



**PRIVILEGED/CONFIDENTIAL
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MEMORANDUM

TO: Roger Isom

FROM: Michael C. Saqui, Labor Counsel

DATE: January 4, 2012

RE: *AB 469: The Wage Theft Prevention Act/Notice to Employees*

AB 469, also known as the Wage Theft Prevention Act, requires all employers to provide certain wage-related information in writing to all employees hired on or after January 1, 2012, and also written notice of any changes to the required information within seven (7) days. The new law, which adds section 2810.5 to the California Labor Code, requires employers to provide non-exempt employees, at the time of hire, a notice that specifies certain wage related information upfront. The notice must include:

1. The rate of pay and the basis, whether hourly, salary, piece commission or otherwise, including any overtime rate;
2. Allowances, if any, claimed as part of the minimum wage, including meal and lodging allowances;
3. The regular pay day designated by the employer as required under the Labor Code;
4. The name of the employer, including any “doing business as” names;
5. The physical address of the employer’s main office or principal place of business and any mailing address, if different;
6. The telephone of the employer; and
7. The name, address and telephone number of the employer’s workers’ compensation carrier.

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In addition to providing the pay notice to new hires, existing employees must receive notice of any *changes* to the above during their employment in writing within seven (7) days, unless such changes are reflected elsewhere, such as on a timely wage statement. Note to FLCs: This new state law is more expansive than the disclosure of employment terms requirement for FLCs under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Form WH-516.

Although the Labor Commissioner initially took the position in its “Frequently Asked Questions” (FAQs) that the wage notice must be provided to all current employees on January 1, 2012, on January 3, 2012 the Labor Commissioner changed the information on its website to clarify that the notice does not need to be given to current employees except under certain circumstances.

AB 469, along with other new legislation taking effect in 2012, is intended to provide greater protection to employees and strengthen enforcement efforts and penalties against employers who fail to comply with state wage laws. Because the wage notice law does not provide for specific penalties, the default penalties under the Private Attorneys General Act (PAGA) contained in Labor Code section 2699 (f)(1) and (2) will apply. Penalties under PAGA provide for a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, if the employer employs one or more employees.

The bill also increases penalties for wage violations and makes changes to the collection of such penalties, including an increase in the statute of limitations. AB 469 extends the period of time for which the Labor Commissioner can collect a final penalty or fee from one year to three years. Further, the bill provides that employers may be subject to paying restitution to employees and criminal liability if the employer willfully violates California labor laws. An employer convicted of a wage violation will now be required to maintain a bond to continue business for two years, whereas existing law on this issue requires convicted employers to post a bond only for six months. Finally, the new law requires that employers retain a copy of the itemized wage statement and a record of deductions for three years.

COUNSEL TO MANAGEMENT: All employers need to evaluate and consider policies for informing new hires of the required information pursuant to the new Labor Code requirements. Review employee pay stubs to ensure that all information is provided and accurate. In addition, set up internal HR checks to ensure that employees receive written notice of any changes in a timely manner.

The Labor Commissioner recently posted a form for employers to utilize in order to ensure compliance with the new labor code requirement. For a copy of the form, go to: http://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html. Employers may utilize their own form, as long as it contains the information specified in the statute and on the template form.