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Act Now Advisory: California Labor Commissioner Releases FAQs and Notice Template to Comply with the California Wage Theft Prevention Act

1/6/2012

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California's Wage Theft Prevention Act of 2011 ("CAWTPA") went into effect on January 1, 2012. The CAWTPA requires most private-sector employers to provide notice to non-exempt employees of certain wage payment information, among other things. As we previously reported (see *Act Now Advisory "New California Laws Increase Penalties for Employee Misclassification and Wage Theft"*), the CAWTPA requires the Labor Commissioner ("Commissioner") to create a template for employers to use to comply with the CAWTPA's requirements. The Division of Labor Standards Enforcement ("DLSE") has now posted a notice template ("Notice Template") and Frequently Asked Questions ("FAQs") to its website in order to provide guidance to employers with respect to CAWTPA compliance.

Notice Requirements under the CAWTPA

The CAWTPA added Section 2810.5 to the California Labor Code. As of January 1, 2012, private-sector employers must provide each new non-exempt employee with a written notice, at the time of hiring, in the language that the employer normally uses to communicate employment-related information. Notice must also be provided to current non-exempt employees if the information required by the CAWTPA changes, and that change is not reflected in the next pay stub or some other writing required by law. Such notice to current employees is required within seven days of the applicable change.[1]

The notice, whether provided to new employees or current employees, must contain the following information:

1. The employee's pay rate or pay rates and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rates, as applicable;
2. Allowances included as part of the minimum wage calculation, including meal or lodging allowances;
3. The employer's regular payday;
4. The employer's name, including any "doing business as" names;
5. The employer's physical address of its main office or principal place of business, and a mailing address, if different;
6. The employer's telephone number;
7. The name, address, and telephone number of the employer's workers' compensation insurance carrier; and
8. Any other information the Commissioner deems material and necessary.

Additional Required Information

Aside from the above items, which are required by the statute, the Notice Template issued by the DLSE contains additional information. While not actually included in

the statute, this additional information constitutes "other information the Commissioner deems material and necessary" (see point 8 above). Further, the FAQs confirm that, while employers may create their own notices, any such notice must include all information contained in the Notice Template. The following information, in addition to what is required by the CAWTPA, is included in the Notice Template:

- The employee's hire date;
- The business form of the employer (*i.e.*, a sole proprietor, corporation, limited liability company, etc.);
- The name, address, and telephone number of any other business or entity that the employer uses to hire employees or administer wages or benefits, excluding recruiting or payroll processing services (*e.g.*, a professional employer organization, an employee leasing company, a temporary services agency);
- Whether the employee's employment agreement is oral or written;
- The workers' compensation policy number or certificate number for consent to self-insure;
- The name and signature of the employee and the date the notice was signed;
- The name and signature of the employer representative and the date the notice was provided to the employee;
- An explanation of which employees are not required to receive notice;^[2]
- A link to the text of Labor Code Section 2810.5; and
- Other information regarding the acknowledgment of receipt of the notice and changes to the information set forth in the notice.

Because of these additional requirements, employers may wish to consider simply using the Notice Template, as opposed to creating their own notices. Further, when completing the Notice Template, employers should be careful when answering the question about the employee's employment agreement, so as not to create a contract where one does not exist. Regardless of whether any such employment agreement exists, or whether it may be oral or written, if the employee's employment is at-will, we recommend including a statement to that effect in addition to answering the question asked.

Additional Compliance Guidance from the FAQs

Because employers are required to provide notice in the language it normally uses to communicate employment-related information to its employees, the DLSE will be posting versions of the Notice Template in Spanish, Chinese, Korean, Vietnamese, and Tagalog. The DLSE will also endeavor to provide translations into other foreign languages.

The FAQs indicate that notice can be provided with offer letters and other materials presented to employees at the time of hire, but the notice itself must be its own separate form. This is because, as the DLSE explains, employees should not have

to piece together the required information from several separate documents or an employee manual. Notice can be provided to employees electronically, but only so long as the employer has a system where the employee can acknowledge receipt of the notice and print out a copy. Finally, as stated above, employers may create their own notices, but such notices must include all information contained in the Notice Template.

With respect to the acknowledgment of receipt, the FAQs explain that employers should provide the notice to an employee even if he or she refuses to acknowledge its receipt. If this should occur, we recommend that the employer place a copy of the notice in the employee's personnel file, noting the date it was provided to the employee and the employee's preference not to sign. Finally, the FAQs clarify that if an employee has multiple pay rates, all such rates must appear in the notice.

What Employers Should Do Now

- Either use the Notice Template or prepare notices that comply with the CAWTPA (including information that is not required by the statute but is set forth in the Notice Template).
- Issue such notices to all new non-exempt employees.
- If you deliver employment-related information to employees in a language other than English, monitor the DLSE's website for templates in Spanish, Chinese, Korean, Vietnamese, and Tagalog, or other languages into which the Notice Template may be translated at a future date.
- Although the CAWTPA requires employers to provide notices only to non-exempt employees, consider issuing notices to exempt employees in any event. This way, if an employee who has been classified as "exempt" successfully challenges that classification, you will have complied with the CAWTPA's notice requirements.
- Contact your employment counsel with any questions or for any assistance with completing the notices required by the CAWTPA.

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ENDNOTES

[1] When the DLSE first posted its FAQs on December 29, 2011, the FAQs stated that notices needed to be provided to not only all new employees but also all current employees. The DLSE has acknowledged that this was a mistake, and that

notice need not be provided to all current employees. The DLSE has revised its FAQs accordingly.

[2] The FAQs state that all private-sector employers are covered unless there is a specified exception. For instance, notice need not be provided to an employee who is: (i) directly employed by the state or any political subdivision, including any city, county, city and county, or special district; (ii) exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission; or (iii) covered by a valid collective bargaining agreement that expressly provides for:

- The wages, hours of work, and working conditions of the employee;
- Premium wage rates for all overtime hours worked; and
- The employee to earn a regular hourly rate of pay that is not less than 30 percent more than California's minimum wage.

Importantly, charter schools, private schools, and not-for-profit corporations are covered by the CAWTPA, as they are not public entities.

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