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NEW YORK
STATE OF
OPPORTUNITY.

**Department
of Labor**

The NYS Hospitality Industry Overview of Labor Law Rules and Regulations

Suffolk Community College

What is the Hospitality Industry?

- Hotels
- Resort Hotels
- Catering
- Fast Food
- Fast Food Chains
- Restaurants
- Take-out
- Bars
- Nightclubs
- More...

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Rates of Pay

The New York State Minimum Wage must be paid for each hour worked.

Hourly rates are required for all non-exempt employees, except commission salespersons.

Overtime pay is due after 40 hours worked, at 1.5 times the Minimum Wage.

Tip “credits” are subtracted from full overtime rate.

Server on Long Island in January 2022

$$\$15.00 \times 1.5 = \$22.50 - \$5.00 = \$17.50$$



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**Attention
Hospitality Industry Employees**

Minimum Wage hourly rates effective 12/31/2021 – 12/30/2022

New York City		Remainder of New York State	
Large Employers (11 or more employees)		Small Employers (10 or less employees)	
Minimum Wage	\$15.00	Minimum Wage	\$15.00
Overtime after 40 hours \$22.50		Overtime after 40 hours \$22.50	
Fast Food Worker	\$15.00	Fast Food Worker	\$15.00
Overtime after 40 hours \$22.50		Overtime after 40 hours \$22.50	
*Service Employee	\$12.50	*Service Employee	\$12.50
Overtime after 40 hours \$20.00		Overtime after 40 hours \$20.00	
Resort – minimum tips \$8.40		Resort – minimum tips \$8.40	
Others – minimum tips \$3.25		Others – minimum tips \$3.25	
*Food Service Worker	\$10.00	*Food Service Worker	\$10.00
Overtime after 40 hours \$17.50		Overtime after 40 hours \$17.50	
Long Island and Westchester County		Remainder of New York State	
Minimum Wage	\$15.00	Minimum Wage	\$13.20
Overtime after 40 hours \$22.50		Overtime after 40 hours \$19.80	
Fast Food Worker	\$15.00	Fast Food Worker	\$15.00
Overtime after 40 hours \$22.50		Overtime after 40 hours \$22.50	
*Service Employee	\$12.50	*Service Employee	\$11.00
Overtime after 40 hours \$20.00		Overtime after 40 hours \$17.60	
Resort – minimum tips \$8.40		Resort – minimum tips \$7.40	
Others – minimum tips \$3.25		Others – minimum tips \$2.85	
*Food Service Worker	\$10.00	*Food Service Worker	\$8.80
Overtime after 40 hours \$17.50		Overtime after 40 hours \$15.40	

If you have questions or want to file a complaint, visit www.labor.ny.gov/minimumwage or call: (888) 469-7365.

Credits and Allowances that may reduce your pay below the minimum wage rates shown above:

- **Tips** – Your employer may use a limited amount of your tips to reduce your wages. This is called a tip credit. Your employer may take a tip credit only if your tips plus wages add up to at least the minimum wage. They must still pay at least the *wage rates shown above.
Exceptions: No tip credit can be taken from any fast food workers, including delivery, or for service employees whose weekly tips average less than the minimum hourly amounts shown above. The tip credit amount is the same for overtime hours.
- **Meals and lodging** – Your employer may take a limited amount of your wages for meals and lodging that they provide to you, as long as they do not charge you anything else. The rates and requirements are set forth in wage orders and summaries, which are available online.

