

# NEW YORK

## EMPLOYMENT LAW GUIDE

Federal, state and local governments adopt labor and employment laws to protect the rights, health and compensation of workers.

As a general rule, federal laws supersede state and local laws. However, state and local laws can supplement or provide additional protections to employees and impose additional requirements that employers must follow. When a conflict exists between federal and local requirements, the U.S. Department of Labor instructs employers to follow the law that provides the highest protection or greater benefit to the employee.

This Employment Law Guide provides employers a reference of key state labor and employment laws. Employers can use the content in this guide to learn more about their obligations and liability under state law. When possible, this guide includes direct links to agency guidance and official posters, notices and forms.

Please note that this guide provides a high-level overview of labor and employment standards in the state. Additional requirements may apply or be adopted. Employers are encouraged to consult with knowledgeable legal professionals or to contact state agencies for legal advice, authorized guidance and official interpretations of these or other employer requirements.



# TABLE OF CONTENTS

<b>RECRUITMENT AND HIRING</b>	<b>3</b>	<b>EMPLOYEE LEAVE</b>	<b>13</b>	<b>DRUG TESTING AND LEGALIZED MARIJUANA</b>	<b>21</b>
Arrests and Convictions.....	3	Paid Family Leave.....	13	Recreational Marijuana .....	21
Salary History Inquiries .....	3	Paid Sick Leave .....	13	Medical Marijuana.....	21
Additional Local Requirements .....	4	Civic Duty Leave .....	14	<b>NOTICES AND POSTERS</b>	<b>22</b>
New Hire Reporting .....	5	Voting Leave.....	14	Posters Required for All New York Employers.....	22
<b>EMPLOYEE COMPENSATION AND WAGES</b>	<b>6</b>	Military and Military Spouse Leave .....	14	Employers Subject to Specific Laws .....	22
Minimum Wage Rate.....	6	Bone Marrow and Blood Donation Leave .....	14	Construction Industry and Public Works .....	23
Overtime Pay.....	8	Adoptive Parents Leave .....	14	Food And Beverage Industry .....	23
Work Hour Requirements .....	9	Bereavement Leave .....	14	Public Employers .....	23
Wage Payment Requirements.....	10	Domestic Violence Leave.....	14	<b>RECORDKEEPING REQUIREMENTS</b>	<b>24</b>
Last Payment of Wages .....	12	Volunteer Emergency Responder Leave .....	15	Apprenticeships .....	24
		<b>DISCRIMINATION</b>	<b>16</b>	Child Labor.....	24
		Unlawful Practices .....	16	Unemployment Compensation .....	24
		Sexual Harassment .....	17	Wage and Hour .....	25
		Sexual Harassment – New York City .....	19	Workers’ Compensation .....	25
				Penalties .....	25



# RECRUITMENT AND HIRING

## ARRESTS AND CONVICTIONS

## SALARY HISTORY INQUIRIES

## ADDITIONAL LOCAL REQUIREMENTS

## NEW HIRE REPORTING

3

3

4

5

In addition to complying with all applicable federal and state nondiscrimination laws, during the recruiting and hiring process, New York employers must follow state laws on criminal records and salary history inquiries.

### ARRESTS AND CONVICTIONS

In general, employers with 4 or more employees are generally prohibited from:

- Inquiring about any arrest or criminal accusation that is not yet or no longer pending against an applicant. However, New York employers are not prohibited from asking an applicant if he or she has any current pending arrests or accusations.
- Inquiring about an individual's arrest or criminal accusation where the arrest or accusation has been resolved in favor of the applicant, by a youthful offender adjudication, or resulted in a sealed conviction.
- Requiring the applicant to divulge information about any arrest or criminal accusation where the arrest or accusation has been resolved in favor of the applicant, by a youthful offender adjudication, or resulted in a sealed conviction.
- Taking any adverse action based on any arrest or criminal accusation where the arrest or accusation has been resolved in favor of the applicant, by a youthful offender adjudication, or resulted in a sealed conviction.

Also, New York employers with 10 or more employees are generally prohibited from discriminating in employment based on prior convictions.

Finally, at the request of an applicant previously convicted of one or more criminal offenses whose job application has been denied, the employer must provide a written statement setting forth the reasons for the denial within 30 days of the request.

### SALARY HISTORY INQUIRIES

[State law](#) prohibits all employers in New York from asking job applicants and employees about their past salaries or wages. State law also prohibits employers from seeking this type of information from other sources, such as an individual's current or former employer, unless:

- An offer of employment for a specified compensation amount has been made to the individual; and
- The individual responded to the offer by providing prior pay information to support a higher compensation amount.

However, even if an individual voluntarily (and without prompting) provides past pay information before an offer is made, employers may not rely on that information for any employment-related decisions affecting that individual.

#### Covered Employers

All employers in NYS must comply with the new prohibitions against seeking an individual's prior pay history. The law specifies that the term "employer" includes, but is not limited to, the following and their agents:

- Every person, corporation, limited liability company (LLC), association, labor organization or entity that employs any individual in any occupation, industry, trade, business or service;
- The state, the state's political subdivisions and every other governmental entity; and
- Every person, corporation, LLC, association or entity that connects applicants with employers.

#### Prohibited Actions

As of Jan. 6, 2020, the law prohibits employers from:

- Relying on an applicant's wage or salary history in determining whether to offer a job to the applicant or how much to pay the applicant;
- Seeking, requesting or requiring wage or salary history from an applicant or employee as a condition of employment or consideration for employment;
- Retaliating against or refusing to interview, hire, promote or otherwise employ an individual based on the individual's past wage or salary or because the individual has either refused to provide past wage or salary information or filed a complaint with the NYS Department of Labor against the employer; and
- Except under specific circumstances, seeking, requesting or requiring an applicant or employee's wage or salary history from a current or former employer (or its employees or agents).

#### Confirmation Exception

An employer may confirm an individual's wage or salary history only if, at the time an offer of employment with compensation is made, the individual responds to the offer by providing prior wage or salary information to support a wage or salary higher than the amount offered by the employer.

### Enforcement

Individuals who believe an employer has violated the new law may file a civil lawsuit against the employer. If a court finds that an employer has violated the law, it may order the employer to pay the plaintiff's actual damages and reasonable attorney's fees.

## ADDITIONAL LOCAL REQUIREMENTS

Additional local requirements and exceptions to the information above may apply. For more information, on local laws please review the information below or contact your local labor and employment regulatory agency.

### Albany County Employers

Albany County employers with 4 or more employees are [generally prohibited](#) from:

- Screening job applicants based on their current or past compensation, including benefits;
- Requiring an applicant's prior compensation to satisfy minimum or maximum criteria;
- Asking for or requiring a job applicant to disclose prior compensation as a condition of being interviewed or continuing to be considered for an employment offer; and
- Before making a job offer with compensation, seeking a job applicant's salary history from a current or former employer. However, after any such offer has been made, a job applicant may provide written authorization to confirm prior compensation.

### New York City Employers

New York City employers with 4 or more employees are also generally prohibited from:

- Inquiring about an applicant's salary history or relying on an applicant's salary history in determining the salary, benefits or other compensation for the applicant during the hiring process. However, an employer may—without inquiring about salary history—engage in discussion with the applicant about his or her expectations with respect to salary, benefits, and other compensation. In addition, employers may verify and consider current or prior earnings or benefits if the applicant offers this information voluntarily. [Click here](#) for additional information;
- Inquiring about an applicant's criminal history or requesting permission to run a criminal background check until after a conditional offer of em-

ployment has been made. After a conditional offer of employment has been made, the employer may then ask whether the applicant has a criminal conviction history and run a background check, but only after giving notice and receiving the applicant's permission. Once the employer knows about the applicant's conviction history, the employer may then ask the applicant about the circumstances that led to the conviction.

- Seeking or considering information pertaining to an applicant's non-conviction; and
- Effective May 10, 2020, requiring applicants to submit to marijuana testing as a condition of employment. However, a pre-employment testing exception applies to:
  - Police and peace officers;
  - Individuals required to comply with section 3321 of the city's building code or section 220-h of the labor law—both dealing with construction safety training;
  - Individuals required to hold a commercial drivers' license;
  - Individuals who supervise or care for children, medical patients or vulnerable persons;
  - Individuals with the potential to significantly impact the health or safety of employees or members of the public (as determined by the [city's administrative services](#));
  - Drug testing requirements under certain federal, state and local rules relating to transportation, safety or security;
  - Federal contracts and grants requiring drug testing; and
  - Collective bargaining agreements that address this type of pre-employment drug testing.

Finally, if a New York City employer with 4 or more employees wants to revoke a job offer based on an applicant's criminal record, the employer must:

- Explain to him or her why using the [Fair Chance Notice](#);
- Provide him or her with a copy of any background check conducted by the employer or third-party vendor; and
- Give him or her 3 business days to respond.

### Suffolk County Employers

Suffolk County employers with 4 or more employees will be [generally prohibited](#) from:

- Inquiring about a job applicant's wage or salary history, including compensation and benefits.
- Relying on the salary history of a job applicant in determining the job applicant's wage or salary amount at any stage in the employment process, including the job offer.

### Westchester County Employers

Westchester County employers with 4 or more employees are also [generally prohibited](#) from:

- Relying on the wage history of a prospective employee from any current or former employer in determining his or her wages;
- Requesting or requiring a prospective employee to disclose information about his or her wages from any current or former employer as a condition of being interviewed or continuing to be considered for employment;
- Seeking the previous wages of any prospective employee from any current or former employer. However, after obtaining written consent, employers may seek to confirm prior wage information after an offer of employment has been made and the prospective employee responds to the offer by providing prior wage information to support a higher wage;
- Refusing to hire or otherwise retaliating against an employee or applicant based on prior wage history;
- Including in any advertisement, solicitation, or publication any limitation or specification in employment based on a person's arrest record or criminal conviction; and
- Questioning or making a statement about a criminal conviction or arrest record of any person in an application for employment. After the submission of an application for employment, an employer may inquire about the applicant's arrest or conviction record in accordance with state law. Before taking any adverse employment action based on that inquiry, however, the employer must perform an analysis of the applicant's criminal record and other factors, and the analysis may be requested by the applicant. If requested, the employer must provide a written statement setting forth the reasons for the denial.

