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District of Columbia Issues Template “Wage Theft Prevention Amendment Act” Notices

By Nancy Delogu and S. Libby Henninger

The District of Columbia’s new Wage Theft Prevention Amendment Act of 2014 (the Act), which became effective on February 26, 2015, requires employers to provide written notice to each employee based in D.C. containing specific information about the employee’s terms and conditions of employment. Although employers have until late May to issue the requisite notices to current employees, new hires are entitled to the notice mandated by the law now.

In addition, the Act makes various amendments to D.C.’s wage and hour laws and increases the remedies, fines and administrative penalties available when an employer fails to pay earned wages or provide statutorily required benefits.¹

Written Notice Requirements

The Act directs D.C.’s Mayor to make one or more model Notices available to employers to aid compliance. The Department of Employment Services (DOES) has issued two template Notices, in English, one for general use and one for use by temporary staffing agencies, each including “instructional guides” to compliance. A Spanish language version should be issued soon. The documents are available on the DOES website, or [here](#) (the general use Notice form) and [here](#) (the temporary staffing agency Notice form).

Although the DOES instructional guides state that employers need not use the template Notices, emergency amendments to the Act state that forms approved by the Mayor must be used. It is likely that the DOES will interpret the law to permit the use of employer-crafted forms as long as those forms contain at least the relevant information set out in the model Notices. Significantly, the Act permits the Mayor to require employers to provide notice beyond what is enumerated in the text of the statute, and the general template Notice requires employers to advise overtime exempt employees of the exemption claimed and, separately, how employees can seek assistance from the District government with concerns about wage payment issues.

¹ See Nancy Delogu, Libby Henninger and Eunju Park, [DC’s Amended Wage Theft Prevention Act Expands Employer Penalties and Imposes New Notice Requirements](#), Littler ASAP (Jan. 19, 2015).

Accordingly, for workers other than those employed by a temporary staffing agency, Notices to employees should include:²

- The employer's name
- Any "doing business as" names used by the employer
- Physical address of the employer's main office or principal place of business
- Employer's mailing address
- Employer's telephone number
- Employee's rate of pay and the basis of that rate (by the hour, shift, day, week, salary, piece, commission)
- Any allowances claimed as part of the minimum wage: tip, meal, or lodging allowances
- A copy or explanation of the company's tip pool policy (if applicable)
- The employee's overtime rate of pay or, in the alternative, the basis for the employee's exemption from eligibility for overtime pay
- Living wage applicability, and/or exemptions from the living wage
- Where applicable, the prevailing wage, classification(s) of work the employee is expected to perform, related wage rate, and any fringe benefit applicable
- Information about how to contact the DOES Office of Wage-Hour (OWH), the designated enforcement agency
- Request that the employee disclose his or her primary language; and
- An employee acknowledgement (employers must keep copies of the signed acknowledgment)

Employers should exercise care in completing the Notices, and consider whether additional information beyond that included in the template is needed. For example, although the template Notice identifies only three categories as a basis for an exemption to the overtime requirements (administrative, executive, and professional), there are potentially other overtime exemptions employers may rely upon as a matter of District of Columbia law. Further, if employers expect employees to work at multiple wage rates, employers will need to explain the basis for calculating the employee's overtime pay rate, although the template Notice does not provide a clear place to convey this information.

Posting Requirement

Employers must also post a summary of the provisions of the Act in a "conspicuous and accessible place." A Notice summarizing the Act's requirements is available on the DOES website or here.

What Employers Should Do Now

- All employers with employees based in D.C. should review the template Notices issued by the DOES and issue each employee a written notice containing all necessary information **no later than Wednesday, May 27, 2015**. Written notices should be signed by each employee and retained for a period of at least three years.
- Employers should take immediate steps to prepare and distribute written notices to all new employees hired **on or after February 26, 2015**.

² Notice to employees of temporary staffing agencies must include additional information including:

- Range of potential hourly wages
- The specific designated payday for the particular assignment
- Actual rate of pay and benefits, if any overtime rate or exemption from overtime and basis for the exemption
- Location and name of client employer and the temporary staffing firm
- Anticipated length of the assignment
- Whether training or safety equipment is required and who is obligated to provide/pay for the equipment
- Legal entity responsible for workers' compensation

Notice must be given at the initial interview or date of hire and upon subsequent assignment.

- Employers can request template Notices from the DOES for employees who identify languages other than English as their primary language.
- Post the Notice issued by the DOES summarizing the Wage Theft Prevention Amendment Act.

[Nancy Delogu](#) and [S. Libby Henninger](#) are Shareholders in Littler's Washington, D.C. office. If you would like further information, please contact your Littler attorney at 1.888.Littler or info@littler.com, Ms. Delogu at nndelogu@littler.com and Ms. Henninger at lhenninger@littler.com.