

# Client Alert



A report for clients and  
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October 2009

## NYS Commissioner of Labor Offers Guidance on Notice of Rates of Pay and Overtime Rate Provided to New Hires

On October 29, 2009, the Commissioner of the New York State Department of Labor (NYSDOL), M. Patricia Smith, issued guidance in the form of a press release ([link here](#)) concerning the recently amended New York Labor Law § 195, which addresses employer notice and recordkeeping requirements.

Effective October 26, 2009, New York employers are required to provide written notice of the rate of pay, the overtime rate of pay, and the regular paydays to employees upon hiring. See, Proskauer's Client Alert. [Link here](#). The Commissioner has now indicated that the notice to be given to newly-hired employees must be provided on a form available from the NYSDOL, accessible at [www.labor.state.ny.us](http://www.labor.state.ny.us) which can also be found [here](#).

Among other things, the form not only includes a general statement that overtime wages must be paid for all hours worked over 40 per week at the rate of 1-1/2 times the employee's regular rate of pay, but also highlights the following statement in a large box on the form, "[a]lmost all employees in New York must be paid overtime wages of 1½ times their regular rate of pay for all hours worked over 40 per workweek. A very limited number of specific categories of employees are covered by overtime at a lower overtime rate or not at all."

The Commissioner's statement to the effect that "almost all" employees are overtime-eligible ignores statutory exemptions which may apply to employees who fall within the executive, administrative, professional, computer professional, and outside sales exemptions, to name just the most prevalent categories of employees who are *not* overtime-eligible under federal or state laws. Since the amendment to New York Labor Law § 195.1 does state that the employee "acknowledgment shall conform to any requirements established by the Commissioner with regard to content and form," New York employers may be obligated to utilize the NYSDOL form at least for their non-exempt employees.

Pursuant to the amendment, newly-hired employees must sign a form acknowledging that they have received the notice. The employer must keep the signed notice on file for at least six years. Notably, the NYSDOL-recommended form reminds employers that it is a criminal misdemeanor to knowingly make a false statement on that form.

In our considered view, the content of the form established by the Commissioner goes beyond the statutory requirements to give notice to employees of their rate of pay, pay date, and overtime rate, if applicable.

If you have any questions about this new law, please contact your Proskauer relationship attorney or any of the attorneys listed below.

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If you have any questions, please contact your Proskauer relationship lawyer or one of the lawyers listed below:

#### New York

Fredric C. Leffler, 212.969.3570 – fleffler@proskauer.com  
Marc A. Mandelman, 212.969.3113 – mmandelman@proskauer.com  
Katharine H. Parker, 212.969.3009 – kparker@proskauer.com

#### Boca Raton

Allan H. Weitzman, 561.995.4760 – aweitzman@proskauer.com

#### Boston

Mark W. Batten, 617.526.9850 – mbatten@proskauer.com

#### Los Angeles

Harold M. Brody, 310.284.5625 – hbrody@proskauer.com  
Anthony J. Oncidi, 310.284.5690 – aoncidi@proskauer.com

#### Newark

John P. Barry, 973.274.6081 – jbarry@proskauer.com  
Wanda L. Ellert, 973.274.3285 – wellert@proskauer.com  
Lawrence R. Sandak, 973.274.3256 – lsandak@proskauer.com

#### New Orleans

Charles F. Seemann, 504.310.4091 – cseemann@proskauer.com  
Howard Shapiro, 504.310.4085 – howshapiro@proskauer.com

#### Washington, D.C.

Lawrence Z. Lorber, 202.416.6891 – llorber@proskauer.com  
Leslie E. Silverman, 202.416.5836 – lsilverman@proskauer.com

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