

### *Act Now* Advisory: California Labor Commissioner Revises Wage Theft Prevention Act Template and Frequently Asked Questions

4/18/2012

Share |

The California Labor Commissioner has clarified employers' legal obligations by once again revising its official Frequently Asked Questions Guidance ("FAQs") and notice template ("Template") for aid in complying with California's Wage Theft Prevention Act of 2011 ("CAWTPA"). As we previously reported (see *Act Now* Advisories "California Labor Commissioner Releases FAQs and Notice Template to Comply with the California Wage Theft Prevention Act" and "New California Laws Increase Penalties for Employee Misclassification and Wage Theft"), last year's CAWTPA amended certain existing Labor Code sections and added several new ones. Most notably, in addition to criminalizing specific wage payment violations, the statute created a new mandate for California employers to provide each new employee with a written notice, upon hire, containing such information as the regular rate of pay, overtime rate(s), and regular pay day.

#### **FAQs Are Revised to Address Prior Uncertainties**

Although the new law became effective on January 1, 2012, the California Division of Labor Standards Enforcement ("DLSE") did not propound FAQs until the final week of December 2011. This initial attempt at guidance, however, seemed to raise more questions than it answered, so the DLSE issued revisions within weeks. Even those revisions raised serious concerns that the FAQs and Template went far beyond the requirements of the law and invited the potential for another round of class action lawsuits against employers.

Reacting to concerns raised by and on behalf of employers, the DLSE has announced additional revisions to both the Template and FAQs. These revisions are designed to address concerns that, among other things, the prior Template could be read as an employment contract between the employer and employee, which diminished the presumption of at-will employment. The revisions also address concerns related to which "rates of pay" must be listed and how those rates should be described, especially where employees have multiple rates of pay or utilize a fluctuating regular rate of pay. Finally, the FAQs provide new guidance on the obligations of joint-employment situations, such as those involving staffing agencies.

Although the DLSE's revised Template and FAQs are helpful and a step in the right direction, employers must still be cautious in ensuring compliance with the CAWTPA. The requirements of this law still contain many pitfalls that could find a well-meaning employer being faced with an individual lawsuit or class action.

#### **The Revised FAQs**

The revised FAQs:

1. Confirm that notice need only be provided to new employees, and not to existing employees, as the FAQs had originally suggested (although when changes occur that affect the information contained in the notice, the employer must provide a new notice, reflecting that changed information, within seven calendar days of the change). See FAQs 2, 11, 22 & 25.
2. Confirm that employers do not have to use the Template, so long as their form includes all of the information in the Template. See FAQ 6.
3. Clarify that the notice need not be signed by either the employer or the employee.
4. State that any signature contained on the notice does not interfere with the "at will" nature of a recipient's employment. See FAQs 10, 21 & 23.
5. Clarify how employers should reflect multiple rates of pay, variable rates of pay, and fluctuating regular rates and overtime rates. See FAQs 12, 18 & 19.
6. Clarify when the notice must be provided and who must provide it, including detailing the requirements of staffing agencies and other joint employers. See FAQs 20, 26, 28, 29 & 30.
7. State that employers that previously used the prior version of the Template need *not* provide additional notice using the new Template. See FAQ 27.

### **The Revised Template**

The Template has been simplified and shortened. Further, since, as referenced above, the FAQs confirm that employers may use their own form (or a modified version of the Template), employers may wish to customize the Template to meet their individual business needs. Employers must keep in mind, however, that any such customized template must still include all of the information in the Template. Additionally, employers are reminded that notices must be given to employees in the language that the employer normally uses to communicate employee information. As such, if the employer regularly provides translations of other employment information, the employer must also provide notices in those other languages. While the revised Template is currently available only in English, the DLSE's website states that the agency is working on translations to other languages.

### **What Employers Should Do Now**

- Review the revised FAQs to ensure that your current practices conform to the revised guidance.
- Review the revised Template against any currently used template to determine whether your current template should be revised or replaced.
- Review the rules set forth in the FAQs regarding foreign language requirements.

- Ensure that adequate safeguards are in place to confirm compliance both with newly hired employees and with existing employees who experience changes in employment conditions requiring written notification.
- Contact your employment counsel with any questions or for any assistance with complying with the CAWTPA.

\*\*\*\*\*

For more information about this Advisory or the CAWTPA, please contact:

**Adam C. Abrahms**

Los Angeles  
310/557-9559  
aabrahms@ebglaw.com

**Michael S. Kun**

Los Angeles  
310/557-9501  
mkun@ebglaw.com

**Marisa S. Ratinoff**

Los Angeles  
310/557-9502  
mratinoff@ebglaw.com

**Dena L. Narbaitz**

San Francisco  
415/399-6030  
dnarbaitz@ebglaw.com

ATTORNEY ADVERTISING

Atlanta - Boston - Chicago - Houston - Indianapolis - Los Angeles - New York - Newark - San Francisco - Stamford - Washington, DC

**EBC**  
EPSTEIN BECKER & GREEN, P.C.