



DLSE revamps wage theft protection act notice

MSK Client Alert

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The California Wage Theft Prevention Act (WTPA), which became effective on January 1, 2012, requires private-sector employers to provide a written wage notice "at the time of hiring" to nonexempt employees (excluding most employees who are covered by a collective bargaining agreement.). The DLSE first issued a notice template in late December. Last Friday, the DLSE issued a revised version of the notice that addresses many of the concerns raised by the employer community. The DLSE also issued revised and expanded FAQs for the second time since the WTPA went into effect. The revised notice and FAQs are available on the DLSE website. DLSE requires employers to provide the revised notice to employees hired **after April 12, 2012**. However, those who received the prior version do not need to be provided with the revised notice, unless or until the information provided in a prior notice changes.

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What's New?

[When Notice Is Required \(FAQ 20\)](#)

In the earlier version of the FAQs, the DLSE did not clearly explain what constituted the "time of hire" for purposes of providing the notice. Now, the employer may provide the notice on any date that both the employer and employee agree is the "time of hire," as long as it is not after the employee's start date. In most cases, it would be advisable to provide the notice on the employee's start date.

[Information Regarding Employment Agreement \(FAQ 22\)](#)

One of the most contentious issues raised by the prior notice was the requirement that the employer specify whether the "employment agreement" was oral or written. The revised notice now requires only that the employer indicate whether a *written agreement providing the rates of pay exists* and, if so,



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whether all rates of pay and bases thereof are contained in the written agreement. If there is a written employment agreement (such as an at-will agreement), but it does not specify the rates and bases of pay, then the employer should indicate "no" on the notice.

Employee Not Required to Sign (FAQs 10, 23)

Previously, it was unclear what an employer should do if an employee refused to sign the acknowledgment portion of the notice. Now the revised notice makes the Acknowledgment of Receipt provision optional. If an employee refuses to sign the notice, the employer should indicate the refusal on the employer's file copy of the notice provided to the employee.

Clarification of Difference Between Employer's "Legal Name" and "Doing Business As" (FAQ 26)

The notice must contain the full legal name of the employer, including any entity designation such as "Inc.," "Corp.," or "Partnership." If the employer also uses a "dba" ("doing business as") or other informal name in connection with the employee's work, then such other name should be provided.

Clarification of Information That a "Staff Agency/Business" is Required to Provide (FAQ 28, 29, 30)

The employer is required to indicate whether it is a "staffing agency or business." For purposes of the WTPA, a "staffing agency or business" is a temporary services company, a leasing company, or a professional employer organization (PEO). However, a recruiting service or payroll processing service is not a "staffing agency or business" under the WTPA. Where a staffing agency is the employer, it may provide the notice, but should also indicate the "other entity for whom this employee will perform work."

If an employee of a staffing agency transfers from one client to another, the staffing agency must provide notice, within seven calendar days of the change, indicating the name of the new client "entity for whom this employee will perform work." Such notice may be provided either on a new WTPA notice or on a paystub provided in accordance with Labor Code §226.

If you have any questions regarding this Alert, please contact the authors or any other member our Labor & Employment department.