Extra Pay you may be owed in addition to the minimum wage rates shown above:

- **Hourly rate and overtime** – You must be paid by the hour (not a salary or dayrate). You must also be paid 1½ times your regular rate of pay (no less than amounts shown above) for weekly hours over 40 (or 44 for residential employees).
Exceptions: An hourly rate and overtime is not required for salaried professionals, or for executives and administrative staff whose weekly salary is more than 75 times the minimum wage rate.
- **Call-in pay** – If you go to work as scheduled and your employer sends you home early, you may be entitled to extra hours of pay at the minimum wage rate for that day.
- **Spread of hours** – If your workday lasts longer than ten hours, you may be entitled to extra daily pay. The daily rate is equal to one hour of pay at the minimum wage rate.
- **Uniform maintenance** – If you clean your own uniform, you may be entitled to additional weekly pay. The weekly rates are available online.

Credits and Extras

ADDITIONS TO WAGES

(extras for employees)

“spread of hours pay”

“call-in pay”

“uniform maintenance pay”

Spread of hours, call-in, and uniform maintenance pay are due to all employees at any pay level. These extra payments may not be offset by credits for meals & lodging provided.

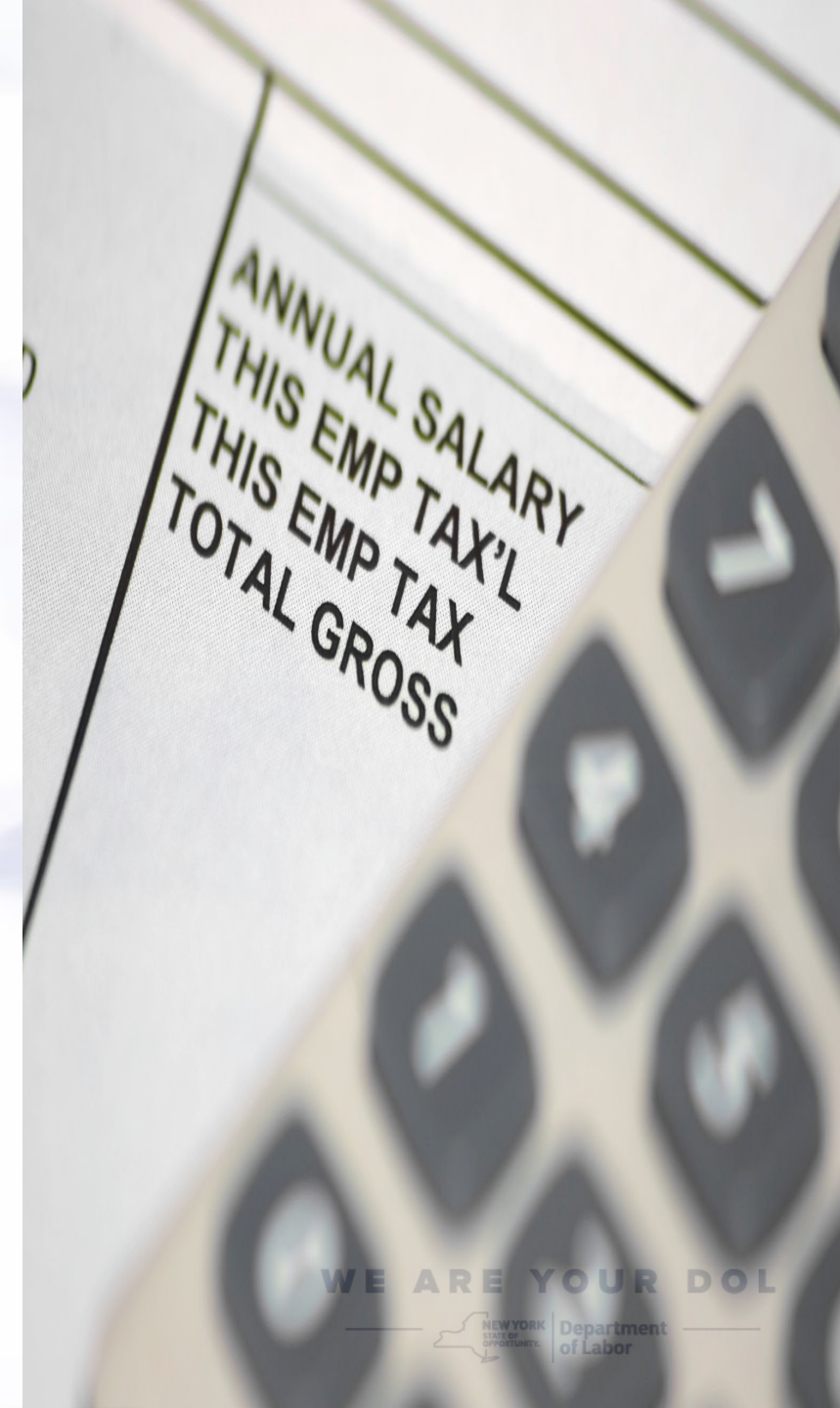
SUBTRACTIONS

(credits to employer)

“tip credit”

“meal credit”

“lodging credit”



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Uniform Pay Exceptions

Wash & Wear

Ordinary wardrobe is not a “uniform” if...

- ordinary basic street clothing
- selected by the employee
- where the employer permits variations in details of dress

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Tip Sharing

- Voluntary tip sharing by employees allowed
- Employer can require tip sharing and set the percentages for each occupation
