

Cooley

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As reported in prior *Alerts*, the Wage Theft Prevention Act of 2011 (AB 469) ("WTPA") took effect on January 1, 2012. This new law requires employers to provide all newly hired non-exempt California employees with a written notice at the time of hire that contains certain specified wage-related information. It also requires employers to provide written notice to existing employees within seven calendar days of a change to any of the specified information (unless such change is reflected on a timely wage statement or another writing required by law).

In late December 2011, as required by the statute, the California Labor Commissioner published a template form for employers to use to comply with the WTPA. The template form required the disclosure of several additional pieces of information beyond what is required by the statute. The Labor Commissioner also published a "Frequently Asked Questions" (FAQ) section on its website to address common employer questions regarding the new law.

In mid-April 2012, the DLSE substantially revised its template WTPA form and also published revised FAQ. The new template form and the revised FAQ can be accessed via the [California Department of Industrial Relations website](#).

Fortunately for employers, the DLSE's revised template form is shorter and more straightforward than its predecessor, and eliminates a few areas of confusion. For example:

- The new template form does not require the employer to list the employee's "hire date." This was a point of potential confusion given the extensive discussion in the FAQ (including in the revised FAQ) indicating that the "hire date" is not necessarily the employee's "start date" but instead the often earlier—and potentially difficult to precisely pinpoint—date when the employment relationship is "formed." The revised template form only requires the employer to list the employee's start date. (Unfortunately, employers cannot escape the "hire date" analysis altogether, since the statute still requires the disclosure to be provided to the employee "at the time of hiring." For most employees, this will likely mean that the disclosure must be provided as soon as there has been an offer and acceptance of employment, which may be days or even weeks prior to the employment start date.)
- The revised template form eliminates the language requiring the employer to specify whether the employee's employment agreement is "oral" or "written"—another frequent area of confusion for employers. Now, the form is more straightforward, reading as follows:

Does a written agreement exist providing the rate(s) of pay? (check box) Yes No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement? (check box) Yes No

The FAQ are explicit that the designation in the notice of this contract-related information does not impact the "at will" nature of the individual's employment, resolving prior speculation and concern on that issue.

- The revised template form eliminates the requirement that the form be signed by the employer's representative and acknowledged by the employee. The acknowledgement language still appears on the form, but is now listed as optional. Nevertheless, it may be wise for employers to continue the practice of having the forms signed and acknowledged, as doing so creates a useful record of the forms having been timely provided to and received by employees.

Employers who provided WTPA notices to employees on or before April 11, 2012 using the Labor Commissioner's previous template form are *not* required to reissue notices using the new template. All notices provided on or after April 12, 2012, must use the new template (or an employer-created equivalent that includes all of the same information).

The revisions to the Labor Commissioner's WTPA FAQ mainly address questions relating to the changes to the template form. A key point of interest for employers is that the revised FAQ continue to take the position, as reported in our January 9, 2012 Alert, that employers are not required to provide an initial WTPA notice to all current nonexempt California employees now that the new law has taken effect. (A disclosure must be provided to current employees only once there is a change to the relevant information, per the terms specified in the statute.) While the revised FAQ take the position that providing an initial notice to all current non-exempt California employees is a "best practice" (see revision implemented January 23, 2012), this is a recommendation only and not a requirement.

If you would like to discuss any of these issues or have questions about this *Alert*, please contact one of the attorneys listed above.

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