



New York State Department of Labor Standards  
Division of Labor Standards

## **Instructions: “Model Notices” of Pay Rates and Pay Days under Section 195.1 of the NYS Labor Law**

The Department of Labor provides model notices for several common types of pay agreements. Employers may create their own notices or use or adapt the Department forms, as long as

- the required information is given,
- the employee is given a copy, and
- the employee signs an acknowledgment of receipt, which the employer keeps for six years.

Below are instructions for choosing among the model notices. For further information or assistance, please contact the Department’s Division of Labor Standards.

### **Hourly Rate plus Overtime**

This form may be used for hourly employees that are not exempt from coverage under the applicable State and Federal overtime provisions. For example, this form is appropriate for an employee whose regular rate of pay is ten dollars per hour and overtime rate is fifteen dollars per hour.

### **Mixed Hourly Rates**

This form is appropriate for employees who are paid more than one rate for different types of work or different shifts. For example, this form would be appropriate for an employee who is paid ten dollars per hour for work as a janitor and twelve dollars per hour for work as a landscaper, or an employee who is paid one rate for working the day shift and another rate for the night shift.

### **Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)**

This form may be used for employees who receive a weekly rate or a salary for a fixed number of hours (40 or fewer in a workweek).

- The employee’s regular rate is determined by dividing the weekly rate or salary by the number of hours it is intended to compensate.
- The overtime rate is 1½ times the regular rate.

Except in very limited circumstances, it is illegal to pay a fixed (unchanging) weekly rate for work weeks that vary over 40 hours. Even where there is a standard work week, there are usually occasions when work hours vary. For this reason, we have not provided a model notice for weekly rates for workweeks of over forty hours. In order to avoid overtime violations, the Department strongly recommends that employers pay an hourly rate to overtime eligible employees whose standard workweek is over 40 hours.

### **Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate, or Other Non-Hourly Basis**

This form is appropriate for non-exempt employees who are paid a salary for varying hours of work, a daily rate, piece rates, flat rates, or any other pay that not based on actual hours worked.

In each overtime week, the employer must

- calculate the regular rate (total regular pay divided by total hours worked)
- calculate the overtime premium (1/2 the regular rate)
- multiply the overtime premium by the number of overtime hours, and
- pay the overtime premium in addition to the salary, day rate, piece rate, flat rate, or other pay.

### **Prevailing Rate and Other Jobs**

This form may be used when the employee

- will work on public work projects (i.e., projects covered by the prevailing wage provisions in State and Federal Law), or
- do mixed prevailing rate and non-prevailing rate work.

There is space on the form for the employer to enter the regular and overtime rates to be paid for the other (non-prevailing wage) work. The form explains to the employee that any premium pay received on prevailing wage jobs in a week will be credited toward any overtime premium due for working over 40 hours in the week.

### **Exempt Employees**

This form may be used for employees who are exempt from premium overtime pay under either State regulations or the Federal Fair Labor Standards Act. The employer should identify the overtime exemption or, if an employee is outside of the definition of the term “employee” in Article 19 of the New York State Labor Law, the employer should identify the minimum wage exemption.