

The Impact of the Wage Theft Prevention Act on Domestic Employers in New York State

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As a follow-up to our previous article on Domestic Employers, there was another amendment to New York's Labor Laws that impacted domestic employees. This legislation relates specifically to notices employers are required to give employees with respect to wage related matters. The new legislation, the New York Wage Theft Prevention Act (the "Act"), was signed into law on December 10, 2010, and becomes effective April 9, 2011. The legislation deals primarily with an employer's obligation to give employees notice of their pay rate and payday, wage statements, and retention of payroll records, and sets forth penalties for non compliance. The following is a summary of the many changes made to the Labor Law by the Act.

Notice of Pay Rate and Payday. Employers must provide each employee with a written notice (in English and in the language identified by the employee as his or her primary language at the time of hiring) pertaining to pay rates and paydays at the time of hiring and on or before February 1 of each subsequent year of employment. The requirement means that all existing employees must receive this notice on or before February 1, 2012. The notice, the form of which will be prepared by the New York Department of Labor (the "NYDOL") and posted on the NYDOL's website, must include the following:

- The rate or rates of pay and the basis of the rate (including overtime rates if the employee is not exempt from overtime compensation), whether paid by the hour, shift, day, week, salary, piece, commission, or by another method;
- Allowances (including tip, meal, or lodging allowances), if any, claimed as part of the minimum wage;
- The regular pay day designated by the employer;
- The name of the employer, 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 the mailing address, if different; and
- The telephone number of the employer; and
- Such other information as the NYDOL deems material and necessary.

Whenever such notice is provided to an employee, the employer must obtain from the employee a signed and dated written acknowledgment of receipt of the notice, which acknowledgment must also include an affirmation by the employee that he or she identified his or her primary language to the employer and that he or she received a copy of the notice in such language (or, as provided below, in English). Each such notice and acknowledgment must be retained by the employer for at least six years.

The Act requires the NYDOL to prepare dual language templates that comply with the above requirements. As of the writing of this publication, the DOL template is available in four languages (English, Spanish, Chinese and Korean). The NYDOL has stated they will also supply this documentation in Creole, Polish and Russian. If the employee identifies a language for which a template is not available from the NYDOL, the employer is only required to provide an English language notice or acknowledgment. Employers are not subject to penalty for any errors or omissions in the non English portion of any notice provided by the NYDOL.

The new notice required under the Act replaces and expands the October 2009 legislation that required only written notice of pay rates and pay days at the time of hire.

Notice of Information Changes. In addition to the above notices, employers are also required to notify each employee in writing of any change to the information described in the bulleted items above at least seven calendar days prior to the time of such change, unless the change is reflected on the wage statement described below.

Wage Statements. With every payment of wages, employers must provide each employee a statement that includes, at a minimum, the following information:

- The dates of work covered by the wage payment;
- The name of the employee;
- The name, address and phone number of the employer;
- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or by another method;
- Gross wages;
- Deductions;
- Allowances, if any, claimed as part of the minimum wage; and
- Net wages.

Domestic employees, for whom all are considered non exempt employees, the statement must include: the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked.

A statement must be given with each payment of wages. The wage statement may be provided electronically, but workers must be able to access their statements on a computer provided by the employer and be able to print a copy for their records.

Retention of Payroll Records: Employers must establish, maintain and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked as well as the other information required to be included in each employee's wage statement, as described above.

Posting Requirements: The Act gives the Commissioner of Labor the power to require employers found to have violated the wage payment laws to post a notice of the violation for a period not to exceed one year in an area visible to employees, summarizing the violations found and other information deemed pertinent by the Commissioner. If the violation was willful, the Commissioner can require the employer to post such a notice in an area visible to the general public for a period not to exceed 90 days.

Retaliation: The Act amends the provisions of the Labor Law prohibiting retaliation against an employee for action taken, or believed by the employer to have been taken, by such employee with regard to Labor Law violations. In addition to the existing right to impose a civil penalty against the employer of between \$1,000 and \$10,000, such civil penalty may be imposed against or the person who retaliated, and the Commissioner may now also order injunctive relief, liquidated damages against the employer or such person of up to \$10,000, rehiring or reinstatement to a former or equivalent position and an award of lost compensation or an award of front pay in lieu of reinstatement and an award of lost compensation. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person who violates the anti retaliation provisions of the Law shall be guilty of a class B misdemeanor.

Penalties for Noncompliance: Not surprisingly, penalties for violation of the Labor Law have been increased significantly by the Act, as follows:

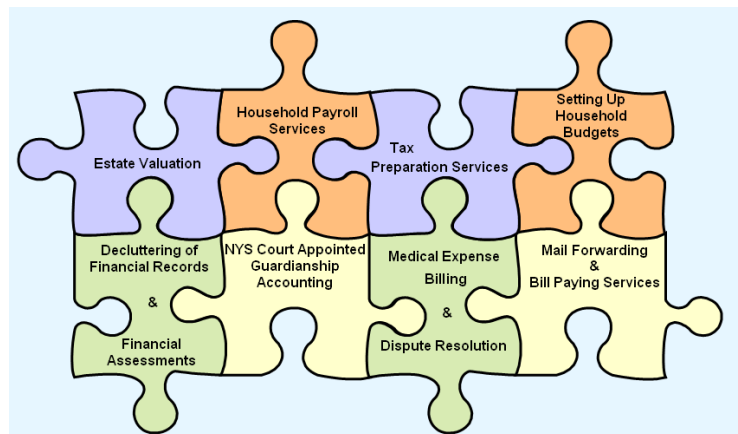
- An employee who is not provided the notice of pay rate and payday described above within 10 business days of his or her hire date may recover damages of \$50 per work week with a maximum amount of up to \$2,500.
- An employee who is not provided the wage statement described above may recover damages of \$100 per work week with a maximum amount of up to \$2,500.

In summary, in order to minimize risk to families, household employers need to insulate themselves with documentation that states the terms of employment and rates of pay. Household employers must think of themselves as a business and manage the underlying risk that is associated with being an employer.

About Redlig Financial Services LLC:

Redlig Financial Services LLC is a family run business that caters to the needs of busy families, small businesses, expatriates and the elderly throughout the New York area. We provide a wide range of personal assistance to clients, who want help with their financial affairs, or those of a loved one. These services include household payroll, tax preparation, daily money management and bill paying, medical expense billing and dispute resolution, and all other aspects associated with paperwork and family finances.

Our payroll system is unique and one of a kind. Unlike others, this is specifically designed for households and automates all aspects of the payroll process. With consistent and frequent communication, we convert everything to electronic instructions, from direct deposit and direct withdrawal of funds as well as monthly and quarterly tax payments and forms. This translates into value added services and minimal paperwork and time on your behalf.



Serving our client’s personalized needs is all part of our role as Trusted Financial Advisor.

While our services are broad and diverse, it is purposely designed to meet the needs of complicated and changing family financial issues. Our business model is built around picking the right services at the right time seamlessly. For more information about this whitepaper or Redlig Financial Services LLC, please contact me directly via email at egilder@redlig.com.

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Disclaimer: This article is not designed to provide legal advice concerning any specific situation. Household employers are urged to consult their labor and employment law counsel regarding specific situations and issues.