- Employees must handle transactions themselves
- Records required & regularly made available to employees

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Tip Pooling

- Voluntary tip pooling and redistribution among directly- and indirectly-tipped occupations by employees is allowed
- Employers can require tip pool and can set the percentages to be distributed to each occupation
- Records required and regularly made available for employees to review

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House Charged Tips to Customers

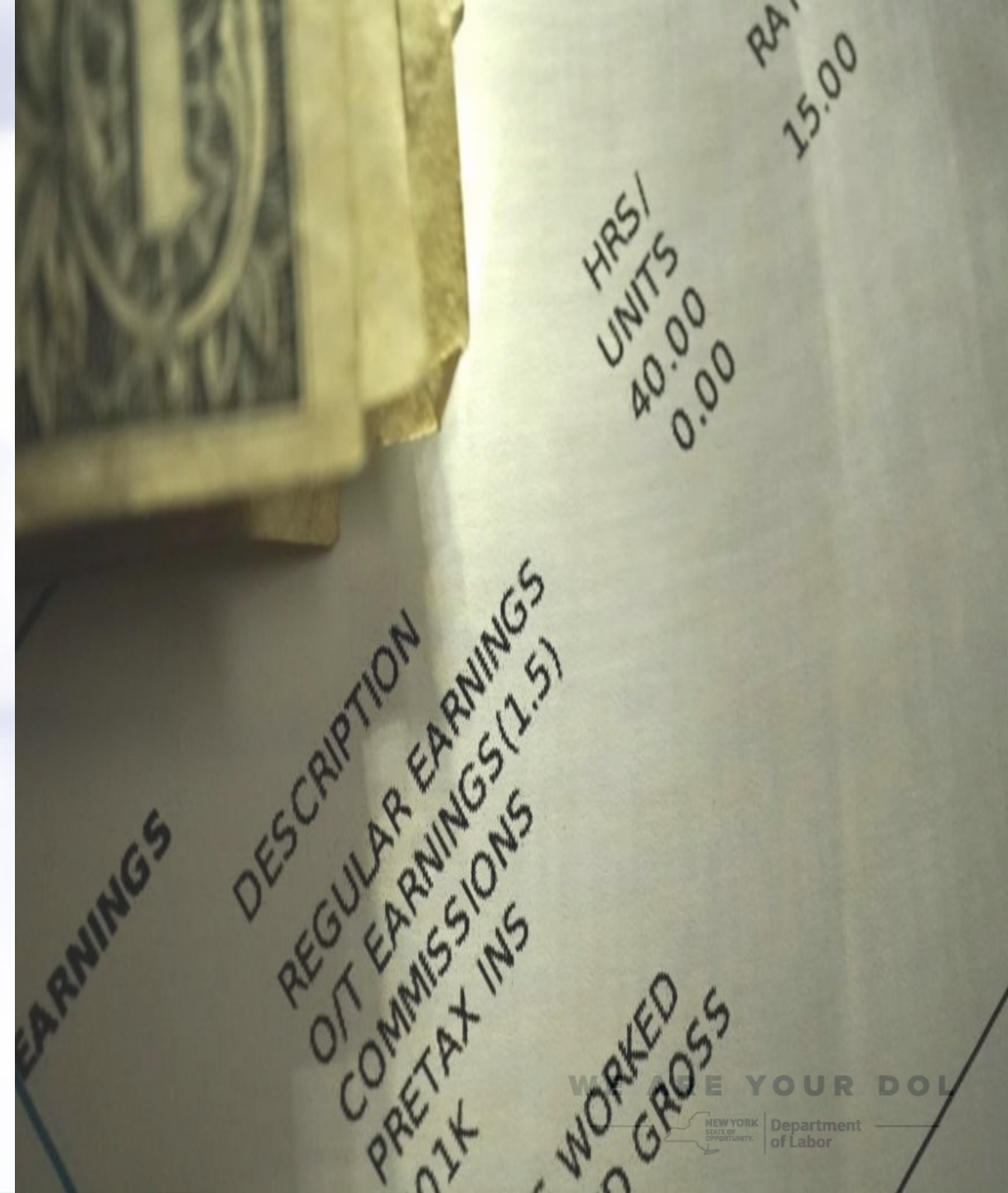
- In banquets, special functions & package deals only
- Distribute to food service and service employees only
- None to management, salespeople, kitchen staff
- Mixed duty occupations could receive tips (non-management)
- EEs must “regularly” be allowed to see “records of such charges and their dispositions”
- Records should be similar to tip pool records