## NEW HIRE REPORTING

Employers must report the following information for each newly hired or re-hired employee within 20 calendar days of the hiring date (if an employer reports electronically, it must submit two monthly reports—if needed—between 12 and 16 days apart):

- Employee name (first, middle initial, last), address (street, city, state, and ZIP code), Social Security number, and hire date.
- Employer name, address (street, city, state, and ZIP code), and identification number (assigned by the IRS).
- Whether dependent health insurance benefits are available to the employee and if so, the date the employee qualifies for the benefits.

Employers required to report to New York State (and multistate employers who designate New York as their reporting state) should use one of the methods below to submit the new hire information:

- Online through the [New York New Hire Online Reporting Center](#).
- Submit a copy of the employee's [Form IT-2104](#) in place of, or in addition to, the federal Form W-4 via fax/mail to the New York State Department of Taxation and Finance.

Additional requirements may apply.



# EMPLOYEE COMPENSATION AND WAGES

- MINIMUM WAGE RATE 6
- OVERTIME PAY 8
- WORK HOUR REQUIREMENTS 9
- WAGE PAYMENT REQUIREMENTS 10
- LAST PAYMENT OF WAGES 12

## MINIMUM WAGE RATE

The minimum wage rate in New York is set to increase to \$15 per hour over the next few years. The table below shows scheduled minimum wage rate increases.

	Area/Region	Employers	New Rate
Dec. 31, 2020	Long Island and Westchester	All employers	\$14 per hour
	Remainder of the state	All employers	\$12.50 per hour
	Throughout the state	Fast food workers	\$14.50 per hour
Dec. 31, 2021	Long Island and Westchester	All employers	\$15 per hour
	Remainder of the state	All employers	\$13.20 (this rate will be updated annually by NYDOL until it reaches \$15 per hour)
	Throughout the state	Fast food workers	\$15 per hour

Employee wages are generally defined as the entire amount of compensation the employee receives for his or her labor or services. Typically, this includes bonuses, commissions and vacation pay, but **excludes** severance pay. Wages can be fixed or based on time, task, piece, commission or other method. Additional local, city, prevailing wage and living wage orders may apply.

### Minimum Wage Rate Exemptions

New York minimum wage rate requirements do not apply to:

- Federal, state and municipal employees;
- Bona fide executive, administrative and professional employees;
- Outside sales personnel;
- Students employed by religious, educational or charitable institutions;
- Students working for sororities, fraternities, college clubs and dormitories;
- Farm laborers;
- Physically or mentally impaired individuals working for religious, educational or charitable institutions;

- Casual babysitters and companions;
- Taxi cab drivers;
- Bona fide volunteers;
- Apprentices and learners;
- Member of religious orders (such as duly ordained, commissioned or licensed ministers, priests, rabbis, sextons or Christian science readers);
- Summer camp employees working for religious, educational or charitable institutions; or
- Youth camp staff counselors.

### Fast Food Workers

New York has [separate minimum wage rates](#) for fast food workers. After a series of annual increases, which began on Dec. 31, 2015, the minimum wage for all fast food workers is \$15.00 per hour. Fast food workers are employees working for a fast food establishment, if their duties include customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance.

A “fast food establishment” is any establishment:

- That primarily serves food or drink items;
- Where patrons order or select items and pay before eating (items may be consumed on the premises, taken out or delivered to the customer’s location);
- That offers limited service; and
- That is part of a chain that has more than 30 or more national establishments (may include integrated enterprises and franchises).

Fast food establishments include establishments located within non-fast food establishments. The minimum wage rate increase tables above incorporate the timeline for implementing a higher minimum wage rate for fast food workers across the state.

### Hospitality Industry Wage Order

The NYDOL has issued a [Hospitality Industry Minimum Wage Order](#) (HWO) to regulate minimum wage rates for restaurant and hotel employees. The HWO requires employers to use an hourly wage rate and prohibits the practice of salary, week-, day- or piece-rate payments to deter excessive long hours of work for hospitality industry employees. An exception to this payment prohibition exists for commissioned sales personnel within the hospitality industry.

New York State law allows employers in all industries other than building service to satisfy the minimum wage by combining a cash wage paid by the employer with a credit or allowance for tips that the employee receives from customers. The state has two separate cash wage and tip credit schedules for tipped hospitality employees, depending on whether they are classified as either:

- Food service workers: Any employee who is primarily engaged in serving food or beverages to guests, patrons, or customers in the hospitality industry who regularly receive tips. This includes wait staff, bartenders, captains, and busing personnel. It does not include delivery workers.
- Service employees: Any employee who is not a food service worker or fast food employee, but customarily receives tips.

Location	12/31/20		12/31/21	
	Food service	Service	Food service	Service
NYC – Large Employers (of 11 or more)	\$10.00 Cash \$5.00 Tip	\$12.50 Cash \$2.50 Tip	\$10.00 Cash \$5.00 Tip	\$12.50 Cash \$2.50 Tip
NYC – Small Employers (10 or less)	\$10.00 Cash \$5.00 Tip	\$12.50 Cash \$2.50 Tip	\$10.00 Cash \$5.00 Tip	\$12.50 Cash \$2.50 Tip
Long Island & Westchester	\$9.35 Cash \$4.65 Tip	\$11.65 Cash \$2.35 Tip	\$10.00 Cash \$5.00 Tip	\$12.50 Cash \$2.50 Tip
Remainder of New York State	\$8.35 Cash \$4.15 Tip	\$10.40 Cash \$2.10 Tip	\$8.35 Cash \$4.15 Tip	\$10.40 Cash \$2.10 Tip

### Additional Minimum Wage Orders

The NYDOL has also issued minimum wage orders for the [building service](#), [farming](#), [nonprofit](#) and [miscellaneous industries](#).

### Meal and Lodging Allowance

A meal-and-lodging allowance is a credit that employers can use when calculating an employee’s wage rate. This credit is offered to offset the cost of meals and lodging employers provide for their workers. The amount of credit available for each meal or day of lodging depends on each employee’s occupation. Check with the NYDOL, a certified accountant or a licensed attorney for the rates that specifically apply to your situation. Allowances for meals or lodging cannot be used to calculate an employee’s call-in pay.

### Uniform Pay and Maintenance

New York law also regulates an employer’s obligation to compensate its employees when uniforms are required for work. Employers must reimburse their employees for the total cost of required uniforms no later than the next regular payday.

The reimbursement must be for a number of uniforms commensurate to the average number of days the employee works during a workweek. Employees are solely responsible for the cost of any additional uniforms.

The amount of uniform pay employers must provide depends on how many hours each employee works during a workweek. However, employers are not required to provide uniform pay for required uniforms when:

- Uniform maintenance does not go above and beyond regular apparel maintenance and the employer provides or subsidizes an employee’s ability to have a number of uniforms commensurate with the average number of days the employee works per week to allow him or her to report to work with all necessary apparel on a regular basis; or
- The employee refuses to use the employers’ uniform maintenance service (employer must provide service free of charge, maintain employee uniforms with reasonable frequency, ensure that adequate, clean and properly fitting uniforms are consistently available and inform employees individually and in writing that this service is available).

### Call-in pay

Employers must pay their employees their regular wage rate for all hours they are required to report for work outside of their regular shift, regardless of whether they are actually assigned to work or just requested to stand-by for additional instructions.

An employee’s regular shift is the fixed, repeating shift the employee normally works on the same day of each week. An employee does not have a regular shift if his or her hours or scheduled work hours change from week to week. When calculating call-in pay, employers must compensate each employee with the lesser of:

- At least three hours (or four, depending on the employee’s occupation) for one shift, or the number of hours in the regularly scheduled shift;
- At least six hours for two shifts totaling six hours or less, or the number of hours in the regularly scheduled shift; or
- At least eight hours for three shifts totaling eight hours or less, or the number of hours in the regularly scheduled shift.

### Notice

New York law requires employers to provide a wage notice to every employee at the time of hiring. The notice must be in English, and, if applicable, in the employee’s primary language and must indicate (among other things):

- The employee’s wage rate;
- Whether the pay is based on a per hour, shift, day-, week-, piece-rate or salary;
- The type and amount of any allowances claimed as a credit when calculating the employee’s wage rate;
- The regular payday designated by the employer;
- The employer’s name, including any “doing business as” designations;
- The employer’s main office address (and mailing address, if different); and
- The employer’s telephone number.

Employers are required to retain proof that each employee received this notice for up to six years. Employers must also notify their employees of any changes to the information mentioned above at least seven calendar days before the changes take place, unless the changes are reflected on the employee’s wage statement. Employers must also notify their employees of policies regarding sick leave, vacation, personal leave, holidays and hours of work.

Finally, employers must inform their employees, in writing, of their exact termination date, if applicable, as well as the exact date of cancellation of employment benefits connected with the termination. An exception is possible when circumstances allow only for a five-day notice of termination.



## OVERTIME PAY

New York law requires employers to compensate their employees with one and one-half times their regular wage rate for any overtime hours worked. Overtime hours are hours worked in excess of 40 hours in a workweek. The hours an employee works during one workweek cannot be averaged with the hours worked on any other workweek.

### Calculating the Regular Rate of Pay

The regular wage rate is the actual rate of pay employees receive for a standard, non-overtime workweek. Employers must calculate their employees' regular rate before determining applicable overtime wages. An employee's regular rate can vary from week to week and may be different from the employee's contractual rate of pay.

