



Webinar 4 - April 22, 2026

The Ins and Outs of Wage Notices and Commission Agreements

WEBINAR OUTLINE

THE BASICS OF NEW YORK STATE WAGE NOTICES

- The New York State Wage Theft Prevention Act
- Wage Notice Requirements
- Wage Statement Requirements For New York Employers
- Frequently Asked Questions Relating to Wage Notices

AN OVERVIEW OF COMMISSION AGREEMENTS

- Key Requirements for New York State Commission Agreements
- Frequently Asked Questions Relating to Commission Agreements

HYPOTHETICAL SCENARIOS

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THE BASICS OF NEW YORK WAGE NOTICES

The New York State Wage Theft Prevention Act

According to the New York State Department of Labor, the Wage Theft Prevention Act (WTPA) of 2011 was enacted to ensure that employees receive accurate and timely payment for their work.

The Act combats wage theft and promotes fair labor practices by requiring employers to provide clear and comprehensive wage-related information to their employees.

The Act mandates specific requirements for wage notices, pay stubs, and record-keeping, thereby enhancing a company's transparency and accountability in its employer-employee relationships.

New York business owners who have employees need to know about the Wage Theft Prevention Act and how to maintain compliance because noncompliance can result in penalties against the company.

Wage Notice Requirements

Upon hiring new employees, New York employers must provide the employees with a written notice that includes the following:

Required Content:

- Rate(s) of pay, including overtime rates.
- How the employee is paid (hourly, shift, salary, commission, etc.).
- Regular payday.
- Official employer name and "Doing Business As" (DBA) names.
- Address and phone number of the employer's main office.
- Allowances taken (tip, meal, or lodging deductions).

Language Requirements: Notices must be in English and the employee's primary language if the NY Department of Labor provides a translation. Translated forms are available for Spanish, Chinese, Haitian Creole, Korean, Polish, and Russian.

Documentation: Employers must obtain a signed acknowledgment from the employee confirming receipt of the notice.

Recordkeeping: Employers must retain signed notices and acknowledgments for six years.

Wage Statement Requirements For New York Employers

Employers in New York must provide their employees with wage statements/pay stubs each pay period, and these statements must detail the employee's earnings and deductions.

The pay stub must include the dates of work covered by the payment, the rate of pay, and the number of hours worked. Other required details include tax and insurance deductions.

Providing accurate pay stubs helps to ensure transparency and allows employees to verify that they are correctly compensated for their work.

Different Wage Notices For Different Types Of Workers

Exempt (salaried)

Non-exempt (hourly)

Multiple Rate

Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)

Employees Paid Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate or Other Non-Hourly Pay

Frequently Asked Questions Relating to Wage Notices

When are pay notices required?

Notices are required at the time of hire, and when there are changes in the information on the pay notices.

May the notice be included in letters and/or employment agreements provided to new hires?

Yes, but must be on its own form.

Can a worker waive the notice requirement?

No.

Can the notice be given electronically?

Yes, but there must be a system where the worker can acknowledge the receipt of the notice and print out a copy of the notice.

What if a worker refuses to sign the notice?

The employer should still give the notice to the worker and note the worker's refusal on its copy of the notice.

Do employers have to keep a copy of the notice?

Yes. Notices must be kept for six years and be available to the Department upon request.

Do I have to give a new notice every time a wage rate changes?

Notice is not required where there is an increase in a rate and the new rate is shown on the next payment of wages (although best practice is to provide notice). For any reduction of wage rate, an employee must be notified in writing prior to the reduction being implemented.

Note: Employers in the hospitality industry need to give a new notice every time a wage rate changes.

What procedures should be followed if an employee has multiple pay rates?

An employer must put all pay rates on the wage statement.

What should we do if the worker has multiple hourly or piece rates?

The purpose of the notice is to inform workers of the wage rates that apply to them. Multiple rates need to be identified either on the notice or on a separate sheet attached to the notice. Only the rates used to determine a worker's pay need be shown on the wage statement for that period.

What about salespersons whose wages are all or partially based on commissions?

Labor Law Section 191(1)(c) already requires commission salespersons to receive and sign for a copy of their commission agreement. This agreement should be attached to the pay notice and a copy of each document kept by the employer.

What if I have a bonus or incentive plan on a weekly or less frequent time period?

So long as the employee initially was given a description or it is clearly shown on the wage statement for the period in which it is paid, no additional notice is required.

What about retroactive wage increases?

The amounts need to be noted separately on the wage statement for the period in which it is paid.

Are exempt employees, including professionals, executives, or administrators, excluded from the notice requirements?

No. Since Section 195 does not contain any exclusions or exemptions from the notice requirements, the notice requirements in Section 195 apply to all employees regardless of their exempt status.

Does the employer have to identify the specific state exemption for workers exempt from overtime requirements?

No.

Can a New York employer reduce an employee's rate of pay without notice?

