



### New York Wage and Theft Prevention Act

JUNE 2011

In December 2010, the “Wage and Theft Prevention Act” (the “Act”), which amends various provisions of the New York Labor Law, was enacted by the State of New York. The Act became effective April 9, 2011 and applies to all New York nongovernmental employers. The new provisions expand the disclosure requirements regarding the payment of wages and substantially increases both civil and criminal penalties for noncompliance.

As a New York employer, you should already be in compliance with the new provisions under the Act. To avoid unnecessary penalties, please review the rules below to ensure you are fulfilling your responsibilities as an employer.

Under the Act, the State of New York requires all employers to notify employees, in writing, at the date of hire and on or before February 1st of each subsequent year details of the employment arrangement. This notice must include the employee’s rate(s) of pay (regular and overtime), the basis of pay (hourly, weekly, per shift, commission, etc.), allowances claimed as part of minimum pay (tip, meal, lodging, etc. allowances), the regular pay day, the name (including “doing business as” name), address, and telephone number of the employer. This writing must be communicated in English and the

primary language of the employee, if other than English. Annual reporting will commence in January 2012 and must be completed by February 1, 2012.

Similar notification must be included with the employees’ paycheck, usually in the form of a paystub. In addition to the information mentioned above, the name of the employee and the period the payment covered should be included as part of the notification with the payment of wages.

An employer is also required to report changes in compensation as well as disclose its policy on sick leave, vacation, personal leave and holidays.

Each time an annual notification is provided to the employee, the employer must receive a signed acknowledgement from the employee affirming their receipt of notice. Employers should retain the signed acknowledgements for a minimum of six years. To assist employers, the State of New York has provided templates to be used as a means of communicating this information. The templates can be downloaded at <http://www.labor.ny.gov/workerprotection/labstandards/workprot/lshmpg.shtm>

Failure to comply with the notification and recordkeeping requirements could result in substantial penalties. Failure to provide

**Wilkin & Guttenplan, P.C.**  
certified public accountants  
and consultants

5 Penn Plaza, 19th Floor  
New York, NY 10001  
T 212.835.1584  
F 212.849.6901

1200 Tices Lane  
East Brunswick, NJ 08816  
T 732.846.3000  
F 732.846.0618

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notice, within ten business days of employment, detailing the terms of employment is subject to a penalty of \$50 per week for each week that the violation occurred, up to a maximum penalty of \$2,500 (plus costs and attorney's fees). Failure to provide statements with the payment of wages could result in a penalty of \$100 per week for each week the violation occurred, up to a maximum penalty of \$2,500 (plus costs and attorney's fees). Criminal charges are also possible under the Act.

While the full details of the Act are beyond the scope of this Alert, your Wilkin & Guttenplan advisor can assist you to ensure that you are in compliance with the requirements of the Act to avoid any potential penalties.

*Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.*

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[www.wgcpas.com](http://www.wgcpas.com)