To calculate an employee's regular rate for a specific work period, employers must divide the employee's entire compensation for a workweek by the number of hours the employee worked during that period. An employee's entire compensation is all compensation paid to the employee. This includes the employee's hourly rate, shift differential, minimum wage tip credit, non-discretionary bonuses, production bonuses and commissions, but excludes:

- Bona fide gifts;
- Business expense reimbursements;
- Overtime pay and premiums paid for work performed on weekends and holidays (must be at least one and one-half times the employee's regular rate);
- Discretionary bonuses;
- Fringe benefits pay;
- Profit-sharing and savings plan payments;
- Employer contributions to benefit plans; and
- Payment for non-working hours (for example, pay for vacation, sick leave or jury duty).

Employers must calculate an employee's regular wage rate before subtracting any tip credit or wage allowance. Employers that subtract tips or wage allowances from an employee's wages before calculating overtime compensation violate overtime wage payment requirements. A workweek in New York is a fixed period of 168 hours, or seven consecutive 24-hour workdays. The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week.

### Compensable Time

Employers must compensate their employees for all hours of work. To determine the number of hours an employee works during a workweek, the employer must consider any time during which the employee was subject to the employer's control. This includes any time the employee is:

- Allowed to work (regardless of whether he or she is required to work);
- Waiting for a job assignment;
- Waiting to begin work;
- Cleaning or performing other "off-the-clock" duties; and
- Traveling under the request, control or direction of the employer (excluding normal commuting time to and from work).

However, compensable time for residential employees does not include any time the employee is sleeping or is free to leave the employer's premises, even if he or she is required to be on call during this time. A residential employee is an employee that lives on the employer's premises. Additional requirements may apply to compensable time for meal periods and sleep times that are excluded from hours worked under the FLSA.

### Executive and Administrative Employee Exemption

New York's wage orders dictate the salary threshold that [executive](#) and [administrative](#) employees need to meet to qualify for an overtime exemption. The salary threshold for executive and administrative employees depends on the employer's location. Employers are encouraged to visit the NYSDOL website and use the following answers to [frequently asked questions](#).

- \$1,125 per week (\$58,500 per year) for exempt employees in New York City, Nassau, Suffolk and Westchester;
- \$900 per week (\$51,480 per year) for exempt employees in the rest of the state.

### Farm Workers

On Feb. 22, 2023, the New York State Department of Labor (NYDOL) published amendments to the state's overtime regulations for farm workers. These amendments incorporate the Farm Labor Wage Board recommendation to reduce the overtime threshold for farm workers from 60 to 40 hours per week.

The overtime threshold determines how many hours farm workers need to work before they qualify for overtime pay. The amendments specify that the overtime threshold for farm workers will be reduced to 40 hours per week over a 10-year period. Employers will need to compensate their farm workers

for overtime at a wage of at least 1.5 times their regular rate of pay if they work more than the following number of hours in one workweek:

- 60 hours on or after Jan. 1, 2020;
- 56 hours on or after Jan. 1, 2024;
- 52 hours on or after Jan. 1, 2026;
- 48 hours on or after Jan. 1, 2028;
- 44 hours on or after Jan. 1, 2030;
- 40 hours on or after Jan. 1, 2032.

The NYDOL is not authorizing any exceptions to these requirements at this time.

### Additional Exemptions

In addition to the exemption for executive and administrative employees, overtime wage payment requirements in New York do not apply to:

- Federal, state and local government employees;
- Bona fide professional employees;
- Outside sales personnel;
- Students employed by religious, educational or charitable institutions;
- Students working for sororities, fraternities, college clubs and dormitories;
- Farm laborers;
- Physically or mentally impaired individuals working for religious, educational or charitable institutions;
- Casual babysitters and companions;
- Taxi cab drivers;
- Bona fide volunteers;
- Apprentices and learners;
- Member of religious orders (such as duly ordained, commissioned or licensed ministers, priests, rabbis, sextons or Christian science readers);
- Summer camp employees working for religious, educational or charitable institutions; or
- Youth camp staff counselors.



### Prohibition on Mandatory Overtime for Nurses

Employers cannot require nurses to work overtime. For this purpose, employers must consider on-call time as regular work time. If an exception applies and employers can require nurses to work overtime, employers may not use on-call time as a substitute for mandatory overtime. Employers can impose mandatory overtime on nurses during:

- A health care disaster (natural or other type of unexpected disaster affecting the county or contiguous county where the nurse is employed);
- A government-declared state of emergency;
- A patient care emergency (an unforeseen situation requiring the presence of the nurse to provide safe patient care); or
- An ongoing medical or surgical procedure.

### Spread of Hours for Restaurant and Hotel Employees

Restaurants and all-year hotel employees with a spread of hours greater than 10 are entitled to receive one additional hour of pay at the basic minimum hourly wage rate. This additional hour of pay cannot be offset by wage allowances such as meals or lodging credits, and need not be included when calculating an employee's regular wage rate for overtime pay purposes.

The spread of hours is the length of the interval between the beginning and the end of an employee's workday, including work time, meal breaks and rest periods.

## WORK HOUR REQUIREMENTS

New York law recognizes the eight-hour work day as a legal day's work. However, longer work day requirements are possible for:

- Farm workers;
- Domestic employees;
- Brickyard employees (up to 10 hours per day but workday cannot begin before 7 a.m.); and
- Railroad employees.

Railroad employees can be required to work 10-hour workdays if they are working for street surface or elevated railroad. The 10-hour shift must include a 30-minute meal break.

Employees engaged in the operation of steam or electric surface, subway or elevated railroads where the mileage system of running trains is not in use may

be required to work a 10-hour shift within 12 consecutive hours. This requirement does not apply to signalpersons.

### Day of Rest

Employers must provide their employees with at least 24 consecutive hours of rest during every calendar week. Whenever possible, this day of rest should coincide with the day each employee reserves for traditional religious worship.

Domestic workers can voluntarily waive their right for a day of rest. However, after one year of work with the same employer, a domestic employee is entitled to receive at least three additional days of rest in each calendar year at his or her regular rate of compensation.

These requirements do **not** apply to:

- Foremen in charge;
- Individuals working for a place where, by an established policy, motion pictures, vaudeville or incidental state presentations are regularly presented throughout the week (exception excludes engineers and firefighters employed at these locations);
- Dairy, creamery, milk condensery, milk powder factory, milk sugar factory, milk shipping station, butter and cheese factory, ice cream manufacturing plant and milk bottling plant employees where not more than seven persons are employed;
- Employees engaged in an industrial or manufacturing process necessarily continuous, in which no employee is permitted to work more than eight hours in any calendar day (this exception requires the approval of the board); Employees whose duties include not more than three hours' work on Sunday in setting sponges in bakeries, caring for live animals, maintaining fires, or making necessary repairs to boilers or machinery;
- Resort, seasonal hotel and restaurant employees in rural communities, cities and villages (with a population of fewer than 15,000 inhabitants); or
- Dry dock plant employees engaged in making repairs to ships.

Employers must notify each employee of his or her designated day of rest. Employers cannot require their employees to work on their designated day of rest. However, employers that encounter practical difficulties or unnecessary hardships to carry out the provisions of this requirement can request an exception from the NYDOL. The request is subject to a non-refundable \$40 application fee.

### Meal Breaks

Employers must allow their employees at least a 30-minute noon meal break (60 minutes for factory employees) during any shift that is more than six hours long. The noon meal break must take place between 11 a.m. and 2 p.m. and the employee's shift must extend over the noon meal period. Employees must be relieved of all duties during this break and must be allowed to pursue personal activities and interests.

Employers must provide a 45-minute meal break (60 for factory employees) during any shift that is more than six hours long when the shift begins between 1 p.m. and 6 a.m. The meal break must be scheduled as closely as possible to the shift's midway point.

Employers must provide an additional 20-minute meal break for employees whose shift starts before 7 a.m. and continues past 7 p.m. This additional meal break must take place between 5 p.m. and 7 p.m.

Employers can apply for a shorter-meal-break permit with the NYDOL. Employers must conspicuously post any permit it obtains in the main entrance to the establishment. The NYDOL reserves the right to revoke these permits at any time.

### Nursing Mothers

New York law requires employers to provide nursing mothers with a reasonable, unpaid break time each day to express breast milk for her infant child. A working mother may decide to use paid break time instead of taking an additional unpaid break.

This break period must be provided for up to three years after the child is born. Employers must make reasonable efforts to provide a location close to the employee's work area, other than a toilet stall, where the employee may take this break in privacy.

### New York City Work Schedules

New York City generally requires all employers to grant each employee two requests for a temporary change to his or her work schedule per calendar year due to a personal event. Employers cannot punish, penalize, retaliate, or take any action against employees that might stop or deter them from exercising their rights under the law. This law covers workers regardless of immigration status.

Employees may request this change if they work 80 or more hours per calendar year in New York City and have been employed by their employer 120 or more days. Additional rules may apply, particularly to fast food and retail employers. For more information, please contact the New York City [Department of Consumer Affairs](#) at 3-1-1 from within NYC or 212-639-9675 outside NYC.

Exceptions to this requirement apply to:

- Government employees
- Certain employees subject to a collective bargaining agreement
- Certain employees in motion picture, television, and live entertainment industries

#### *Temporary Change*

A temporary change is a limited alteration in the hours or times that or locations where an employee is expected to work. This includes, but is not limited to, using paid time off, working remotely, swapping or shifting work hours, or using short-term unpaid leave.

