

New York Wage Theft Prevention Act (WTPA) Notice of Wage and Payday Form



Introduction

As of April 9, 2011, the State of New York requires that ALL employees receive a Mandatory Notice and Acknowledgement of Wage Rate and Designated Payday at the time of hire. The law requires that the employer retain a copy of the form on file for six years. For purposes of this law, the production company is the employer and CAPS Payroll is the administrative employer.

In order to be in compliance with this law, the information on this form must match the information on time cards submitted for payment. It is the employer's responsibility to ensure that the information matches on both documents.

General Requirements

1. A notice form must be filled out and signed for every hire on every project.
2. If an employee's rate changes during a project, a new form must be provided to cover the rate going forward.
3. A copy of the form must be provided to the employee.
4. The original of the form should be retained by the production company.
5. Do not send a copy to CAPS. Any copies sent to CAPS will be destroyed.

CAPS supplies multipart forms. Please contact your payroll coordinator to request them.

Filling Out the Form

Most of the information is self-explanatory. CAPS, LLC, employer information has already been provided.

The Non-Exempt or Exempt Employee sections must be accurately completed. The law requires that the information in these sections match the information on the time cards and in our payroll records. There are no exceptions. It is the employer's responsibility to ensure that the information matches.

Only one of these sections will apply to each employee. They are either non-exempt (eligible to receive overtime payments) or exempt (not eligible to receive overtime payments). There are no other options.

Non-Exempt Employees

An Hourly Rate of Pay must be indicated.

An Overtime Rate of Pay must be indicated.

The basis of Overtime must be indicated with agreed hourly rates of pay.

- Weekly after 40 hours worked.
- Daily after X hours and any other agreed overtime increments.

If working under a union contract, agreed upon rates for the regular hourly rate as well as overtime increments based on the contract requirements must be indicated. Other terms and conditions can be indicated per the specific CBA.

Proper Representation of Typical "Deals"

Weekly Overtime

The Fair Labor Standards Act (FLSA) and NY Law require only that overtime be paid on a weekly basis. This is the easiest way to comply with the law and fill out these forms and time cards. Establish a

Regular Hourly Rate (RHR) and pay at least 1.5X that rate for all hours worked in excess of 40 in a work week.

Guarantees

Unless working under a union collective bargaining agreement, to pay a non-exempt employee a “guarantee” or set amount for a workday or work week is not legal under either Federal or New York state law. There is no way to properly represent a Guarantee on the form.

Rates for “X” Hours in a Day

Conforming to federal and New York wage and hour law, there are two ways to define day rates, such as \$500/10.

In the first case, \$500/10 would mean that the employee receives \$50/hour for the first 10 hours in any work day, and \$75/hour for all work past 10 hours in a day, or after 40 hours in a work week. This would typically result in the 5th day of the work week exceeding 40 hours, and thereby that day would be paid in its entirety at 1.5X.

Alternatively, in order to avoid having to pay the 5th day as overtime, a practice has evolved based on some union contracts: Break out the first 10 hours of the day as 8 straight-time hours and 2 hours of overtime at 1.5X. This results in a regular hourly rate of \$45.45/hour, calculated by dividing the 10-hour rate by 11. Hours beyond the 10-hour day would be paid at 1.65X the regular hourly rate (\$45.45) which computes as \$75.00/hour.

The FLSA requires that all overtime rates be expressed as a multiple of the regular hourly rate. The only way to properly represent this on the Notice and on time cards is as follows:

Divide the 10 hour rate by 11 to determine the regular hourly rate (\$45.45) which is the regular rate of pay.

Daily overtime would start after 8 hours at 1.5X that hourly rate (\$68.18) and after 10 hours at 1.65X that hourly rate (\$75.00), as in this example:

Non-Exempt Employees : Your rate of pay is: \$ 45.45 per hour.

Weekly Overtime : Your overtime rate of pay is: \$ _____ per hour.

(Overtime rate must be at least 1½ times the worker's regular rate, to be paid after 40 regular hours in work week.)

----- **OR** -----

Daily Overtime: Daily after 8 hours \$ 68.18 per hour, and after 10 hours \$ 75.00 per hour and \$ 75.00 per hour for all hours over 40 weekly.

IF working under union contract: Other terms and conditions per CBA IATSE NE Corridor - Local 600 Agmt/Local

Employees Working Under Union Contracts

While the Department of Labor requires forms for union workers, if workers are paid accurately under a union contract, there is unlikely to be any kind of claim. Hence, errors on their Notices may be inconsequential.

L52, L600 NEC, L161 NEC and L798 NEC

All have 10 hour Minimum Calls, but reflect 1x rates in their structure. The proper way to fill out the form and time cards would be to reflect the 1x rate, 1.5x rate and 6th day rates as structured in the contracts and as described in the 10 hour deals above.

DGA Agreements

These agreements call for 12 hour days and do not appear to fit with the FLSA structure. AICP has advised to represent their 1x rate by dividing their 12 hour rate by 12. Their 1.5x overtime rate is computed by dividing their 12 hour rate by 8. The overtime rate would start after 12 hours.

Local 817 Teamsters

AICP Agreement calls for a 10 hour day with a specified rate for overtime. 1/10th the 10 hour rate should be indicated for 1x and the specified rate should be indicated for overtime after 10 hours.

Local 829 Scenic Artists

AICP agreement calls for an 8 hour day with daily overtime after 8 hours and 2x after 12 hours. Rates for 10 hours are inconsistent with this agreement. The 1x rate is the regular rate. 1.5x should be indicated after 8 hours and 2x after 10 hours

In all cases the respective collective bargaining agreement (CBA) should be referenced.

