

April 19, 2012

Labor Commissioner Updates New Hire Notice Template and FAQs

The California Labor Commissioner has just updated its [New Hire Notice template](#) and [FAQs](#) under the Wage Theft Prevention Act, which took effect on January 1, 2012. As most employers who have tried to make sense of the prior template can attest, the original form was confusing -- and controversial. The newly updated form is somewhat simplified and addresses a number of the key concerns that employers had voiced over the template and the Labor Commissioner's requirements for the New Hire Notices. Here's an overview of what has changed:

- *Acknowledgment of receipt.* On the original template, it appeared that signatures of the employer and employee were required. The new version indicates that signatures are optional. The Labor Commissioner reminds employers, however, that signatures may provide assurance that the notice was in fact provided by the employer and received by the employee.
- *"At the time of hiring".* The statute and the Labor Commissioner have provided confusing information as to when the New Hire Notice must be provided. In particular, it must be provided "at the time of hiring" -- but is that when an offer is made, on the first day of work, or another date? The Labor Commissioner's updated FAQs explain that this is a date that may be determined by the employer and employee, but in no event may the notice be provided to the employee later than the "start date" for work. In addition, while the original template required employers to indicate the "hire date," the new template now asks for the "start date."
- *Written agreement.* One of the more controversial aspects of the original form were check boxes requiring the employer to indicate whether the "employment agreement" was oral or written. The new template instead asks whether a "written agreement exist[s] providing the rate(s) of pay." If yes, the employer must confirm whether all rates of pay, and the bases for them, are contained in that written agreement. The Labor Commissioner takes the position that providing this information on the New Hire Notice makes it clear to the employee whether all terms relating to the basis and rate(s) of pay are in a (separate) written agreement,

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consistent with the Wage Theft Prevention Act's purpose of informing employees about their pay and rates of pay.

- *Employer "legal" and "doing business as" names:* The statute requires that the notice indicate "the name of the employer, including other 'doing business as' names used by the employer." In the updated FAQs, the Labor Commissioner explains that the employer must specify its full formal "legal" name, including "Inc.," "Co.," "Corp.," "LLC," "Partnership", or other designation. In addition, the employer must specify any other name it is "doing business as" (also known as "dba") which applies to the employment of the employee receiving the notice. This may include any name used by an employer pursuant to a filed fictitious business name statement or other informal names it uses which may be similar to or very different from the legal name.
- *Staffing agencies.* The Labor Commissioner's updated FAQs address a number of points related to staffing agencies, such as specifying that the staffing agency, rather than the client, is responsible for providing the New Hire Notice. For staffing agencies and businesses that use staffing agencies, the updated FAQs are required reading.

Employers must begin using the new template immediately. However, employers are not required to reissue New Hire Notices that were already provided using the old template, unless there is a substantive change in information provided on the earlier template; in that case, the employer has seven calendar days from the date of the change to provide an updated notice. And one final point: as before, employers should consider adding a statement to the template specifying that the employment is at will and nothing in the form alters the terms and conditions of employment.

The updated New Hire Notice template is available [here](#). And the new FAQs are online [here](#).

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