#### *Personal event*

A personal event includes:

- The need to care for a child under the age of 18
- The need to care for a “care recipient,” a person with a disability who is a family or household member and relies on the employee for medical care or to meet the needs of daily living
- The need to attend a legal proceeding or hearing for public benefits to which the employee, a family member, or the employee’s minor child or care recipient is a party
- Any other reason for which the employee may use leave under NYC’s Paid Safe and Sick Leave Law

“Family member” includes:

- Any individual whose close association with the employee is the equivalent of family
- Child (biological, adopted, or foster child; legal ward; child of an employee standing in loco parentis)
- Grandchild

- Spouse
- Domestic Partner
- Parent
- Grandparent
- Child or Parent of an employee’s spouse or domestic partner
- Sibling (including a half, adopted, or step sibling)
- Any other individual related by blood to the employee

#### *Notice Requirements*

Employers must post the notice “You Have a Right to Temporary Changes to Your Work Schedule” where employees can easily see it at each New York City workplace.

Employers must post this notice in English and in any language that is the primary language of at least 5% of the workers at a workplace if the translation is available on the DCA website [nyc.gov/dca](http://nyc.gov/dca).

#### *Recordkeeping*

Employers must retain electronic records documenting their compliance with the law for three (3) years unless another law requires that records be maintained for a longer period. If an employer fails to retain or produce records, employees receive a “rebuttable presumption” in their favor when they bring their complaint in court. This means that the burden will be on employers to show they did not violate the law.

## WAGE PAYMENT REQUIREMENTS

New York law requires employers to pay wages in lawful United States currency. Employers may satisfy this obligation by paying wages with cash, check or through direct deposit or payroll debit card.

#### **Frequency of Payment**

In New York, the frequency of wage payment depends on the employee’s occupation. Different payment requirements exist for manual workers, railroad workers, commissioned salespersons and clerical personnel.

However, most employers must pay employee wages at least twice per month, on pre-established regular paydays. New York laws do not restrict employers from paying wages to their employees on earlier days or at more frequent intervals. The information below summarizes New York frequency of payment requirements.

#### *Commission Sales Persons*

Minimum Payment Frequency: Monthly

Covered Pay Period: By the last day of the month following the month when commission is earned.

Conditions and Regulations:

- Additional compensation (extra incentives, bonuses and special payment) may be paid less frequently than once per month but no later than what is provided in an employee’s written employment agreement.
- Wage payment agreements must be in writing, signed by the employer and the commission sales person, kept on file for at least three years and made available to the NYDOL upon request. The agreement must describe how wages, commissions and other monies are calculated and paid. The agreement must also provide details on how to process an employee’s last payment of wages.



### *Railroad Workers*

Minimum Payment Frequency: Weekly (on Thursdays)

Covered Pay Period: The seven-day period ending on Tuesday of the preceding week.

Conditions and Regulations:

- At a worker's written request and address notification, employers have an obligation to send the paycheck through first-class mail via the U.S. Postal Service.
- An exception exists for workers in commuter railroads under the jurisdiction of the metropolitan transportation authority.

### *Manual Workers*

Minimum Payment Frequency: Weekly

Covered Pay Period: Within seven calendar days after the end of the week where wages are earned.

Conditions and Regulations:

Employers can pay semi-monthly wages to manual workers if the employer:

- Is a nonprofit organization; or
- Has employed at least 1,000 workers in the state during the previous three years or 1,000 workers in the state and 3,000 workers out of the state during the previous year.

Employers must receive NYDOL approval for this exception. Approval is possible for employers that have:

- Sufficient solvency to meet payroll obligations;
- No outstanding tax or unemployment insurance contributions;
- Current and valid workers' compensation and employee disability coverage;
- A history of meeting payroll obligations; and
- A computerized payroll record system that specifies each employee's number of hours worked, rate of pay, gross wages, deductions and date of payment.

### *Clerical and Other Workers*

Minimum Payment Frequency: Semi-monthly

Covered Pay Period: On regular, predetermined paydays.

#### **Withholdings and Deductions**

Employers may not withhold all or a portion of an employee's wages unless the withholding or deduction is authorized by law or the employee for his or her convenience or benefit. Common deductions authorized by law include taxes, union dues, FICA contributions, garnishments and court-ordered deductions such as child support. Common deductions authorized by employees include funds for employee participation in:

- Hospitalization and medical insurance plans;
- Savings plans and deposits to financial institutions;
- Pharmacy purchases made at the employer's place of business;
- Stock and bond purchases;
- Charitable donations
- Retirement plans;
- Discounted parking, fare cards or other entitlements to use mass transit;
- Fitness center, health club and gym membership dues;
- Cafeteria and vending machine purchases made at the employer's place of business; or property;
- Purchases made at employer gift shops (employer must be a hospital, college or university);
- Supplemental retirement plans;
- Loan payments;
- Tuition, room, board and fees for educational institutions;
- Day care and before- and after-school care expenses;
- Union dues;
- Housing;
- Employer goods or services; and
- Employer equipment

In addition, certain deductions are authorized only in limited circumstances. These include deductions necessary to correct an overpayment of wages caused by an employer's mathematical or clerical error and deductions used

to repay a wage advance or employer loan. New York law requires employers to follow specific procedures and strict guidelines when making these types of deductions.

Finally, New York law prohibits employers from making deductions from their employees' wages to replace the cost of spoilage or breakage, correct cash shortages (or losses), or cover fines and penalties employees incur for lateness, misconduct or quitting without notice.

Employers should record each withholding with accuracy. Wage deductions and withholdings cannot reduce an employee's gross wages below the minimum wage rate, unless a wage allowance or credit applies. Employers may not derive any financial gain from wage deductions.

#### **Statements**

Employers must provide each employee with an itemized statement at the time that the employee's wages are paid. The itemized statement must show:

- Gross wages earned;
- Number of hours worked;
- Wage rate;
- Wage allowances (if any are claimed);
- All withholdings and deductions for that pay period; and
- Net wages earned.

#### **Joint Liability for Wage Claims**

The state of New York has adopted a [new law](#) (AB 3350) that holds construction contractors and subcontractors jointly and severally liable for wage claims brought against their subcontractors. The new law becomes effective on Jan. 4, 2022, and will apply to all new, renewed, modified and amended contracts.

The new law allows employees and the NYDOL to file wage claims against contractors and subcontractors for unpaid wages. Contractors that cover a wage claim on behalf of their subcontractors can bring legal actions of their own to recover any amount paid to satisfy wage claims.

A contractor's joint and several liability for unpaid wages is limited to wage claims that take place within the three years prior to the initiation of the claim. Under AB 3550, a contractor's liability for wage claims cannot be waived by agreement or release, except through a valid collective bargaining agreement with a bona fide building and construction trade labor organization.

Finally, AB 3550 also creates a right for contractors to request and inspect sub-contractor records to ensure that subcontractors are complying with wage payment requirements. The law allows contractors to withhold payments owed to subcontractors that fail to provide this information on a timely basis.

## **LAST PAYMENT OF WAGES**

In the event of employment separation (through resignation or involuntary termination), employers are required to pay all of an employee's outstanding wages by the following regular payday. The wages must be mailed if the employee requests.

### **Payment of Unused Benefits on Termination**

Whether an employer must pay for unused time depends upon the terms of the vacation and/or resignation policy. New York courts have held that an agreement to give benefits or wage supplements, like vacation, can specify that employees lose accrued benefits under certain conditions. To be valid, the employer must have told employees, in writing, of the conditions that nullify the benefit.



# EMPLOYEE LEAVE

**PAID FAMILY LEAVE** 13

**PAID SICK LEAVE** 13

**CIVIC DUTY LEAVE** 14

**VOTING LEAVE** 14

**MILITARY AND MILITARY SPOUSE LEAVE** 14

**BONE MARROW AND BLOOD DONATION LEAVE** 14

**ADOPTIVE PARENTS LEAVE** 14

**BEREAVEMENT LEAVE** 14

**DOMESTIC VIOLENCE LEAVE** 14

**VOLUNTEER EMERGENCY RESPONDER LEAVE** 15

Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages, including vacation time, personal leave and sick leave. Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, New York employers must comply with state employment laws requiring employee leave for specific purposes.

Employers must also follow federal laws, such as the Family and Medical Leave Act (FMLA), that require employee leave.

New York has state laws mandating:

- Paid family leave;
- Sick leave (paid and unpaid);
- Civic duty leave;
- Voting leave;
- Military and military spouse leave;
- Bone marrow and blood donation leave;
- Adoptive parents leave;
- Bereavement leave;
- Domestic violence leave; and
- Emergency responder leave.

## PAID FAMILY LEAVE

New York's paid family leave law requires private sector employers to provide paid family leave benefits to eligible employees.

The paid family leave benefits are funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits, but may choose to do so.

Coverage for paid family leave benefits is typically included under an employer's existing disability benefits policy.

Under the law, employees must receive:

- Wage replacement benefits for up to 12 weeks of leave;
- Job reinstatement upon return from paid family leave; and
- Continuation of health insurance while out on paid family leave.

An employee may receive paid family leave benefits for the following reasons:

- To provide care to a family member with a serious health condition;
- To bond with the employee's child during the first 12 months after the child's birth, or after the placement of the child for adoption or foster care with the employee; or
- For any qualifying exigency as interpreted under the federal FMLA arising out of the fact that the spouse, domestic partner, child or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces.

Paid family leave benefits are funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits, but may choose to do so.

An employer may not discriminate or retaliate against employees for taking or inquiring about paid family leave.

Employers are required to conspicuously post a notice in the workplace to indicate their compliance with the paid family leave requirements. In addition, employers must provide employees who take eight or more consecutive days of family leave with a written notice of their rights under the paid family leave law.

Employers that maintain an employee handbook must include a paid family leave policy that outlines employees' rights and obligations, including how to file a claim for paid family leave. An employer that does not maintain a handbook must provide each employee with a written notice regarding all of the employee's rights and obligations under the paid family leave law, including information on how to file a claim for paid family leave.

