

NEW YORK LABOR AND EMPLOYMENT LAW: A PRIMER

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DISCLAIMER

Steve is a Lawyer, BUT, he isn't your lawyer.

Therefore:

- Even though we're talking about the law, nothing here is legal advice.
- Nothing here creates an attorney-client relationship between us.
- Rather, I consider all of your questions to be hypothetical and assume that you are asking "for a friend."

Steve's Theory on PowerPoint Presentations:

“Last week I gave a fire safety talk (clears throat) and nobody paid any attention. **It's my own fault for using PowerPoint. PowerPoint is boring.**”

Dwight Schrute, The Office, Season 5, Episode 13



Agenda for Today

Wage and Hour Forms

Minimum Wage

Regular Pay and Overtime

Paycheck Information

Independent Contractors

Earned Sick Time

Meal & Rest Periods

Sexual Harassment Training

Warning Letter

Handbooks

Questions?

YOU JUST HIRED SOMEONE...NOW WHAT?



- Open a File Jacket for each employee
- Fill out W-4
- Sign Handbook (More on this later)
- Fill Out I-9 Form
- Fill Out Wage Theft Protection Act Forms
- Drug Testing
- Earned Sick Leave
- Credit Check?
- Social Media Log In Information?

NY WAGE THEFT PROTECTION ACT FORMS

- English Form:

<https://labor.ny.gov/formsdocs/wp/LS54.pdf>

- Spanish Form:

<https://labor.ny.gov/formsdocs/wp/LS54S.pdf>

FINE = \$5000.00 per Employee



Notice and Acknowledgement of Pay Rate and Payday Under Section 195.1 of the New York State Labor Law Notice for Hourly Rate Employees

1. Employer Information

Name:

Doing Business As (DBA) Name(s):

FEIN (optional):

Physical Address:

Mailing Address:

Phone:

2. Notice given:

- At hiring
- Before a change in pay rate(s), allowances claimed or payday

3. Employee's rate of pay:

\$ _____ per hour

4. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____

5. Regular payday: _____

6. Pay is:

- Weekly
- Bi-weekly
- Other

7. Overtime Pay Rate:

\$ _____ per hour (This must be at least 1½ times the worker's regular rate with few exceptions.)

8. Employee Acknowledgement:

On this day I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated pay day on the date given below. 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.

Print Employee Name

Employee Signature

Date

Preparer's Name and Title

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

Please note: It is unlawful for an employee to be paid less than an employee of the opposite sex for equal work. Employers also may not prohibit employees from discussing wages with their co-workers.

Westchester County Earned Sick Leave Act

- The Poster can be found at this website:

<https://humanrights.westchestergov.com/images/stories/pdfs/2019slposterr.pdf>

- Here is the Poster in Spanish:

<https://humanrights.westchestergov.com/images/stories/pdfs/2019slposterspr.pdf>

- Here is the Notice for each Employee to sign and to be placed in their respective Employee file. It should also be part of your "Hiring Package.":

<https://humanrights.westchestergov.com/images/stories/pdfs/2019slemployeeenoticer.pdf>

- Here is the Notice in Spanish:

<https://humanrights.westchestergov.com/images/stories/pdfs/2019slemployeeenoticespr.pdf>

Westchester County's Earned Sick Leave Law
Effective April 10, 2019

Under Westchester County's Earned Sick Leave Law, employers with five or more employees in Westchester County must provide paid sick leave. Employers with fewer than five employees must provide unpaid sick leave.

YOU HAVE A RIGHT TO SICK LEAVE, WHICH YOU CAN USE FOR THE CARE AND TREATMENT OF YOURSELF OR A FAMILY MEMBER.

80 HOURS WORKED
In general, employees who work for a covered employer in Westchester County for more than 80 hours in a calendar year, full-time or part-time, are covered by the Earned Sick Leave Law but certain exceptions apply.

ONE HOUR EARNED for every 30 WORKED
You accrue sick leave at the rate of one hour for every 30 hours worked, up to a maximum of 40 hours of sick leave per year.

You begin to accrue sick leave on July 10, 2019 or on your first day of employment, whichever is later. An employer has the right to delay your ability to use earned sick time until you have worked for the employer for 90 days.

YOU CAN USE SICK LEAVE WHEN:

- You have a mental or physical illness, injury or health condition; you need to get a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; you need to get preventative medical care.
- You must care for a family member who needs a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventative medical care.
- Your employer's business closes due to a public health emergency or you need to care for a child whose school or child care provider has closed due to a public health emergency.

YOU HAVE A RIGHT TO BE FREE FROM RETALIATION FROM YOUR EMPLOYER FOR USING SICK LEAVE

For general information about the law, contact the Human Rights Commission at (914) 995-7710 or visit humanrights@westchestergov.com.
If you think you've been subjected to a violation of any rights granted under the Earned Sick Leave Law, please contact the Westchester County Department of Consumer Protection. Visit www.consumer.westchestergov.com or call (914) 995-2155.

