

To: CAMPS
From: Malkin & Ross
RE: Minimum Wage and Overtime Laws Memo
Date: January 10, 2014

Effect of new notice requirement

In 2011, an amendment was made to the labor law requiring employers to notify employees, in English or the individual employee's primary language as indicated by the employee, of information concerning rate of pay and employer information.¹ The notification shall take place at either the time of hiring or no later than February 1st of each subsequent year of the employee's employment.² Along with the rate of pay, the notification must include the basis thereof (i.e. hourly, salary, commission, etc.) and any allowances claimed as a part of the minimum wage (i.e. tips, lodging, meals). The notification must also include the name of the employer, any other business names used by the employer, the physical address of the employer's main office or principal place of business, a different mailing address (if applicable), the telephone number of the employer, and any other information the commissioner of labor of the state of New York considers material. Any time this notice is provided, the employer shall obtain a signed and dated acknowledgment from the employee to be kept by the employer for six years. The acknowledgment must include affirmation by the employee that he or she accurately identified his or her primary language to the employer and that the notification was provided in that primary language.

The commissioner is responsible for preparing templates that comply with the above requirements. The commissioner has the discretion to determine which languages, in addition to English, that will be provided based on the size of the New York State population of those who speak that language. An employee shall receive an English-language notice if an employee

¹ Labor Law § 195

² L. 2010, Ch. 564, §3, eff. April 9, 2011

identifies a primary language in which a template has not been made available. The employer will not suffer penalty in this situation. The commissioner has the discretion to waive the above requirements for temporary help firms.

The employee must be furnished a statement of every payment of wages that includes the dates of work covered by that payment of wages, name of the employer and employee, address and phone number of the employer, rate of pay and basis thereof, gross wages, deductions, and allowances (if applicable). Where overtime applies, the statement shall include the regular hourly rate of pay, the overtime rate of pay, the number of regular hours worked and the number of overtime hours worked. Payroll records showing this information must be kept by the employer for six years.

Who is subject to minimum wage / overtime laws

Most employees must receive minimum wage and overtime pay for all hours worked over 40 in a workweek. However, staff counselors at children's camps are not subject to minimum wage and overtime requirements.³ Also, anyone who works for a non-profit summer camp for not more than three months annually is not subject to minimum wage and overtime requirements.⁴

Therefore, support staff at a camp would only be exempt if they are working for a non-profit camp and do not work more than 13 weeks a year. Support staff at for profit camps are not exempt from minimum wage and overtime laws.

³ NY Labor Law § 651 (5) (l); 12 NYCRR 138-4.4 (c) (3); 12 NYCRR 142-2.14 (c) (8); 12 NYCRR 142-3.12 (c) (13); 12 NYCRR 143.1 (m).

⁴ NY Labor Law § 651 (5) (k); 12 NYCRR 142-3.12 (c) (14); 12 NYCRR 143.1 (n).