## PAID SICK LEAVE

Employees are eligible for 40-56 hours of paid or unpaid sick leave per year, depending on employer size and income, as follows:

- Fewer than 5 employees; annual net income \$1 million or less: Up to 40 unpaid hours
- Fewer than 5 employees; annual net income over \$1 million: Up to 40 paid hours
- 5-99 employees: Up to 40 paid hours
- 100 or more employees: Up to 56 paid hours

Employees accrue one hour of sick leave for every 30 hours worked. Frontloading is permitted, and employees must be allowed to carry over unused leave to the following year. Leave must be allowed for specified reasons related to an employee's or family member's physical or mental illness, injury or health condition. Employees may also take leave for certain reasons related to domestic violence. Employer confidentiality rules apply.

Employees must be paid at their regular rate of pay or the applicable state law minimum wage, whichever is greater, but employees are not entitled to a payout of unused leave at the end of employment. Retaliation is prohibited, and employees returning from leave must be restored to their former positions.

Employers with policies that meet or exceed the law's benefits are not required to provide additional leave.

Employers must keep records of employee sick leave for six years, and they must provide a summary of accrued and used sick leave within three days on employee request.

## CIVIC DUTY LEAVE

An employee who is summoned to serve as a juror is eligible to take unpaid leave for the period of jury service. Employers with more than 10 employees cannot withhold the first \$40 of the juror's daily wages during the first three days of jury service. Notice and certification requirements apply.

Employers must allow employees who are crime victims or are subpoenaed as witnesses in criminal proceedings to take time off from work to attend the criminal proceedings. Leave is unpaid. Notice and certification requirements apply.

## VOTING LEAVE

New York State employees who are registered voters are eligible for up to two hours of paid time off to vote if they do not have "sufficient time to vote." "Sufficient time to vote" means four consecutive hours either from the opening of the polls to the beginning of the work shift, or from the end of the shift to the closing of the polls.

The amount of paid time off required must be determined on a case-by-case basis, as waiting times at polling places, traffic conditions and other factors

may vary. Time off for voting is required only at the beginning or end of employees' working shifts, as the employer may designate, unless otherwise mutually agreed. Notice and posting requirements apply.

## MILITARY AND MILITARY SPOUSE LEAVE

In addition to USERRA, New York law provides employment protections for New York and U.S. military members, including reemployment rights and military spouse leave.

Under military spouse leave, employers with 20 or more employees working in at least one work site must grant up to 10 days of unpaid leave to an employee who is a spouse of a military service member who has been deployed during a period of military conflict. Eligible employees must have worked for a covered employer for an average of 20 or more hours per week. Leave may only be taken while the military service member is on leave from deployment.

## BONE MARROW AND BLOOD DONATION LEAVE

Employers with 20 or more employees working in at least one work site must provide eligible employees with leave for bone marrow and blood donation. Employees are eligible for bone marrow or blood donation leave if they:

- Work for a covered employer for an average of 20 or more hours per week; and
- Seek to donate bone marrow or blood.

Leave for bone marrow donation may be taken in one or more periods, but may not exceed 24 work hours for each bone marrow donation. The leave period for blood donation varies depending on whether the donation takes place on or off the employer's premises.

Notice and certification requirements apply. Leave may be paid or unpaid, at the employer's discretion.

## ADOPTIVE PARENTS LEAVE

Employers must give employees who adopt a child the same leave benefits given to employees for the birth of a child, if the adopted child is either:

- Younger than school age (under five years old); or
- Hard to place or handicapped, and under 18 years old.

Employers cannot retaliate against an employee for exercising his or her right to adoptive parents leave.

## BEREAVEMENT LEAVE

Employers are not required to provide funeral or bereavement leave for employees.

If employers allow employees to take funeral or bereavement leave for the death of the employee's spouse or the child, parent or other relative of the employee's spouse, the employer must provide the same leave to an employee for the death of the employee's same-sex committed partner or the child, parent or other relative of that partner.

## DOMESTIC VIOLENCE LEAVE

Employers must allow employees they know are domestic violence victims to take leave to obtain:

- Medical attention (including for a child);
- Services from a domestic violence shelter, program or rape crisis center;
- Psychological counseling (including for a child); or
- Legal services.

Employees may also take leave to increase safety from future domestic violence, including relocating, and to assist in prosecuting the offense or appear in court.

Employee notice and certification requirements apply.

Employers who can show the leave would cause undue hardship are not required to provide leave. Employees may be required to take the leave as ordinary paid leave, or as unpaid leave where paid leave is not available.



## **VOLUNTEER EMERGENCY RESPONDER LEAVE**

Employees who are volunteer firefighters or members of a volunteer ambulance service must be granted an unpaid leave from work while engaged in their volunteer duties in response to a declared emergency. To be eligible, an employee must have previously provided his or her employer with written documentation of the employee's volunteer status. Additionally, the employer may request documentation of the employee's volunteer service during the leave period.

The employee may elect to substitute the unpaid leave with other accrued vacation or paid leave available to the employee.

# DISCRIMINATION

## UNLAWFUL PRACTICES

## SEXUAL HARASSMENT

## SEXUAL HARASSMENT — NEW YORK CITY

16

17

19

In addition to [federal nondiscrimination laws](#), the New York State Human Rights Law provides broad workplace discrimination protections to employees in New York. The state law is discussed in this section.

### UNLAWFUL PRACTICES

In general, New York labor laws prohibit employers from discriminating against individuals who belong to a protected class. Labor discrimination includes refusing to hire or employ, firing, or otherwise discriminating or retaliating against an individual in compensation or in terms, conditions, or privileges of employment.

A protected class is a group of individuals with common characteristics who are legally protected from discrimination on the basis of that characteristic. Protected classes in New York include groups based on the following characteristics:

- Age
- Color
- Creed (Religion)
- Disability (including pregnancy and pregnancy-related conditions, which, as of Sept. 13, 2019, specifically include lactation)
- Domestic violence victim status
- Familial status
- Gender expression
- Gender identity
- Marital status
- Military status
- National origin
- Predisposing genetic characteristics
- Race
- Sex
- Sexual orientation
- Status as a domestic violence victim

#### Reproductive Health

State law also prohibits discrimination based on an employee or dependent's reproductive health decisions. Employers that provide employee handbooks

must ensure that the handbooks include notice of employees' rights and remedies related to reproductive health decisions.

#### Religious Discrimination

Religious discrimination includes imposing any terms or conditions that would require an employee to violate or forgo a sincerely held practice of his or her religion, including observing a sabbath or other holy day as prescribed by a religious belief.

Religious discrimination also includes discrimination on the basis of wearing any attire, clothing or facial hair in accordance with the requirements of the employee's religion. The prohibition against religious discrimination contains an exception to protect employers from undue hardships.

#### Racial Discrimination

Racial discrimination includes discrimination on the basis of traits historically associated with race, such as hair texture and protective hairstyles (including braids, locks, and twists).

#### Immigration Status

New York employers are prohibited from threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status (or that of the employee's family or household member) to a federal, state, or local agency because the employee made a good faith complaint that the employer violated the New York Labor Law or an order of the labor commissioner.

#### Harassment

It is illegal for employers to subject any individual to harassment regardless of whether the harassment would be considered severe or pervasive. However, harassment must be above petty slights or trivial inconveniences from the perspective of a reasonable victim of discrimination.



### Equal pay

State law specifically prohibits employers from paying different wages to employees solely because they belong to a protected class. This means that employers must pay the same wages to employees who perform substantially similar work. However, the law allows wage differentials when they are based on one of the following factors:

- A merit system;
- A seniority system;
- A system which measures earnings by quantity or quality of production; or
- A bona fide factor other than status within one or more protected classes, such as education, training, or experience.

### Mandatory Arbitration and Nondisclosure Agreements

Employers may not require employees to submit their discrimination claims to mandatory arbitration.

In addition, employers cannot use nondisclosure agreements to prevent the disclosure of the underlying facts and circumstances of a discrimination claim or action. However, an exception exists for situations where the person bringing the claim sets confidentiality as a condition for reaching a settlement, agreement, or other resolution to the claim. In these circumstances, the terms and conditions must be provided in writing to all the parties involved.

Nondisclosure agreements are void to the extent they prohibit or restrict individuals from:

- Initiating or participating in an investigation conducted by the appropriate local, state, or federal agency; or
- Filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which the individual is entitled.

Finally, nondisclosure agreements related to any future discrimination claim are unenforceable unless the employee or potential employee is notified that the agreement does not prohibit the employee from speaking with:

- Law enforcement
- The Equal Employment Opportunity Commission
- The Division of Human Rights
- A local commission on human rights
- The employee’s attorney

## SEXUAL HARASSMENT

In addition to the workplace discrimination protections provided to employees under federal law, New York State (NYS) affords broad workplace discrimination protections under the state’s Human Rights Law and other laws relating to employment. In April 2018, the state’s [2019 budget](#) amended several of these laws to provide increased protections against sexual harassment in the workplace. These protections were further expanded under another new law ([S6594](#)) enacted in August 2019.

Under state law, all employers in NYS are required to:

- Adopt a written sexual harassment prevention policy;
- Distribute the written policy to employees; and
- Conduct annual sexual harassment prevention training for employees.

In addition, state law prohibits all employers in NYS from including any:

- Nondisclosure requirements within any settlement or other agreement to resolve a sexual harassment claim, unless the complainant prefers to include one; or
- Mandatory arbitration requirements for sexual harassment claims within any written contract.

Employers that submit bids to the state or to any of its departments or agencies must certify that they are in compliance with these requirements when submitting a bid.

Finally, the law now allows nonemployees, such as contractors or vendors, to hold an employer liable for sexual harassment in the employer’s workplace.

### Written Policy and Training Requirements

To comply with the law’s written policy and training requirements, employers may adopt either the [models](#) issued by NYS Department of Labor (NYDOL) or their own policies and programs that meet or exceed the standards set forth in the NYDOL’s models.