Changing Rates

Generally non-exempt hourly employees should not have their hourly rate of pay changed, unless there is a significant change in their job/position and responsibilities. If this occurs, the employee must be provided with a new form indicating the new rates, which will apply as of the change. In making payments either the entire week needs to be paid at the higher rate or a weighted overtime calculation must be used. Please see separate Time Card Prep memo about weighted overtime calculations. Weighted calculations are very complicated and may present challenges in job costing.

Exempt Employees

Examining an employee's job responsibilities is the only way to determine if they are exempt from the overtime requirements of the FLSA. Their title may be indicative, but it is not necessarily determinative. As such, CAPS cannot provide a list of exempt titles.

We urge all clients to examine the actual situations and job responsibilities and provide guidance to their employees given the responsibility of preparing these forms.

DOL guidance is available: http://www.dol.gov/whd/overtime/fs17a_overview.pdf

Applicable exemptions will likely fall into one of three categories: Executive, Administrative or Creative Professional.

For exempt employees, fill in rate of pay and the period it covers. You may also indicate which exemption has been used to determine the exempt status: Executive, Administrative or Creative Professional. This is optional under the law.

Exempt per CBA: Exempt per CBA should be indicated for the rare union categories considered exempt. These include DGA Directors and Local 817 Location Managers.

Designated Pay Day

Day of the week (e.g. Friday) in addition to the regular payday cycle (e.g. weekly) of the production company should be indicated. New York State law requires that manual workers be paid weekly and that clerical and office worker be paid at least bi-weekly.

Employee Acknowledgement

The employee should sign the form and check one of the boxes. If the employee has indicated that his or her primary language is other than English, the translated New York State DOL form must be provided to the employee. New York State DOL has prepared forms in several languages, including Spanish, Chinese, Korean, Creole, Polish and Russian, available here: <http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>

If the employee's primary language is not among these translations, then the English form is all that is required.

If the employee refuses to sign the Notice, the New York State DOL has directed that they should be given an unsigned copy and it should be noted on the employer's copy that the employee refused to sign.

Preparer's Name and Title

These must be entered. The DOL's instructions are that this should be someone who can answer questions, should the employee have questions about how they were paid.

As noted the employee must receive a copy of the form and the production company should retain the original. Do not provide a copy to CAPS. Any copies sent to CAPS will be destroyed.

Please e-mail any questions or concerns to BusinessAffairs@capspayroll.com.



Notice and Acknowledgement of Pay Rate and Payday Under Section 195.1 of New York Labor Law

V3-R5411

NY State requires that ALL employees be given notice of their rate of pay, wage status and payday at time of hire. For freelance employees this notice must be provided for each project for which they are hired. They must be paid the agreed rate for all work in the hired category for that project. If their job changes, the rate can change, but a new Notice must be issued.

Employer/Production Co. Name/DBA _____ **FEIN (Optional)** _____
 Physical address _____ City _____ State _____ Zip _____
 Mailing add.(If different) _____ City _____ State _____ Zip _____
 Phone (____) ____ - _____ **Employer of Record:** CAPS, LLC, 65 Bleecker St., 13th Floor, New York, NY 10012, Ph. 212-925-1415

Employee: Name _____ Your Job/Occupation Category is: _____
 Project Name/# _____ Work Start Date _____

Non-Exempt Employees : Your rate of pay is: \$ _____ per hour.
Weekly Overtime : Your overtime rate of pay is: \$ _____ per hour.
 (Overtime rate must be at least 1½ times the worker's regular rate, to be paid after 40 regular hours in work week.)
 ----- OR -----
Daily Overtime: Daily after _____ hours \$ _____ per hour, and after _____ hours \$ _____ per hour and \$ _____ per hour for all hours over 40 weekly.
IF working under union contract: Other terms and conditions per CBA _____ Agmt/Local

Exempt Employees: Employee's pay rate(s): State if pay is based on salary for a period, day rate, or other basis.

Overtime Pay Rate:
 Most workers in NYS must receive at least 1½ times their regular rate of pay for all hours worked over 40 in a workweek, with few exceptions. A limited number of employees must only be paid overtime at 1½ times the minimum wage rate, or not at all.
 This employee is exempt from overtime under the following exemption(s) (optional): _____
 Other terms and conditions as per CBA _____ Agmt/Local
 Information on designation of Exempt categories is available at: http://www.dol.gov/whd/overtime/fs17a_overview.pdf

Allowances: There are no allowances taken by the Employer against the statutory minimum hourly rate of pay. If otherwise describe:

Regular pay day: _____ Weekly Bi- Weekly Other _____ If more frequent.

Employee Acknowledgement: On this date, I received notice of my pay rate, overtime rate (if eligible), allowances, and designated payday. I told my employer what my primary language is.

Check one:

- I have been given this pay notice in English because it is my primary language.
- My primary language is _____. I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

Employee Signature _____ **Date:** _____

The employee must receive a signed copy of this form. The employer must keep the original for 6 years.

Preparer's Name and Title _____

The above notice is solely for purposes of compliance with NY Labor Law Sec. 195.1 and does not alter the "at will" status of any "at will" employee recipient. This form is made available as a guide to assist AICP members in NY Labor Law Sec. 195.1 compliance. It is not intended as legal advice nor as a substitute for review by legal counsel.

Original should be retained by the Employer. A duplicate signed copy should be provided to the employee. Do not send a copy to CAPS.