the employer should identify the minimum wage exemption.

* Employers in the Hospitality Industry may not pay a non-exempt employee a non-hourly rate, except for commissioned salespeople.



**Notice and Acknowledgement of Pay Rate and Payday
Under Section 195.1 of the New York State Labor Law
Notice for Hourly Rate Employees**

1. Employer Information

Name:

Doing Business As (DBA) Name(s):

FEIN (optional):

Physical Address:

Mailing Address:

Phone:

3. Employee's rate of pay:

\$ _____ per hour

4. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____

5. Regular payday: _____

6. Pay is:

- Weekly
- Bi-weekly
- Other

7. Overtime Pay Rate:

\$ _____ per hour (This must be at least 1½ times the worker's regular rate with few exceptions.)

2. Notice given:

- At hiring
- On or before February 1st
- Before a change in pay rate(s), allowances claimed or payday

8. Employee Acknowledgement:

On this day I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated pay day on the date given below. I told my employer what my primary language is.

Check one:

- I have been given this pay notice in English because it is my primary language.
- My primary language is _____, I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Print Employee Name _____

Employee Signature _____

Date _____

Preparer's Name and Title _____

The employee must receive a signed copy of this form. The employer must keep the original for 6 years.



Notice and Acknowledgement of Pay Rate and Payday

Under Section 195.1 of the New York State Labor Law

Notice for Multiple Hourly Rate Employees

1. Employer Information

Name:

Doing Business As (DBA) name(s):

FEIN (optional):

Physical Address:

Mailing Address:

Phone:

2. Notice given:

- At hiring
- On or before February 1
- Before a change in pay rate (s), allowances claimed or payday

each rate of pay. The overtime rate may vary from week to week.

8. Employee Acknowledgement:

On this day I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated payday on the date given below. I told my employer what my primary language is.

Check one:

- I have been given this pay notice in English because it is my primary language.
- My primary language is _____ I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Print Employee Name

Employee Signature

Date

Preparer Name and Title

The employee must receive a signed copy of this form. The employer must keep the original for 6 years.

3. Employee's rate(s) of pay for each type of work or shift:

\$ _____ per hour for _____

\$ _____ per hour for _____

\$ _____ per hour for _____

4. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____

5. Regular payday: _____

6. Pay is:

- Weekly
- Bi-weekly
- Other

7. Overtime Pay Rate(s) for each type of work or shift:

This must be at least 1½ times the worker's weighted average of the multiple rates of pay for the week, with few exceptions. The weighted average is the total regular pay divided by the total hours worked in the week. The overtime rate may vary from week to week depending on how many hours you worked at



**Notice and Acknowledgement of Pay Rate and Payday
Under Section 195.1 of the New York State Labor Law
Notice for Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)**

1. Employer Information

Name: _____

Doing Business As (DBA) Name(s): _____

FEIN (optional): _____

Physical Address: _____

Mailing Address: _____

Phone: _____

- 2. Notice given:**
- At hiring
 - On or before February 1
 - Before a change in pay rate(s), allowances claimed or payday

3. Employee's Pay Rate:

\$ _____ per _____

Weekly hours _____ (Specify the number of hours for which the weekly rate or salary will be paid.)

Employers may not pay a non-hourly rate to a non-exempt employee in the Hospitality Industry, except for commissioned salespeople.

- 4. Allowances taken:**
- None
 - Tips _____ per hour
 - Meals _____ per meal
 - Lodging _____
 - Other _____

5. Regular payday: _____

- 6. Pay is:**
- Weekly
 - Bi-weekly
 - Other

7. Overtime Pay Rate:

\$ _____ per hour (This must be at least 1½ times the worker's regular rate, with few exceptions.)

8. Employee Acknowledgement:

On this day, I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated payday. I told my employer what my primary language is.

- Check one:**
- I have been given this pay notice in English because it is my primary language.
 - My primary language is _____, I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Print Employee Name _____

Employee Signature _____

Date _____

Preparer Name and Title _____

The employee must receive a signed copy of this form. The employer must keep the original for 6 years.



Notice and Acknowledgement of Pay Rate and Payday Under Section 195.1 of the New York State Labor Law
Notice for Employees Paid Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate or Other Non-Hourly Pay

1. Employer Information

Name: _____

Doing Business As (DBA) Name(s): _____

FEIN (optional): _____

Physical Address: _____

Mailing Address: _____

Phone: _____

4. Employee's Pay Rate:

\$ _____ per _____
Specify the basis for the rate paid, i.e. salary for varying hours, day rate, etc.

Employers may not pay a non-hourly rate to a non-exempt employee in the Hospitality Industry, except for commissioned salespeople.

5. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____

6. Pay is:

- Weekly
- Bi-weekly
- Other _____

7. Overtime Pay Rate:

In most cases the overtime rate will be 1½ times the regular rate of pay for the week. The regular rate of pay is the total weekly pay divided by the hours worked in the week.

In most cases, it is illegal to pay a fixed weekly rate for varying hours worked over 40 per week. The Department of Labor strongly discourages weekly rates for non-exempt employees, since underpayments often result.

2. Notice given:

- At hiring
- On or before February 1
- Before a change in pay rate(s), allowances claimed or payday

3. Regular payday: _____

8. Employee Acknowledgement:

On this day, I received notice of my pay rate, overtime rate (if eligible), allowances, and designated payday. I told my employer what my primary language is.

Check one:

I have been given this pay notice in English because it is my primary language.

My primary language is _____.

I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Print Employee Name

Employee Signature

Date

Preparer Name and Title

The employee must receive a signed copy of this form. The employer must keep the original for 6 years.



**Notice and Acknowledgement of Pay Rate and Payday
Under Section 195.1 of the New York State Labor Law
Notice for Prevailing Rate and Other Jobs**

1. Employer Information

Name: _____

Doing Business As (DBA) Name(s): _____

FEIN (optional): _____

Physical Address: _____

Mailing Address: _____

Phone: _____

2. Notice given:

- At hiring
- On or before February 1
- Before a change in pay rate(s), allowances claimed or payday

3. Regular payday: _____

LS 58 (03/11)

- 10. Pay is:**
- Weekly
 - Bi-weekly
 - Other: _____

11. Employee Acknowledgement:

On this date, I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated payday. I told my employer what my primary language is.

Check one:

- I have been given this pay notice in English only, because it is my primary language.
- My primary language is _____, I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Print Employee Name

Employee Signature

Date

Preparer Name and Title

The employee must receive a signed copy of this form. The employer must keep the original for 6 years.

- 4. Prevailing Rate Jobs Pay Rate(s):** Your rate of pay will be the posted rate for the occupation(s).

Occupation: _____

5. Prevailing Rate Jobs Overtime Pay Rate:

Your overtime rate(s) are payable after 8 hours in a day and after 5 days in a week, or as noted in the applicable prevailing wage schedule. Overtime rates will be those posted for the occupation.

6. Non-Prevailing Rate Jobs Pay Rate:

\$ _____ per hour.

7. Non-Prevailing Rate Jobs Overtime Pay Rate:

\$ _____ per hour.

8. Overtime for Prevailing Rate and Non-Prevailing Rate Jobs in the Same Week:

For most employees in NYS the overtime rate will be 1 ½ times the regular pay rate for the work you are performing for hours over 40 in a workweek. Any overtime premium earned on a prevailing rate job during the same week can be credited toward non-prevailing rate overtime pay.

9. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____