The table below provides links to the models and other materials that are available from the NYDOL.

Written Policy	Training Program
<ul style="list-style-type: none"> <li>• Fact sheet on the budget law’s <a href="#">minimum written policy standards</a>;</li> <li>• Model written policy on sexual harassment prevention (in both <a href="#">Word</a> and <a href="#">PDF</a> formats); and</li> <li>• Model complaint form for workplace sexual harassment claims (in both <a href="#">Word</a> and <a href="#">PDF</a> formats).</li> </ul>	<ul style="list-style-type: none"> <li>• Fact sheet on the budget law’s <a href="#">minimum training program standards</a>;</li> <li>• Model training program guide (in both <a href="#">Word</a> and <a href="#">PDF</a> formats);</li> <li>• General training presentation (in both <a href="#">PowerPoint</a> and <a href="#">PDF</a> formats); and</li> <li>• Presentation on sexual harassment case studies (in both <a href="#">PowerPoint</a> and <a href="#">PDF</a> formats).</li> </ul>
Other Guidance	
<ul style="list-style-type: none"> <li>• A sexual harassment prevention <a href="#">employer toolkit</a>;</li> <li>• A model <a href="#">workplace poster</a> on sexual harassment prevention, which is an optional tool for directing employees and others to an employer’s sexual harassment prevention policy; and</li> <li>• Final <a href="#">FAQs</a> about the budget law’s workplace sexual harassment provisions.</li> </ul>	

### Written Policy

Employers must provide a written anti-sexual harassment policy to each employee:

- In both English and the employee’s primary language; and
- Both at hire and again every year when training is provided.

At minimum, the law requires an employer’s written policy to include:

- A statement that sexual harassment is prohibited and examples of prohibited conduct that would constitute unlawful sexual harassment;
- Information about federal and state statutory provisions relating to sexual harassment and remedies available to victims of sexual harassment, along with a statement that there may be applicable local laws;

- A standard complaint form;
- A procedure for timely and confidential investigation of complaints that ensures due process for all parties;
- Information about employees’ rights of redress and all available forums for adjudicating complaints;
- A clear statement that sexual harassment is a form of employee misconduct and that sanctions will be enforced against both those who engage in sexual harassment and any supervisory and managerial personnel who knowingly allow it to continue; and
- A clear statement that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.

The NYDOL’s model written policy generally follows the framework of these minimum requirements. However, the model includes certain details that the law does not specifically address. For example, the model policy states that it applies not only to all employees, but also to job applicants, interns (paid or unpaid), contractors and any other person conducting business with the employer.

#### *Training Program*

Employers must provide sexual harassment prevention training to each new employee as quickly as possible after hire, regardless of:

- Their immigration status;
- Whether they are exempt from overtime requirements; and
- Whether they work part time or on a seasonal or temporary basis.

Employers must also provide written copies of the training program information (in both English and each employee’s primary language) to each employee both at hire and again every year.

The training may be presented to employees individually or in groups, in person, via phone or online, or via webinar or recorded presentation.

Under the law, an employer’s training program must be “interactive” and include:

- An explanation of sexual harassment and examples of conduct that would be unlawful;
- Information about federal and state statutory provisions relating to sexual

harassment and remedies available to victims;

- Information about employees’ rights of redress and all available forums for adjudicating sexual harassment complaints; and
- Information about conduct by supervisors and additional responsibilities for supervisory personnel.

The NYDOL’s model program defines the term “interactive” as requiring some level of feedback by those being trained. While having a live trainer is a best practice, in-person training is not required.

#### **Prohibition Against Nondisclosure Conditions**

As of July 11, 2018, a settlement or other agreement to resolve a workplace sexual harassment claim may not include any condition that prevents the parties from disclosing the underlying facts and circumstances of the claim, unless the complainant prefers to include one.

When a complainant prefers to include a nondisclosure condition, a 21-day waiting period will apply. If the complainant still prefers the condition after these 21 days, that preference must be memorialized in an agreement signed by all the parties. The complainant then has the right to revoke this agreement for at least seven days after it is executed, and the agreement does not become effective or enforceable until the revocation period expires.

Effective Jan. 1, 2020, these provisions apply for any type of workplace harassment claim, and the law requires any complainant preference to include a nondisclosure condition to be written and provided to the complainant in both English and his or her primary language. If the agreement prevents disclosure of facts related to a future claim, it must also include notice that it does not prohibit the employee or applicant from speaking with law enforcement, the U.S. Equal Employment Opportunity Commission, the NYS Department of Human Services, any local commission on human rights or an attorney. In addition, any nondisclosure condition that restricts a complainant from participating in any local, state or federal agency investigation or from filing or disclosing facts necessary to receive public benefits is rendered null and void.

#### **Prohibition Against Mandatory Arbitration Clauses**

As of July 11, 2018, any written contract an employer enters into may not require the parties to resolve sexual harassment claims through mandatory arbitration as a condition of the contract’s enforcement or of the parties’ abilities to obtain remedies under the contract. As of Oct. 11, 2019, this prohibition applies for any other type of workplace harassment claim as well.

A mandatory arbitration clause is a requirement in any written contract that:

- When faced with contract disputes, compels parties to seek arbitration before going to court; and
- Makes facts found at arbitration final and not subject to review by the courts.

Under most circumstances, the law will render any mandatory arbitration clause null and void while allowing other portions of a contract to remain enforceable. However, a contractual mandatory arbitration clause may still be enforceable if excluding it would be inconsistent with federal law or with the terms of a collective bargaining agreement.

#### **Nonemployee Claims**

As of April 12, 2018, the NYS Human Rights Law permits not only employees, but also contractors, subcontractors, vendors, consultants, their employees and any other person providing services under a contract in an employer’s workplace to file sexual harassment claims against employers. As of Oct. 11, 2019, this applies for any other type of workplace harassment claim as well.

An employer may be held liable for a nonemployee’s harassment claim if:

- The employer (or its agents or supervisors) knew or should have known that the nonemployee was subjected to harassment in the employer’s workplace; and
- The employer failed to take immediate and appropriate corrective action.

#### **Enforcement**

Most types of unlawful discrimination claims must be filed with the NYS Division of Human Rights within one year after an allegedly unlawful discriminatory practice. As of Aug. 12, 2020, however, individuals have up to three years to file claims of workplace sexual harassment against an employer.

#### **Prohibited Retaliation**

The New York Human Rights Law prohibits employers from retaliating against individuals for opposing, filing a complaint or participating in any way in the enforcement of the law. Under changes that went into effect in March of 2022, prohibited retaliation specifically includes disclosure of an employee’s personnel files, except when a disclosure is made in the course of commencing or responding to a complaint in a legal proceeding.



## Local Requirements

In addition to the state law requirements, a [local law](#) enacted by the New York City (NYC) Council in 2018 requires employers in NYC that have 15 or more employees to provide sexual harassment prevention [training](#) to each new employee after 90 days of employment and to all employees on an annual basis. This law also imposes various other requirements on NYC employers. All employers should become familiar with all applicable state and local laws to ensure that their sexual harassment prevention policies, training programs and other workplace policies comply.

## SEXUAL HARASSMENT – NEW YORK CITY

In May 2018, the city of New York (NYC) enacted a series of 11 local laws that strengthen the city’s existing protections against workplace sexual harassment. These laws, which are collectively known as the Stop Sexual Harassment in New York City Act (NYC-SSHA), impose a training mandate and other requirements on employers in the city. The New York State Legislature enacted similar requirements that apply statewide in April 2018. This document provides an overview of the NYC’s laws sexual harassment laws, as amended by the NYC-SSHA, and includes information about related provisions under New York State law. It also includes information about an amendment to NYC’s law that, as of Jan. 11, 2020, extended the city’s protections against sexual harassment and other unlawful discrimination to independent contractors and freelancers.

This section provides an overview of the NYC’s laws sexual harassment laws, as amended by the NYC-SSHA, and includes information about related provisions under New York State law. It also includes information about an amendment to NYC’s law that, as of Jan. 11, 2020, extended the city’s protections against sexual harassment and other unlawful discrimination to independent contractors and freelancers.

### Overview Of NYC Sexual Harassment Laws

Under NYC’s Human Rights Law (NYC-HRL) employers in the city are prohibited from discriminating against, harassing or allowing others to harass job applicants and employees based on certain protected traits, which include gender and sexual orientation. Most of the NYC-HRL’s prohibitions apply only to employers with four or more employees, and most claims under the law must be filed within one year after an alleged violation. As of May 9, 2018, however, the NYC-SSHA amended the NYC-HRL to allow gender-based harassment claims to be filed:

- Against any NYC employer, regardless of its size; and
- Within three years after any alleged harassment occurs.

Other changes made by the NYC-SSHA require:

- All private employers in NYC to display a poster about sexual harassment in their employees’ workplaces and to provide an information sheet about sexual harassment to each employee, effective Sept. 6, 2018; and
- Private employers with 15 or more employees in NYC to provide annual sexual harassment training to their employees, effective April 1, 2019. (New York State’s 2019 budget law also requires all employers in the state to provide annual sexual harassment training to their employees, effective Oct. 9, 2018.)

Another amendment to the NYC-HRL extended all of the law’s protections to independent contractors and freelancers, as of Jan. 11, 2020. This means that for purposes of complying with all requirements under the law, the term “employee” includes any person who performs any type of work for an employer. The NYC Commission on Human Rights provides guidance on this amendment in this fact sheet.

### NYC Gender-based Harassment Claims And Employer Liability

Under the NYC-SSHA, the term “gender-based harassment” means any unwelcome conduct that is either:

- Of a sexual nature; or
- Based on an individual’s actual or perceived sex, gender identity or gender expression, including actual or perceived gender-related self-image, appearance, behavior, expression or other gender-related characteristic, regardless of the sex assigned to a person at birth.

