

Employment Notes

NEW YORK DELAYS ENFORCEMENT OF WAGE THEFT PREVENTION ACT'S ANNUAL NOTICE REQUIREMENT FOR STAFFING FIRMS

Background

As we previously reported, New York State enacted the Wage Theft Prevention Act (WTPA), which became effective April 9, 2011. Among other things, the WTPA requires employers to provide employees, both at the time of hire and on or before February 1 of each year, written notification (in English and in the language identified by each employee as his or her primary language, provided the New York State Department of Labor (DOL) has prepared a template notice in such language), which must include:

- rate(s) of pay;
- for non-exempt employees, their overtime rates of pay;
- whether paid by hour, shift, day, week, salary, piece, commission, or other;
- allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;
- regular pay day designated by the employer;
- name of the employer and any “doing business” names used by the employer;
- physical address of the employer’s main office or principal place of business, and a mailing address if different; and
- telephone number of the employer.

The DOL has prepared several model WTPA templates for use by employers, including for staffing firms, and specific *Guidelines for Notice and Acknowledgement of Wage Rate(s) For Temporary Help Firms*. These forms and guidance are currently available on the DOL’s website:

<http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>

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Delayed Enforcement as Applied to Staffing Firms

Recognizing that certain aspects of the WTPA will be particularly onerous for employers in the staffing industry, the WTPA grants the Commissioner of Labor the discretion to waive or alter the wage notification requirements for temporary help firms.

Accordingly, and as a result of a series of discussions and meetings between representatives of the DOL and the New York Staffing Association (NYSA), in which Joel A. Klarreich (NYSA's General Counsel) and Jason B. Klimpl participated, the DOL has stated that it is delaying until March 1, 2012, the requirement for staffing firms to provide temporary employees with the yearly notice. In the interim, the DOL has indicated that it will review several proposals put forth by NYSA to clarify and potentially simplify the responsibilities of staffing firms for providing annual notices under the WTPA.

We anticipate providing further updates as we become aware of additional developments.

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If you have any questions concerning the Wage Theft Prevention Act or other issues of employment or staffing law, please contact any of the following attorneys in our Employment Law Group, or other attorney at THSH with whom you work:

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