George LaFimer, County Executive
Tajah Sanchez, Esq., Executive Director
Human Rights Commission

Westchester.gov

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Wage and Hour Update

- What is at stake if you get sued for a W & H violation?
- NYC Disconnecting From Work Statute – Pending in the City: Checking your cell phone after work will be unlawful (even for “Exempt” employee’s), and compensable time, but allows *de minimus checking*, and excludes emergencies. \$2500 fine/incident, plus lost wages, written policy.
- Verma v. 3001 Castor, Inc. (Nov. 2016, ED of Pa.) – Independent Contractors v. Employee distinction.

MINIMUM WAGES

- Superintendents/Janitors in Westchester (Live In)

Now = \$8.65 per hour; 12/31/20 = \$9.35

- All other Employees in Westchester

Now = \$13.00 per hour; 12/31/20 = \$14.00 per hour; 12/31/21 = \$15.00 per hour.

- Superintendents/Janitors in NYC (Live In)

\$10.00 per hour

- All other Employees in NYC

\$15.00 per hour

- Apartments provided to Superintendents/Janitors – Count towards Minimum Wages (that is why the Minimum Wages are lower!)
- Overtime – 1.5 times minimum wages after 40 hours (unless Union CBA)

MINIMUM SALARY FOR EXEMPT ADMINISTRATIVE/EXECUTIVE AND PROFESSIONAL EMPLOYEES

- Administrative/Executive (Westchester)

Now = \$975.00 per week; 12/31/20 = \$1050 per week; 12/31/21 = \$1125 per week.

- Professional (all of New York)

\$684.00 per week (\$35,568 per year) which is the Federal Rate (it was \$455 per week until 1/1/20).

- Administrative/Executive (NYC)

\$1125 per week

- If you are paying your Administrative/Executive/Professional Employees below these rates, they are entitled to OT at 1.5X.

CREATING THE PROPER PAY STUB

- All pay stubs/checks must contain the following information:
- Employee's Name;
- Dates of work covered by payment;
- Employers Name, address and phone number;
- Rate of Pay and Overtime Rate;
- Method of Calculation;
- Gross Wages;
- Deductions;
- Net Wages
- Any Allowances claimed
- **NOTE** – For Superintendents/Janitors, the number of Apartments/Units
- **FAILURE TO HAVE THE PROPER PAY STUB** - \$5000 Fine per Employee

MISC. WAGE AND HOUR ISSUES

- Time Keeping System (Time Clocks NOT required, but an accurate “system” is)
- Meal/Rest Breaks – any break of 20 minutes or less is considered “on the clock.”
- All Employees in NYS are entitled to a minimum 30 minute meal break (“off the clock”) between 11 am and 2 pm, provided they work a minimum 6 hour shift over a day long period.
- If the shift begins before 11 am, a second meal break of 20 minutes is required if the employee works between 5 pm and 7 pm.
- Maintain all Payroll Records for Six (6) years = Statute of Limitations.
- Non-Disclosure Agreements – not allowed in W & H Cases (on the record).

What is the Alternative?

- You don't follow the above precisely
- An Employee reports his/her underpayment to either WHD or a Private Attorney
- You pay Back wages, LD's (100% of the Wages), Fines and Attorney Fees
- Pay an Attorney (like me) to defend you, **and you WILL LOSE!**
- New York State Wage Theft Lien Law



Conduct Sexual Harassment Training...Regularly

- Conduct Sexual Harassment Training on a regular basis – The EEOC, in its June 2016 Report titled “Select Task Force on the Study of Harassment the Workplace”, recommends that the training be “Live and Interactive.”
- New York State has Video and/or Online training. If a Sexual Harassment Charge gets filed, you want to make the EEOC/Court happy!
- Have a Handbook with a clear “No Harassment” Policy, and make sure everyone (from Owners/Shareholders to the Janitor) knows about it.
- Let the Employee’s know they can go directly to the Board of Directors with their complaints if need be.
- Catch your problem before somebody else does.

HANDBOOKS/MANDATORY ARBITRATION CLAUSES – This is not a request...

- You must have one, and it needs to be all inclusive!
- Kindred Nursing Services v. Clark – US Supreme Court (May 2017): State Courts can NOT single out Arbitration Agreements for disfavored treatment.
- Epic Systems Corp. v. Lewis – US Supreme Court (May, 2018): Individual Arbitration Agreements in Handbooks that forbid Class Action Suits in Court are enforceable!



HANDBOOKS/MANDATORY ARBITRATION CLAUSES (cont'd)

- Keep your Handbooks up to date (an out of date handbook is a liability).
- Arbitration Clauses avoid costly and lengthy Court litigation.
 - Must clearly and unambiguously put the Employee on notice that he/she is agreeing to arbitration and waiving the right to a judicial determination of the claim AND to a Jury trial.
 - Apply to as many causes of action as possible (Wage and Hour, Harassment, Discrimination, etc.)
 - Specifically Exclude from Arbitration any claim that falls under the NLRA (wages/hours/other terms and conditions of employment)
 - You cant give an EE the impression their ability to go the NLRB is chilled.

