

Labor and Employment Alert

California Wage Theft Prevention Act Update

January 19, 2012

The California Wage Theft Prevention Act, which amends the California Labor Code to impose certain wage notice requirements on employers, became effective January 1, 2012. At the end of last year, the California Division of Labor Standards Enforcement (DLSE) finally released a template that employers can use to provide this information. To aid you in your compliance efforts, we've summarized the key aspects of the new law and the DLSE template below.

Notice Requirements

Under the new law, all private-sector employers are required to provide each non-exempt employee at the time of hire who is not covered by a valid collective bargaining agreement, in the language it normally uses to communicate employment-related information, with a notice containing the following:

1. The employee's rate or rates of pay (including the overtime rate, as applicable);
2. Whether the employee is paid on an hourly, daily, weekly or other basis;
3. Allowances claimed as part of the minimum wage (e.g., for meals or lodging), if applicable;
4. The regular payday designated by the employer;
5. The name of the employer, including any "doing business as" names the employer uses;
6. The address of the employer's main office or principal place of business (and a mailing address, if different);
7. The employer's telephone number;
8. The name, address, and telephone number of the employer's workers' compensation insurance carrier; and
9. Any other information the Labor Commissioner deems material and necessary.

An employer must further notify an employee of any changes to the information within seven calendar days after the changes, unless the changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226 or another writing required by law.



DLSE Template

The template issued by the DLSE includes all of the information identified above. However, it also includes several other types of information not expressly included in the statute, including the identity of any co-employer or other business or entity used by the employer to hire employees or administer wages or benefits; whether the employment agreement is oral or written; the workers' compensation policy number; and an acknowledgment of receipt. This additional information falls in the category of "other information the Labor Commissioner deems material and necessary." Employers are not required to use the DLSE template, but any notice used must be its own form and must include all the information included in the DLSE template. Employers should keep a record of the notices provided to employees. The DLSE template is available in English and a variety of other languages on the DLSE website at <http://www.dir.ca.gov/DLSE>. A copy is included with this alert as well.

Penalties

The new law does not include any specific penalties for failing to provide the required notice. However, employees who do not receive the information could potentially seek penalties pursuant to California's Private Attorneys General Act (Labor Code section 2699), which provides for penalties of \$100 per aggrieved employee for an initial violation, and \$200 per aggrieved employee per pay period for each subsequent violation, for certain violations of the Labor Code.

Further, although the notice is not required for exempt employees, an employee might allege the failure to provide the notice as an additional claim in a lawsuit challenging his or her exempt status. Therefore, employers may want to consider providing the wage notice to both exempt and non-exempt employees.

CONTACT INFORMATION

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NOTICE TO EMPLOYEE
Labor Code section 2810.5

Effective January 1, 2012, California Labor Code section 2810.5(a) requires that the following information be provided to each employee at the time of hire in the language the employer normally uses to communicate employment-related information. Exceptions to this requirement are indicated on the next page.
This notice is available in other languages at www.dir.ca.gov/DLSE.

EMPLOYEE

Employee Name: _____ Hire Date: _____

EMPLOYER

Name of Employer: _____

(Check all that apply): Sole Proprietor Corporation Limited Liability Company General Partnership

Other type of entity: _____

Staffing agency (e.g., temp agency or PEO)

Other Name Employer is doing business as (if applicable): _____

Physical Address of Main Office: _____

Employer's Mailing Address: _____

Employer's Telephone Number: _____

If the worksite employer uses any other business or entity to hire employees or administer wages or benefits, complete the information above for the worksite employer, complete the information below for the other business, and complete the remaining sections. If there is no other business or co-employer, or if the only other business is a recruiting service or a payroll processing service, skip the rest of this section, and complete the remaining sections.

Name of Other Business: _____

This other business is a:

Professional Employer Organization (PEO) or Employee Leasing Company or a Temporary Services Agency

Other: _____

Physical Address of Main Office: _____

Mailing Address: _____

Telephone Number: _____

WAGE INFORMATION

Rate(s) of Pay: _____ Overtime Rate(s) of Pay: _____

Rate by (check box): Hour Shift Day Week Salary Piece rate Commission

Other (provide specifics): _____

Employment agreement is (check box): Oral Written

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):

Regular Pay Day: _____

WORKERS' COMPENSATION

Insurance Carrier's Name: _____
Address: _____
Telephone Number: _____
Policy No.: _____
 Self-Insured (Labor Code 3700) and Certificate Number for Consent to Self-Insure: _____

ACKNOWLEDGMENT OF RECEIPT

(PRINT NAME of Employer representative)

(PRINT NAME of Employee)

(SIGNATURE of Employer representative)

(SIGNATURE of Employee)

(Date provided to employee & signed by representative)

(Date received by employee & signed by employee)

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this Notice within seven calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven days of the changes.

This Notice is NOT required if (a) you are directly employed by the state or any political subdivision thereof, (b) you are an employee who is exempt from the payment of overtime wages by statute or wage order, or (c) you are covered by a collective bargaining agreement that expressly provides for wages, hours of work and working conditions, and provides for premium wage rates for all overtime worked.

The full text of Labor Code section 2810.5 may be found at www.leginfo.ca.gov/calaw.html. Check "Labor Code" and search for "2810.5" in quotes.

The employee's signature on this notice merely constitutes acknowledgement of receipt. In accordance with an employer's general recordkeeping requirements under the law, it is the employer's obligation to ensure that the employment and wage-related information provided on this notice is accurate and complete. Furthermore, the employee's signature acknowledging receipt of this notice does not constitute a voluntary written agreement as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.