As of May 9, 2018, the NYC-SSHA imposes an affirmative legal obligation on all NYC employers, regardless of size, to prevent and address gender-based harassment in the workplace. Because that obligation already existed for larger employers, this change only affects NYC employers with up to three employees. Like their larger counterparts, these employers may now be held liable for gender-based, workplace harassment committed by their employees, agents and independent contractors. In general, an employer may be held liable for gender-based harassment committed by any of its employees or agents if:

- The employee or agent exercised managerial or supervisory responsibility;
- The employer (or any of its managers or supervisors) knew of the conduct and either acquiesced in it or failed to take immediate and appropriate corrective action; or
- The employer should have known of the conduct and failed to exercise reasonable diligence to prevent it.

For gender-based harassment committed by an independent contractor, an employer may be held liable if:

- The conduct occurred while the independent contractor was working for the employer; and
- The employer had actual knowledge of and acquiesced in the conduct.

Also as of May 9, 2018, the NYC-SSHA extends the time limit for individuals to file claims of gender-based harassment against any NYC employer. While the NYC-HRL’s existing, one-year limit still applies for claims of harassment based on other protected traits, individuals who believe they have been harassed based on gender may now file claims with the NYC-CHR within three years of the alleged harassment.

### NYC Posting and Information Requirements

Effective Sept. 6, 2018, the NYC-SSHA requires every employer in NYC to post a notice and provide written information about sexual harassment to its employees. To satisfy the NYC-SSHA’s posting requirements, employers must use the NYC-CHR’s anti-sexual harassment rights and responsibilities poster and display both English and Spanish versions of it in their employees’ breakrooms or in other common areas where their employees gather. The posters must be at least 8 1/2 by 14 inches in size. To satisfy the NYC-SSHA’s information requirements, employers must use the NYC-CHR’s anti-sexual harassment rights and responsibilities fact sheet and give a copy of it to each employee at the time he or she is hired. The fact sheet may be distributed by including it in an employee handbook.

### NYC and State Training Requirements

Because the new training requirements enacted under New York State’s 2019 budget bill apply to all New York employers as of Oct. 9, 2018, every employer in NYC should have already established and implemented a state-compliant training program by the time the NYC-SSHA’s new training requirements went into effect on April 1, 2019. However, employers with 15 or more employees working in NYC should be aware that, as of that date, additional training-related obligations apply to them under the NYC-SSHA. Specifically, the NYC-

SSHA requires these employers to:

- Keep records, including a signed employee acknowledgment from each employee (which may be electronic), of the training they provide; and
- Maintain their training records (and make them available for the NYC-CHR’s inspection upon its request) for at least three years.

Many of the other training requirements are similar under both new laws. For example, both laws require an employer’s training program to be:

- Interactive; and
- Provided annually.

Under both laws, the term “interactive” is generally defined as participatory teaching that allows trainees to interact with a trainer. This may be through the use of audio-visuals, computer- or online-training programs, or other participatory forms of training. The NYC-SSHA specifies that a training program does not necessarily have to be live or facilitated by an in-person instructor in order to be interactive.

Also, while the state law directs every employer to provide the required training to “all employees on an annual basis,” the NYC-SSHA specifies that its training requirements apply 90 days after each employee who works more than 80 hours in a calendar year is initially hired. This includes any interns, regardless of whether an employer pays them a salary or wage. As of Jan. 11, 2020, this also includes all independent contractors and freelancers.

Finally, the state law directs the New York State Department of Labor and the New York State Human Rights Division to develop a model training program with standards that all employers in the state must either meet or exceed. Similarly, the NYC-SSHA directs the NYC-CHR to develop an online, interactive training module that employers may use to comply with the city’s training requirements.

NYC employers that are subject to the local training requirements may develop their own training programs as long as they comply with minimum standards outlined in the NYC-SSHA. In particular, an NYC employer’s training program must include, at a minimum:

- An explanation of sexual harassment as a form of unlawful discrimination under local law;
- A statement that sexual harassment is also a form of unlawful discrimination under state and federal law;

- A description of what sexual harassment is, using examples;
- Any internal complaint process available to employees through their employer to address sexual harassment claims;
- The complaint process available through the NYC-CHR, the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission, including contact information;
- An explanation of the NYC-HRL’s prohibition against retaliation, using examples;
- Information about bystander intervention, including (but not limited to) any resources that explain how to engage in bystander intervention; and
- The specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures that these employees may take to appropriately address sexual harassment complaints.

#### **Sexual Harassment Hotline Requirement**

Effective July 14, 2022, a New York State law requires employers to provide employees with information about [a toll-free hotline for individuals to make complaints of workplace sexual harassment](#). The law also provides for free legal assistance to individuals who contact the hotline.



# DRUG TESTING AND LEGALIZED MARIJUANA

## RECREATIONAL MARIJUANA

## MEDICAL MARIJUANA

21

21

For most private employers in New York, there is no state law that requires or prohibits workplace drug or alcohol testing. However, employers that choose to test their employees and applicants may be subject to certain limitations on the actions they may take based on testing results.

In addition, employers in New York City (NYC) should be aware that, under a [city law](#), employers cannot require applicants to undergo pre-employment drug screening for marijuana or tetrahydrocannabinols as a condition of employment (some exceptions for certain safety-sensitive jobs may apply).

In addition, employers in certain industries may be subject to mandatory testing requirements under industry-specific state or federal laws. For example, employers in the commercial transportation industry must comply with federal drug and alcohol testing [regulations](#) issued by the U.S. Department of Transportation Federal Motor Carrier Safety Administration.

### RECREATIONAL MARIJUANA

The [New York Marijuana Regulation and Taxation Act](#) (MRTA) legalized recreational marijuana use for adults aged 21 or older. Effective March 31, 2021, these individuals are allowed to possess and use up to 3 ounces of marijuana and up to 24 ounces of marijuana concentrate. The MRTA also allows for the cultivation of up to six plants per person and 12 plants per household.

Under the MRTA, employers are prohibited from taking any adverse employment actions against an individual because of the individual's legal use of or legal activity involving marijuana that occurs:

- Outside of the employee's work hours;
- Off of the employer's premises; and
- Without the use of the employer's equipment or other property.

However, an employer's adverse employment actions will not violate the law if they are:

- Required by state or federal statute, regulation, ordinance, or other state or federal governmental mandate; or
- Necessary to avoid violating a federal law or losing a federal contract or federal funding.

Employers may also take adverse actions if an employee is impaired by marijuana while working. Under the law, impairment means the employee manifests specific, articulable symptoms that:

- Decrease or lessen the employee's job performance; or
- Interfere with the employer's obligation to provide a safe and healthy workplace, free from recognized hazards, as required by state and federal occupational safety and health law.

### MEDICAL MARIJUANA

The [New York Compassionate Care Act](#) (NYCCA) provides protections against criminal prosecution for certain medical uses of marijuana. These protections are available only to certified patients, who are individuals who have been diagnosed with one or more "severe debilitating or life-threatening conditions" and have obtained a marijuana registry identification card from the [New York Department of Health](#).

Under the NYCCA, employers are prohibited from discriminating against certified patients based solely on their state-authorized use of medical marijuana. In addition, the NYCCA deems every certified patient as having a disability for purposes of the [New York State Human Rights Law](#) (NYSHRL). Under the NYSHRL, all New York employers with four or more employees must provide reasonable accommodations to employees or applicants with disabilities unless an accommodation would cause an undue burden on the employer.

In general, this means that when a certified patient works for (or applies for a job with) an employer that is subject to the NYSHRL, the employer must either:

- Allow the certified patient to continue using state-authorized marijuana as a reasonable accommodation (and, if necessary, provide other accommodations that allow the individual to perform the job); or
- Be able to prove that allowing the certified patient to continue using state-authorized marijuana would cause significant hardship or expense (undue burden) on the employer's business.

The NYCCA also specifies that an employer may not take any adverse employment against an individual on the basis that the individual:

- Is a certified patient; or
- Performs any other action or engages in any other conduct that complies with the NYCCA.

Nevertheless, the NYCCA does allow employers to prohibit their employees (including certified patients) from performing employment duties while impaired by any controlled substance, including marijuana. In addition, the NYCCA does not require employers to perform any act that would put them in violation of federal law or cause them to lose a federal contract or funding.

# NOTICES AND POSTERS

**POSTERS REQUIRED FOR ALL NEW YORK EMPLOYERS** 22

**EMPLOYERS SUBJECT TO SPECIFIC LAWS** 22

**CONSTRUCTION INDUSTRY AND PUBLIC WORKS** 23

**FOOD AND BEVERAGE INDUSTRY** 23

**PUBLIC EMPLOYERS** 23

Employers must display required posters in a public place where employees can easily access them. While most posters apply to all employers within the state, some may apply to specific industries or employers. Employers can review each poster description to determine whether they are required to display that particular poster. Employers must also comply with all applicable federal posting requirements.