THE MOST PERFECT EXCELLENT WARNING LETTER

(What you are about to see is going to amaze you)

DATE: _____

TO: _____

Re: Verbal Warning Suspension Written Warning Termination

Dear _____:

This letter shall serve as a Warning Notice that on the following date(s) the following incident occurred involving yourself:

- | | | | |
|-----|--|-----|--|
| () | No call/no show | () | Absent with no valid reason or documentation |
| () | Consistent absences | () | Tardiness |
| () | Leaving without permission | () | Possession/consumption of alcohol while on the job |
| () | Disruptive and unruly behavior | () | Defective and improper work |
| () | Carelessness | () | Violation of company safety rules |
| () | Insubordination | () | Dishonesty |
| () | Failure to follow instruction(s) | () | Fighting |
| () | Destruction of company property | () | Theft |
| () | Reporting to work under the influence of alcohol/drugs | () | Operating Machinery while using cell phone |
| | | () | Other (see explanation below) |

Further comments/specifics:

Please be advised that any further infractions on your part may lead to further disciplinary action, up to and including suspension and/or discharge.

Thank you for your cooperation in this matter.

Very truly yours,

EMPLOYER

RECEIVED BY:

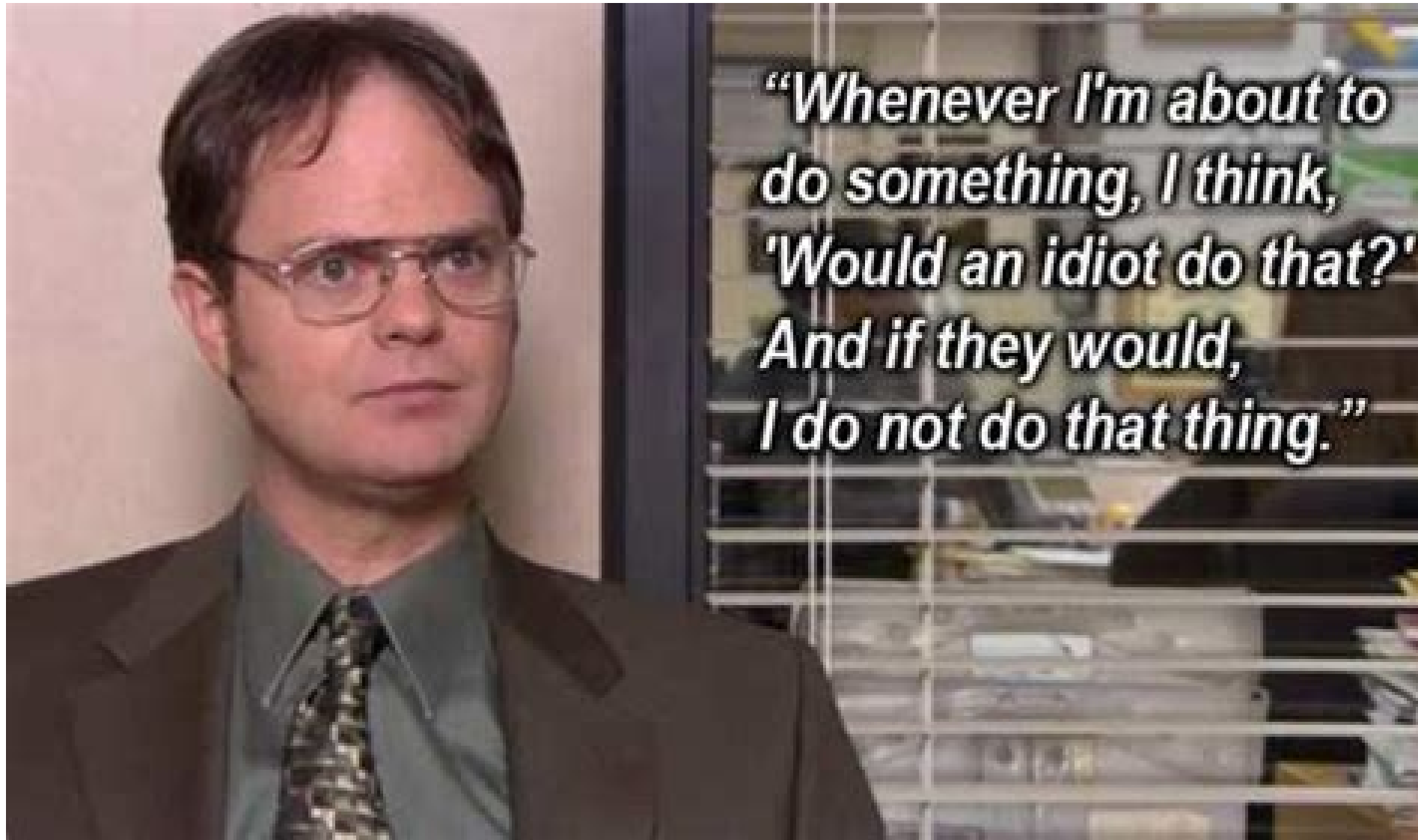
WITNESSED BY:

(WITNESS)

Employee comments (Use back of this form if necessary): _____

c: Steven B. Horowitz, Esq.

_____, Union Business Agent



“Whenever I’m about to do something, I think, ‘Would an idiot do that?’ And if they would, I do not do that thing.”

QUESTIONS?



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