

AGRICULTURAL EMPLOYERS AND THE WAGE THEFT PREVENTION ACT

On April 9, 2011, the Wage Theft Prevention Act (WTPA) took effect in New York State. This Act requires that employers provide written notice of wage rate(s) to new employees at the time of hire, as well as to current employees by February 1st of each year. The wage notice must include: the rate(s) of pay, including overtime rate (if applicable); a description of how the employee is paid (by the hour, shift, day, week, etc.); the regular payday each week; the official name of the employer and any other names used for business (DBAs); the address and phone number of the employer's main office or location; and any allowances taken as part of the minimum wage (i.e., meal and/or lodging deductions).

To assist agricultural employers in complying with this provision of the WTPA, the NYS Department of Labor's Agriculture Labor Program created the Supplement to ETA 790 (AL790.1, located at www.labor.ny.gov/formsdocs/dipa/al790.1.pdf). This supplement is for employers of H-2A guest workers and domestic workers employed on the farm who are performing the same duties and tasks as the H-2A workers. This form should be provided to employees, in addition to the ETA 790 and all of its attachments as required by federal regulations. Employers can choose to use the AL790.1 in conjunction with the ETA 790 to meet the requirements of the WTPA.

Another way for agricultural employers to comply with the WTPA is to use the Pay Notice and Work Agreement for Farm Workers (LS309). This document ensures that agricultural employers provide a written work agreement upon hire. It is also available in Spanish (LS309S). If you have H-2A guest workers on your farm but also have domestic workers that are not doing H-2A job duties, you should continue to use the LS309 or LS309S (Spanish) at least for the domestic workers that are not doing H-2A job duties.

As the State Workforce Agency (SWA), the Department of Labor is responsible for providing, in Spanish, the essential terms and conditions of each H-2A job order (ETA 790) to the SWAs in New Jersey, Pennsylvania, and Puerto Rico. These states help supply workers to agricultural employers in New York. The essential terms and conditions are compiled on a form called the AL516S. Because the AL516S may be helpful to employers who are providing notice to their workers as part of the WTPA, the Agriculture Labor Program also makes the AL516S available to H-2A farmers in New York. With this completed form, employers can provide the Spanish translations of the pay rate, job description, and other terms of employment on the notice of their choosing (AL790.1 or LS309) to their employees, upon hire and/or on a yearly basis, between January 1st and February 1st of each year.

Regardless of the form used, the notice must be signed by the employee and the employer or employer's representative ("Preparer") on the day the wage rate notice is provided to the employee. Both the employee and the employer must each receive a copy of the form with all signatures present. Please note that completing the pay notice may mean you are only partially in compliance with the WTPA, as there are other provisions, including a six-year payroll and time record retention provision.

For questions regarding any of these forms or Labor Law compliance, please contact the Agriculture Labor Specialist serving your county. You may also contact the Foreign Labor Certification Unit at ForeignLaborCert@labor.ny.gov. Find contact information for the Agriculture Labor Specialists and other information on the services for agricultural employers by visiting the Agriculture Labor Program's website at <http://www.labor.ny.gov/immigrants/agriculture-labor-program.shtm>.

This article was provided by the NYS Department of Labor's Agriculture Labor Program.