Employers in New York must provide notice within seven days for any change that is not included on the wage statement/pay stub for the next pay period. Notice is not generally required when there is an increase in the pay rate and that new rate will appear on the next pay stub. However, the employer must communicate any reduction in the employee's rate of pay to the employee in writing before the change takes effect. Employers must then update the wage notice to reflect the new rate of pay and any other changes. They must also obtain a new signed acknowledgment from the employee to ensure the company's compliance with the Wage Theft Prevention Act.

COMMISSION AGREEMENTS

Key Requirements for New York Commission Agreements

- **Mandatory Written Contract:** The agreement must be signed by both parties.
- **Calculation Details:** The agreement must explicitly describe how commissions, draws, salaries, and all other monies earned are calculated.
- **Payment Frequency:** It must state how often the employee will be paid.
- **Draw Reconciliation:** If a recoverable draw is used, the agreement must specify the frequency of reconciliation.
- **Termination Terms:** It must detail how commissions are paid upon the termination of employment.
- **Record Retention:** Employers must retain the signed agreement for at least three years.

Frequently Asked Questions Relating to Commission Agreements

When is a commission considered to be "earned?"

The commission will be considered "earned" at the time specified in the written employment agreement. If the agreement is silent on this topic, a commission is considered to be earned in accordance with the past dealings between the employer and commission salesperson. If there are no such past dealings, then a commission is considered earned when the commission salesperson produces a person ready, willing, and able to enter into a contract upon the employer's terms.

Once a commission is "earned," it is legally considered "wages" under the Labor Law and subject to all other provisions of the Labor Law regarding the payment of wages.

What, if any, deductions may an employer take from a commission salesperson's commission?

- **Unearned Commissions (non-wages):** Employers may make adjustments and/or apply charges in accordance with the applicable terms of the written employment agreement. For example, an employer may reduce an employee's unearned commissions by any expenses incurred by the employee.

- **Earned Commissions (wages):** Once earned, commissions are considered wages and deductions are limited to those permitted by Section 193 of the Labor Law.

Do any commissions have to be paid to a commission salesperson who has been terminated or left employment?

All commissions earned by a commission salesperson are legally considered wages and must be paid to the salesperson even if the employment relationship with the employer has ended. If the commissions have not yet been earned, the terms of the written employment agreement – which must include language addressing this situation – will control.

What is a draw against commissions?

A draw is a payment to a commissioned employee that is credited, in whole or in part, against future commissions. Draws typically function like an advance or guaranteed minimum payment of commissions subject to settlement at set intervals. At the settlement, draws made are supplemented by any additional commission earnings that exceed the amounts previously paid.

The frequency and terms of the settlement must be included in the commission agreement for such settlement/recovery to be permissible. Draws are typically paid to employees like a salary, and are deemed to be earned in the same fashion.

A draw can only be reconciled against future commissions. Employees who leave the employer's employment cannot be required to repay this type of draw. Draws cannot be recouped from earnings other than commissions; as such recoupment is an illegal deduction from wages.

May a commission salesperson be required to repay an employer for draws against commission?

The New York courts have repeatedly held that unless there is a specific agreement saying otherwise, a commission salesperson who receives draws against anticipated commissions is not required to repay those draws if the commission does not become finally due and payable to the salesperson. If there is a specific agreement providing otherwise, the Labor Law requires that such an agreement must be in writing and, if the draw is recoverable by the employer, the frequency of reconciliation must be included.

Are commission salespersons subject to the State Minimum Wage and Overtime requirements?

While no State minimum wage and overtime exception exists for commission salespersons, outside salespersons are exempted from such requirements. Commission salespersons who meet requirements for outside salespersons are exempt from the State minimum wage and overtime requirements.

If a non-exempt commission salesperson's draw and commissions do not equal or exceed the amount computed as the minimum wage for the agreed pay period, the employer must make up the difference on the same payday.

What is the difference between an "outside salesperson" and a "commission salesperson"?

As stated above, a commission salesperson is an employee whose principal activity includes sales and who is paid, in whole or part, on a commission basis. An outside salesperson is an employee: Whose primary duty is making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer who is customarily and regularly engaged away from the employer's place or places of business

*An employee may be both a commission salesperson and an outside salesperson if they fit the definitions for both of those terms.

What is the difference between a commission and a bonus?

A "bonus" is money paid by an employer to an employee when both the fact and amount of payment are wholly at the discretion at the employer. True bonuses are not considered wages under the Labor Law. If, however, the employee is given reason to believe that if he/she performs a certain amount of orders or sales then he/she will be paid a certain amount of compensation, then the money to be paid is a commission.

How long must employers keep a commission salesperson's employment agreement?

The employment agreement between an employer and a commission salesperson must be kept on file by the employer for the duration of the employment relationship and for at least three years after the employment terminates. The agreement must be made available to Department of Labor investigators at their request. If the employment agreement is not made available, then the Department must presume that the commission salesperson's version of the agreed terms of employment is correct.