## POSTERS REQUIRED FOR ALL NEW YORK EMPLOYERS

The following posters are required for all New York employers:

- Criminal conviction records notice: employers must post a copy of Article 23-A of the correction law. This article relates to the employment of individuals with a criminal record - [English](#)
- Discrimination is prohibited - [English/Spanish](#)
- Equal pay provision - [English](#)
- Minimum wage poster - [English](#)
- No smoking/vaping posters: employers must prominently post “[No Smoking](#)” signs, “No Vaping” signs or a [sign](#) with the international “no smoking” symbol in all indoor work spaces
- Notice of fringe benefits and hours: employers must notify their employees of sick leave, vacation, personal leave, holiday and hours of work policies. The notice can be provided in writing or by publicly posting them. [Click here](#) for more information - [English](#)
- Nursing mothers notice: employers must provide this notice to employees who are returning to work following the birth of a child and to all employees through a handbook or by posting it in a central location - [English](#)
- Paid family leave poster: employers must obtain this posting from their insurance carrier. Self-insured employers can obtain this form by contacting the [Workers’ Compensation Board](#)
- Sexual harassment prevention policy: employers must provide, in writing, a copy of this policy. The policy must include annual sexual harassment prevention training - [Article 7, Section 201-g](#)
- Time off to vote poster - [English](#)
- Unemployment insurance (UI) poster: this poster is obtained by registering with the UI Division and calling 888-899-8810 - [English](#)

## EMPLOYERS SUBJECT TO SPECIFIC LAWS

Employers must display the following posters only if they are affected by the laws, conditions or requirements specified below:

- Workers’ compensation notice: required for employers subject to New York’s workers’ compensation laws - Employers must obtain this poster from their insurance carrier
- Disability benefits poster: required for employers subject to New York’s workers’ compensation laws - Employers must obtain this poster from their insurance carrier
- Apparel industry minimum wage poster - [English](#)
- Breastfeeding Mothers’ Bill of Rights: must be conspicuously posted in a public place in each maternal health care facility and each child day care facility - [Multiple Languages](#)
- Commissary Price List (for commissary operators) - [English](#) | [Spanish](#)
- Domestic worker minimum wage - [English](#) | [Spanish](#)
- Farm minimum wage poster: farm employers are required to post it where employees can see it. Print on legal size, 8.5 inch x 14 inch, paper. [Click here](#) and scroll down to «Postings/Fact Sheets» - [English](#)
- Hospitality industry minimum wage poster. [Click here](#) for additional information and resources - [English](#)
- Nail salons: Workers’ Bill of Rights - [English](#) | [Multiple Languages](#)
- Nurse Coverage Plan poster: relates to mandatory nurse overtime work. Must be posted in a location accessible to all nursing staff - [English](#)



## CONSTRUCTION INDUSTRY AND PUBLIC WORKS

The following posters are required for construction employers and for contractors engaged in public work projects:

- Construction Industry Fair Play Act poster - [English](#)
- Prevailing wage rate schedule: the current schedule must be posted on the site of the public work project where workers can see and access it, encased in, or made of, weatherproof materials, and titled “PREVAILING RATE OF WAGES” in letters that are at least 2 x 2 inches.
- Public work project poster - [English](#)

## FOOD AND BEVERAGE INDUSTRY

Employers in the food and beverage industry must display the following posters:

- Deduction from wages poster - [English](#)
- Tip appropriation poster - [English](#)

## PUBLIC EMPLOYERS

Public employers are required to display the following poster:

- “You have a right to know” - [English](#)

# RECORDKEEPING REQUIREMENTS

## APPRENTICESHIPS

24

## CHILD LABOR

24

## UNEMPLOYMENT COMPENSATION

24

## WAGE AND HOUR

25

## WORKERS' COMPENSATION

25

## PENALTIES

25

Federal laws, such as the Federal Insurance Contribution Act, the Fair Labor Standards Act (FLSA), the Equal Pay Act and the Civil Rights Act, impose recordkeeping duties on employers. Recordkeeping duties include creating, updating and preserving information.

State law also imposes several recordkeeping requirements on employers. These laws operate in addition to, or in conjunction with, federal requirements. This Employment Law Guide provides an overview of various New York recordkeeping requirements that generally apply to all employers in the state. Additional requirements may apply for employers in certain industries.

## APPRENTICESHIPS

Employers that sponsor apprenticeship programs must make and keep all records necessary to prove that their apprenticeship programs comply with all federal and state laws. These records must also be used to periodically evaluate each apprentice's progress.

An apprenticeship program sponsor's records must include:

- The apprentice-to-journey-worker ratio;
- A certification of compliance with applicable federal, state and local health and safety standards;
- A description of the probationary apprenticeship period;
- Apprenticeship program modification requests submitted to the New York Department of Labor (NYDOL), if applicable; and
- Information on program processes, such as procedures to authorize wage increases, transferring apprentices to other programs or notifying apprentices of adverse actions.

For each apprentice, the sponsor's records must also show:

- The training provided (must be at least 144 hours per year provided by qualified training personnel);
- The apprentice's age (must be at least 16 years of age);
- The skills apprentices are expected to and have actually learned (must be verified and signed at least monthly by the apprentice's supervisor);
- The amount of time required in each work process or rotation;
- The placement and registration with the program;
- Evidence of program completion (if applicable); and
- A signed copy of the Apprenticeship Agreement (which must also be filed with the NYDOL).

## CHILD LABOR

New York allows employers to hire minors between 16 and 17 years old to work in occupations for which they have completed an approved work training program. For these minors, employers must maintain records showing:

- The name, address and age of the minor;
- The date the minor entered and the minor's attendance record for the approved work training program;
- The number of hours the minor participated in the work training program;
- The number of hours the minor received specific training in safety; and
- The occupation and work processes for which a certificate of completion was issued.

In addition, employers must maintain accurate records of each minor's employment-related injuries and illnesses, unless the injuries were minor and required only first aid treatment.

Additional recordkeeping requirements apply for employers that work with child performers.

## UNEMPLOYMENT COMPENSATION

Employers must keep a true and accurate record of each employee's:

- Name and Social Security number;
- The amount of wages paid per payroll period;
- The beginning and ending dates of each payroll period; and
- The total amount of employee wages subject to unemployment compensation contributions under state law.

These records must be maintained for at least three years.



## WAGE AND HOUR

New York employers must create and maintain contemporaneous, true and accurate payroll records for at least six years. For each employee, these records must show:

- The number of hours worked each week;
- The regular and overtime wage rates and how they are calculated (hour, salary, piece or other, unless exempt from overtime compensation);
- The number of regular and overtime hours worked (unless exempt from overtime compensation);
- The amount of gross wages paid;
- An itemized list of deductions;
- An itemized list of allowances claimed as part of the employee's wage (if any);
- The amount of net wages paid; and
- The employee's student classification, if applicable.

Personnel records for student-employees must include a statement from the employee's school indicating whether the student-employee is:

- Participating in an instruction program that will lead to a degree, diploma or certificate (or is completing residence requirements for a degree); and
- Required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

For employees who are paid a piece rate, payroll records must include the applicable piece rate (or rates) of pay and the number of pieces completed at each piece rate.

Employers are subject to misdemeanor charges if they fail to keep or falsify payroll records or hinder the NYDOL's access to these records during an investigation. Potential penalties for a first offense include a fine of between \$500 and \$5,000 or imprisonment for up to one year. For second or subsequent offenses within a six-year period from the first offense, employers may face felony charges punishable by a fine of between \$500 and \$20,000, imprisonment for up to 366 days or both. Each date an employer fails to comply with these recordkeeping requirements is considered a separate offense.

Additional recordkeeping requirements may apply for:

- The farming industry;
- Domestic workers and household employees;
- The hospitality industry;
- Employers that allow their employees to participate in tip pooling; and
- The building service industry.

## WORKERS' COMPENSATION

Employers subject to the state's workers' compensation laws must keep the following true and accurate records.

### Identity, Organizational and Occupational Records

- Federal Employer Identification Number;
- Business name (including certificates of assumed business names);
- Business form (such as corporation, limited liability company or partnership);
- Articles of incorporation or organization (including amendments to the articles, occupational license, trade licenses or certifications); and
- A current list of the officers, partners or principals of the business.

### Employment Records

- The number of employees;
- Each employee's name, Social Security number or other identifying number;
- Each day, month, year or pay period worked by each employee;
- Each employee's classification;
- A description of each employee's general duties (must provide enough information for a proper employee classification);
- The amount of wages paid or owed to each employee;
- The method of payment used to calculate each employee's wages;
- Wage payment records;
- The value of credits and allowances claimed for each employee's wages (tips, employer-provided meals, lodging or similar benefits);
- Annual wage or earnings statements for each employee (including IRS Forms 1099 and W-2);

- Any written contracts or agreements that describe the terms of employment;
- Documentation of all and any employee accidents and injuries;
- Tax records (federal, state and the New York State Department of Labor filings);
- Financial account records (general ledgers and monthly, quarterly or annual statements of all opened or closed business accounts); and
- Insurance coverage and eligibility records.

## PENALTIES

Employers that violate these recordkeeping requirements may face criminal and administrative penalties. Criminal penalties include misdemeanor charges and fines of between \$5,000 and \$10,000 for failing to keep or falsifying these records. Second and subsequent violations can lead to class E felony charges and fines of between \$10,000 and \$25,000. Administrative penalties include a \$1,000 fine for every ten-day period of non-compliance or a fine equal to twice the cost of compensation for the employer's payroll for the period when the violation takes place.

In general, employers must maintain these records for a period of at least four calendar years.

### Employee Injuries

Employers must record every injury and illness employees suffer in the course of employment on a form prescribed by the New York State [Workers' Compensation Board](#). This injury record must be kept for at least 18 years. The Workers' Compensation Board does not require employers to file an injury or illness report, unless the injury or illness causes the employee to:

- Miss a day of work beyond the shift or day when the injury or illness took place; or
- Receive medical treatment beyond ordinary first aid or more than two treatments by a person rendering first aid.

Employers that refuse or neglect to keep employee injury and illness records may be charged with a misdemeanor, punishable by a fine of up to \$1,000 and an additional administrative fine (imposed by the Workers' Compensation Board) of up to \$2,000.



# NEW YORK

## EMPLOYMENT LAW GUIDE

*The materials in this State Employment Law Guide are provided as a general reference resource. The guide is not meant to be exhaustive or construed as providing legal or any other professional service or advice. Additional requirements may apply under federal and local laws. Employers are advised to work with experienced legal counsel to implement policies, practices and procedures necessary for compliance.*