

## **NYDOL Reverses Position: Employers Not Required to Use Previously Published Wage Rate Notice and Acknowledgement Form**

**December 3, 2009**

Prior Morgan Lewis LawFlashes reported that a recent amendment to New York Labor Law Article 6, Section 195(1) requires employers to notify **all** newly hired employees at the time of hiring, in **writing**, of their regular rate of pay and regular pay day, and for nonexempt employees, their hourly and overtime rates of pay. On October 28, the New York State Department of Labor (NYDOL) published an official form titled “Labor Law Section 195(1) Notice and Acknowledgement of Wage Rate Hourly Rate Plus Overtime” (the Notice and Acknowledgement Form) and advised that employers were required to use the Notice and Acknowledgement Form for **ALL** categories of employees hired on or after October 26, 2009.<sup>1</sup>

There has since been an important change to these requirements. On December 2, the NYDOL modified its position, and now advises that employers are **NOT** required to use the Notice and Acknowledgement Form, but rather that employers may create their own forms, or use and/or adapt the Notice and Acknowledgement Form. The NYDOL also advises that “in the near future” it will provide sample forms for a variety of pay agreements (salaried, prevailing rate, exempt, and others).

To read the NYDOL’s recent guidance on its website, click here  
<http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/lshmpg.shtm>.

Prior to the publication of the Notice and Acknowledgement Form, many employers had complied with the amended statute by modifying their offer letters to contain the required content and acknowledgment. With this most recent guidance, the NYDOL seems to be acknowledging that this practice was and is permissible.

We will provide additional information regarding the sample forms, as well as any guidelines related to this amended law, when they are published by the NYDOL.

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<sup>1</sup> Our prior LawFlashes on this topic, issued on September 3, 2009, are available at [http://www.morganlewis.com/pubs/LEPG\\_PayInfoWrittenNotice\\_LF\\_03sept09.pdf](http://www.morganlewis.com/pubs/LEPG_PayInfoWrittenNotice_LF_03sept09.pdf), and on November 17, 2009, available at [http://www.morganlewis.com/pubs/LEPG\\_NYDOLWageRateNotice\\_LF\\_17nov09.pdf](http://www.morganlewis.com/pubs/LEPG_NYDOLWageRateNotice_LF_17nov09.pdf).

Morgan Lewis's Labor and Employment Practice Group regularly advises employers with respect to all aspects of federal and state wage and hour laws. If you would like further information regarding the issues raised in this Morgan Lewis LawFlash, please contact either of the following Morgan Lewis attorneys:

**New York**

Christopher A. Parlo  
Samuel S. Shaulson

212.309.6062  
212.309.6718

[cparlo@morganlewis.com](mailto:cparlo@morganlewis.com)  
[sshaulson@morganlewis.com](mailto:sshaulson@morganlewis.com)

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