

## **New York DOL Publishes Guidelines, Instructions, and Templates for Compliance with New York Wage Theft Prevention Act**

**April 4, 2011**

As we reported in our December 15, 2010 LawFlash,<sup>1</sup> the New York Wage Theft Prevention Act (the Act), which becomes effective on April 9, 2011, dramatically increases an employer's notice and recordkeeping requirements and imposes significantly increased penalties for violations of the Act's requirements. Among other requirements, the Act provides that an employer must provide an employee, at the time of hire and thereafter each year on or before February 1, notice of the following information:

- His or her regular rate of pay, regular payday, and overtime rate of pay if he or she will be eligible for overtime
- The basis of the wage payment (e.g., whether the employee will be paid by the hour, shift, day, week, salary, piece, or commission, or on another basis)
- The employer's intent to claim allowances (e.g., tip or meal allowances) as part of the minimum wage
- The employer's main address and phone number
- Additional information about the employer, including any d/b/a names

The New York State Department of Labor (the Department), the agency with responsibility for enforcing the new law, recently issued template notices for use in connection with these requirements, instructions on using the templates, and guidance concerning the Act's application. Notably, the Department has now stated that employers *may* develop and use their own notice templates instead of using those provided by the Department. However, a statement contained in a question-and-answer format, issued by the Department, suggests that the notice requirements are satisfied *only* if the required information is contained in a form separate and apart from an offer letter or employment agreement.

Notification must be provided to employees in English and in the language identified by an employee as his or her primary language, to the extent that the Department has created a template in that language. Presently, templates exist for the following languages: **Chinese, Korean, and Spanish**. The Department has advised that it will be creating additional templates in the following languages: **Haitian-Creole,**

---

1. Our December 15, 2010 LawFlash, "New York Wage Theft Prevention Act to Take Effect April 9, 2011," is available at [http://www.morganlewis.com/pubs/LEPG\\_LF\\_WageTheftPreventionAct\\_15dec10.pdf](http://www.morganlewis.com/pubs/LEPG_LF_WageTheftPreventionAct_15dec10.pdf).

**Polish, and Russian.**<sup>2</sup> The Department’s guidelines, instructions, and templates can be viewed at <http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>.

Importantly, the Department has reversed its position on one key issue. Previously, the Department took the position that, for an exempt employee, an employer was required to notify the employee of all exemptions applicable to the employee’s position. In the recently issued guidelines and instructions, the Department states that an employer is **not** required to identify the specific exemption(s) applicable to the employee’s position (though it may if it wishes).

It is critically important that employers review the guidelines and instructions, become familiar with the new legal requirements, and take steps now to be in compliance when the law goes into effect on April 9.

If you have additional questions about the impact of the legislation discussed in this LawFlash on your policies and procedures, please contact any of the following Morgan Lewis attorneys in our New York Labor and Employment Practice:

|                      |              |  |
|----------------------|--------------|--|
| David A. McManus     | 212.309.6824 | <a href="mailto:dmcmanus@morganlewis.com">dmcmanus@morganlewis.com</a>       |
| Christopher A. Parlo | 212.309.6062 | <a href="mailto:cparlo@morganlewis.com">cparlo@morganlewis.com</a>           |
| Ira G. Rosenstein    | 212.309.6960 | <a href="mailto:irosenstein@morganlewis.com">irosenstein@morganlewis.com</a> |
| Andrew J. Schaffran  | 212.309.6380 | <a href="mailto:dschaffran@morganlewis.com">dschaffran@morganlewis.com</a>   |
| Samuel S. Shaulson   | 212.309.6718 | <a href="mailto:sshaulson@morganlewis.com">sshaulson@morganlewis.com</a>     |
| Kenneth J. Turnbull  | 212.309.6055 | <a href="mailto:kturnbull@morganlewis.com">kturnbull@morganlewis.com</a>     |

### **About Morgan Lewis’s Labor and Employment Practice**

Morgan Lewis’s Labor and Employment Practice includes more than 265 lawyers and legal professionals and is listed in the highest tier for National Labor and Employment Practice in *Chambers USA 2010*. We represent clients across the United States in a full spectrum of workplace issues, including drafting employment policies and providing guidance with respect to employment-related issues, complex employment litigation, ERISA litigation, wage and hour litigation and compliance, whistleblower claims, labor-management relations, immigration, occupational safety and health matters, and workforce change issues. Our international Labor and Employment Practice serves clients worldwide on the complete range of often complex matters within the employment law subject area, including high-level sophisticated employment litigation, plant closures and executive terminations, managing difficult HR matters in transactions and outsourcings, the full spectrum of contentious and collective matters, workplace investigations, data protection and cross-border compliance, and pensions and benefits.

### **About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory

---

2. If the Department does not create a dual-language template in the language identified by the employee, then the employer is only required to provide the notice in English. Thus, at present, employers are only required to provide dual language forms for employees whose primary language is Chinese, Korean, or Spanish. Employers should continue to monitor this situation in the event the Department provides additional templates.

scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

**© 2011 Morgan, Lewis & Bockius LLP. All Rights Reserved.**

