

January 5, 2012

## Complying with California's Wage Theft Prevention Act

The New Year marks the effective date of the California Wage Theft Prevention Act of 2011 (A.B. 469), which requires employers to provide written wage disclosures to certain new hires and employees. As the compliance clock was ticking down to 2012, the California Labor Commissioner issued FAQs and a template that employers may use to make the required disclosures. Here is a summary of the law's requirements, along with an overview of the guidance and template.

### Brief Summary of the New Law

The Wage Theft Prevention Act adds new Labor Code section 2810.5 to require employers to provide nonexempt employees with a written wage disclosure at the time of hire. The notice requirements do not apply to employees who are exempt from overtime, public employees, or employees covered by a valid collective bargaining agreement that provides premium rates for overtime and a regular pay rate of at least 30 percent more than the state minimum wage.

The new hire notice must contain certain specified information, in the language the employer normally uses to communicate with the employee, including:

- The employee's rate or rates of pay and basis thereof, whether the employee will be paid by the hour, shift, day, week, salary, piece, commission, or otherwise;
- The rates for overtime;
- Allowances, if any, that the employer claims as part of the minimum wage, including meal or lodging allowances;
- The designated paydays;
- The employer's name and any "doing business as" names used by the employer;
- The physical address of the employer's main office or principal place of business, and a mailing address, if different;

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- The employer's telephone number;
- The name, address, and telephone number of the employer's workers' compensation insurance carrier; and
- Any other information the Labor Commissioner deems necessary (see below for additional information the Labor Commissioner is requiring).

In addition, an employer must notify the employee in writing of any changes to the required disclosure within seven calendar days of making the change. We pointed out in an earlier [Employment Law Alert](#) that this continuing notice requirement appears to effectively extend this new law to all employees, not just to new hires who initially receive the written disclosure. The notice update can be made by way of the employee's regular paystub (such as when a wage rate changes), another notice that is required by law, or by other written notice of the specific change.

### **New Template**

The Labor Commissioner recently issued a template that employers may use to make the required disclosure. The template currently is available only in English, although the Labor Commissioner will be providing templates in other languages, including Spanish, Chinese, Korean, Vietnamese and Tagalog.

It is important to note that the Labor Commissioner's template includes information that is *in addition to* the specific information required by the statute (see above). While an employer may use its own form for the disclosure, it must include *all* of the information in the Labor Commissioner's template. The additional information the Labor Commissioner requires is:

- The employee's hire date.
- The business form of the employer (sole proprietor, corporation, limited liability company, or partnership, and whether the employer is a staffing agency (PEO or temp agency)).

- The name and contact information for any entity or business the employer uses to administer wages or benefits, with the exception of recruiting services or payroll processing services.
- Whether the employment agreement is oral or written (see Compliance Suggestions below for an explanation).
- The workers' compensation policy number, or for self-insured employers, the certificate number.
- The name and signature of the employee and the date the notice was received and signed.
- The name/signature of the employer representative providing the notice and the date notice is provided, as well as the employee's signature and date received and signed.
- The template also includes some introductory and concluding information on the Wage Theft Prevention Act and the new disclosures, which employers preparing their own forms should be certain to incorporate into their forms.

The template can be downloaded in [Word](#) and [pdf](#) versions.

### **FAQs**

The Labor Commissioner has published FAQs that clarify some aspects of the Wage Theft Prevention Act. The following comments are noteworthy:

- The written disclosure should be presented in a single document and should not be combined with offer letters or other documentation. According to the Labor Commissioner, employees should not have to “piece together” the required information from several documents or pages in a manual.
- An employer may provide the notice electronically, though the employee must be able to acknowledge receipt of the notice and print out a copy of it.
- In the circumstance where the employer changes an employee's rate of pay, a complete new notice is not required, provided the change is an increase and the employee's pay stub will reflect the new rate. The Labor Commissioner cautions

that decreases in wage rates may not be made through a pay stub notice because they can occur only on a prospective basis.

- If multiple wage rates apply to an employee, the notice must specify all rates, though pay stubs need reflect only the rates used for the pay period involved.
- Consistent with our previous advice, the Labor Commissioner indicates that employers should obtain an employee's written acknowledgement of receipt of the disclosure and should retain in its records both the acknowledgement and a copy of the notice used.
- If an employee refuses to sign the disclosure the employer should still provide the employee with the notice and then note the refusal on the employer's copy.
- Employees cannot waive the notice requirement.

One other aspect of the FAQs deserves mention. When initially posted, the FAQs stated that the notice must be given to all *existing* employees as well as new hires. Shortly thereafter, however, the Labor Commissioner revised the FAQs to omit this statement, which was plainly at odds with the statute. We believe one or more law firms notified the Labor Commissioner of its error. Although the Labor Commissioner's initial statement was erroneous, it may signal that the Labor Commissioner will soon expressly state that an employer must give the required full disclosures to all affected employees whenever it makes a change to any of the items that must be included in the new hire disclosure.

### **Compliance Suggestions**

Starting immediately, employers should be certain to provide the disclosure to new hires and should provide an updated notice or paystub to a current employee if any information changes. Here are some other compliance suggestions:

1. The new law specifies that the disclosure should be provided at the time of hire, although it does not define when that is. To avoid disputes, employers should consider providing the notice at the time an offer is made, rather than waiting for the employee's first day of work.
2. The template requires the employer to check a box indicating whether the employment agreement is oral or written. An employer may need to check both

boxes if the employment agreement, as sometimes is the case, is oral and written. For example, some aspects of the employment may be under an oral agreement, such as the employee's duties and schedule, and other aspects may be contained in a written employment agreement, a confidentiality agreement, an arbitration agreement, or other type of employment agreement.

3. As mentioned above, employers are free to develop their own disclosure forms. However, the form must include all of the information that is on the Labor Commissioner's template.
4. Consider adding a statement to the disclosure that the employment is at will, if applicable.
5. Employers should be certain to keep a copy of each signed disclosure on file, preferably in the employee's personnel file.
6. Finally, employers should ensure that wage rates and other information in payroll systems and on wage statements are consistent with the information provided in the new hire disclosure.

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