HYPOTHETICAL SCENARIOS

HYPOTHETICAL SCENARIO #1: NON-EXEMPT NEW HIRE

The Employer: "Empire Tech Solutions," a small software firm in New York City.

The Hire:

Alex, a new non-exempt hourly employee.

1. **Timing of Notice:** Before Alex performs any work, Empire Tech must provide a written wage notice.
2. **Required Content:** The notice given to Alex must include:
 - o **Rate of Pay:** \$35.00 per hour.
 - o **Overtime Rate:** \$52.50 per hour (1.5x the regular rate).

- **Basis of Pay:** Hourly.
 - **Regular Payday:** Every other Friday.
 - **Employer Details:** The company's legal name, any "Doing Business As" (DBA) names, and their principal office address and phone number.
 - **Allowances:** Note if they are claiming any tip, meal, or lodging allowances against the minimum wage.
3. **Language Requirement:** Alex identifies Spanish as their primary language. Because the New York Department of Labor provides a template in Spanish, Empire Tech **must** provide the notice in both **English and Spanish**.
 4. **Acknowledgment:** Alex must sign and date the notice, confirming they received it and that it was in their primary language. Empire Tech must then provide Alex with a copy and keep the original for **six years**.

HYPOTHETICAL SCENARIO #2: MID-YEAR WAGE INCREASE

- **Situation:** ABC Corp decides to increase Jane Doe's hourly wage from \$ 20 to \$ 22 effective June 1.
- **Requirement:** Since this is a rate change, ABC Corp must provide written notice at least 7 days before the change takes effect, unless this new rate is clearly listed on the wage statement for the first pay period in which the rate change occurs.
- **Best Practice:** Even if reflected in the pay stub, it is best practice to provide an updated wage notice showing the new rate, signed by Jane, to comply with the requirement to notify of changes.

HYPOTHETICAL SCENARIO #3: MID-YEAR WAGE DECREASE AND RECLASSIFICATION FROM EXEMPT TO NON-EXEMPT

- **Situation:** ABC Corp decides to decrease Jane Doe's hourly wage from \$ 40 to \$ 30 effective June 1. ABC Corp will also reclassify Jane Doe as a non-exempt employee.
- **Requirement:** Since this is a decrease in rate, ABC Corp must provide written notice at least 7 days before the change takes effect, unless this new rate is clearly listed on the wage statement for the first pay period in which the rate change occurs.
- **Requirement:** A new non-exempt wage notice should be issued to Jane outlining that she will be paid on an hourly basis and the new rate.
- **Best Practice:** Even if reflected in the pay stub, it is best practice to provide an updated wage notice showing the new rate, signed by Jane, to comply with the requirement to notify of changes.

HYPOTHETICAL SCENARIO #4: THE COMMISSION AGREEMENT

- **Employer:** TechSales Inc.
- **Employee:** Sarah Jennings (Business Development Representative)
- **Role:** Responsible for selling SaaS subscription software to small businesses.

- **Compensation Structure:** Base Salary + Tiered Commission + Bonus.
- **Scenario Focus:** A 3-month "ramp-up" period followed by standard monthly sales targets.

Key Agreement Terms (The "How It Works")

- **Base Salary:** \$3,000 per month.
- **Commission Rate:** 10% on all closed-won revenue for the first \$10,000 in monthly sales; 15% on any sales above \$10,000 (Tiered Structure).
- **Definition of "Earned":** Commission is deemed "earned" only when the client signs the contract and payment is received by TechSales Inc..
- **Payment Timing:** Commissions earned in a calendar month are paid on the 10th of the following month.
- **Termination Clause:** If Sarah leaves, she is eligible for commissions on sales fully closed and paid for before her last day. No "trailing" commissions on deals closed after her departure.



TRENDS



INSIGHTS



PRACTICAL
GUIDANCE



STRATEGIES

- **Use Proper Templates:** Prepare wage notices in advance and ensure you are using the correct notice. Always consult with an attorney or use the official NYSDOL LS 57-59 forms to ensure compliance with the Wage Theft Prevention Act (WTPA).
- **Timing of Notices:** Give notice at the time of hire and within 7 days of any change in pay rate or payday, unless the change appears on the next wage statement.
- **Primary Language Requirement:** Provide the notice in English and the employee's primary language if the NYSDOL offers a translation (e.g., Spanish, Chinese, Korean, Haitian Creole, Polish, Russian).
- **Signature and Retention:** Have employees sign and date the notice, acknowledging receipt, and keep this record for at least six years.
- **Accuracy in Paystubs:** Ensure every paycheck includes the total pay rate, deductions, and allowances to avoid penalties.
- **Training:** Properly train HR in using the correct forms and to ensure any changes to rates of pay are reflected in employee notices and wage statements.
- **Maintain Proper Records**