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Deductions from Wages

No deductions may be made from wages, except:

- Those required by law (such as income taxes, Social Security, Medicare, and court-ordered garnishments) and
- Those which are for the benefit of the employee and have been authorized in writing by the employee.



Deductions from Wages

No payments are allowed by separate transaction from wages that would not be allowed as deductions from wages.

- A separate transaction means accepting payment from an employee separately from wages, rather than deducting it from wages.
- Examples of Illegal Deductions are charges to employees for loss, breakage, shortage, fines for lateness, etc.



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Payment of Wages

- Notify employee at time of hiring of exact rate of pay and regular payday
- No unpaid tryout or training period.
- Manual workers must be paid weekly and within 7 days of end of week worked.
- Clerical and other workers must be paid at least semi-monthly on regular paydays designated in advance.



Pay Notice and Wage Statement

- Workers must be given a wage statement (pay stub) with every payment of wages, stating:

Period Covered	Gross Wages
Rates Paid	All Deductions
Regular Hours Worked	Net Wages
Overtime Hours Worked	Pay Date
Credits claimed toward min wage for meals or tips, if any	

- Employees should save all their wage statements

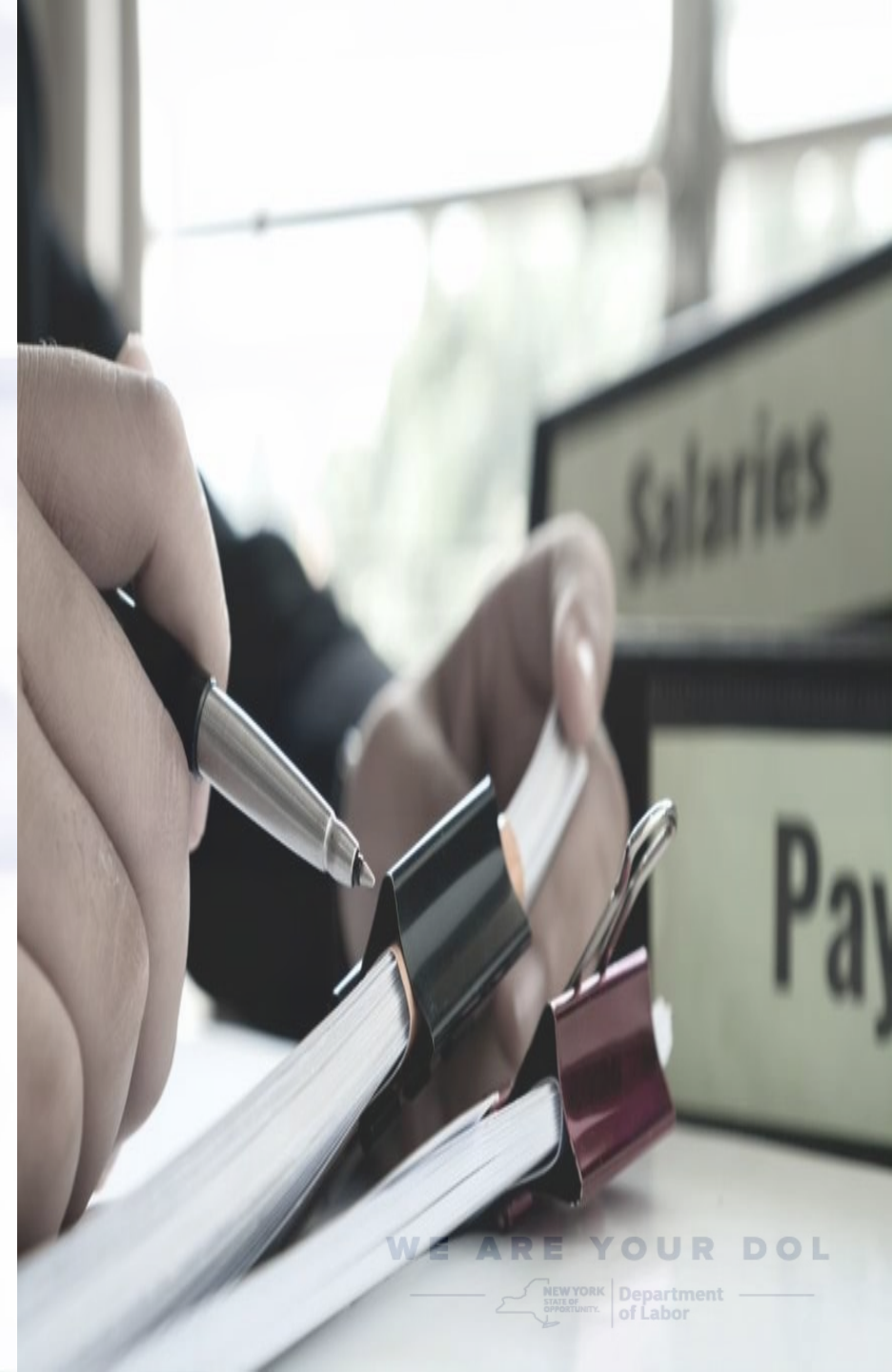


Employer Record-keeping

KEEP FOR 6 YEARS:

- Name, address and social security number of employee
- Wage rates
- Period covered
- Number of hours worked daily & weekly
- Gross wages paid
- Credits claimed for meals or tips received by employee
- All deductions
- Net wages
- Arrival and departure times for each employee working split shift or spread of hours exceeding ten

“Off the Books” is illegal and does not benefit workers



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Meal Periods and Breaks

On shifts longer than 6 hours:

- At least 30 minutes meal period is required between 11:00 AM and 2:00 PM if shift completely covers that period or for other shifts, meal period must occur approximately mid-shift.
- If shift starts before 11:00 AM and finishes after 7:00 PM, additional meal period of at least 20 minutes must be given between 5:00 PM and 7:00 PM
- Meal period may be unpaid

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Meal Periods and Breaks

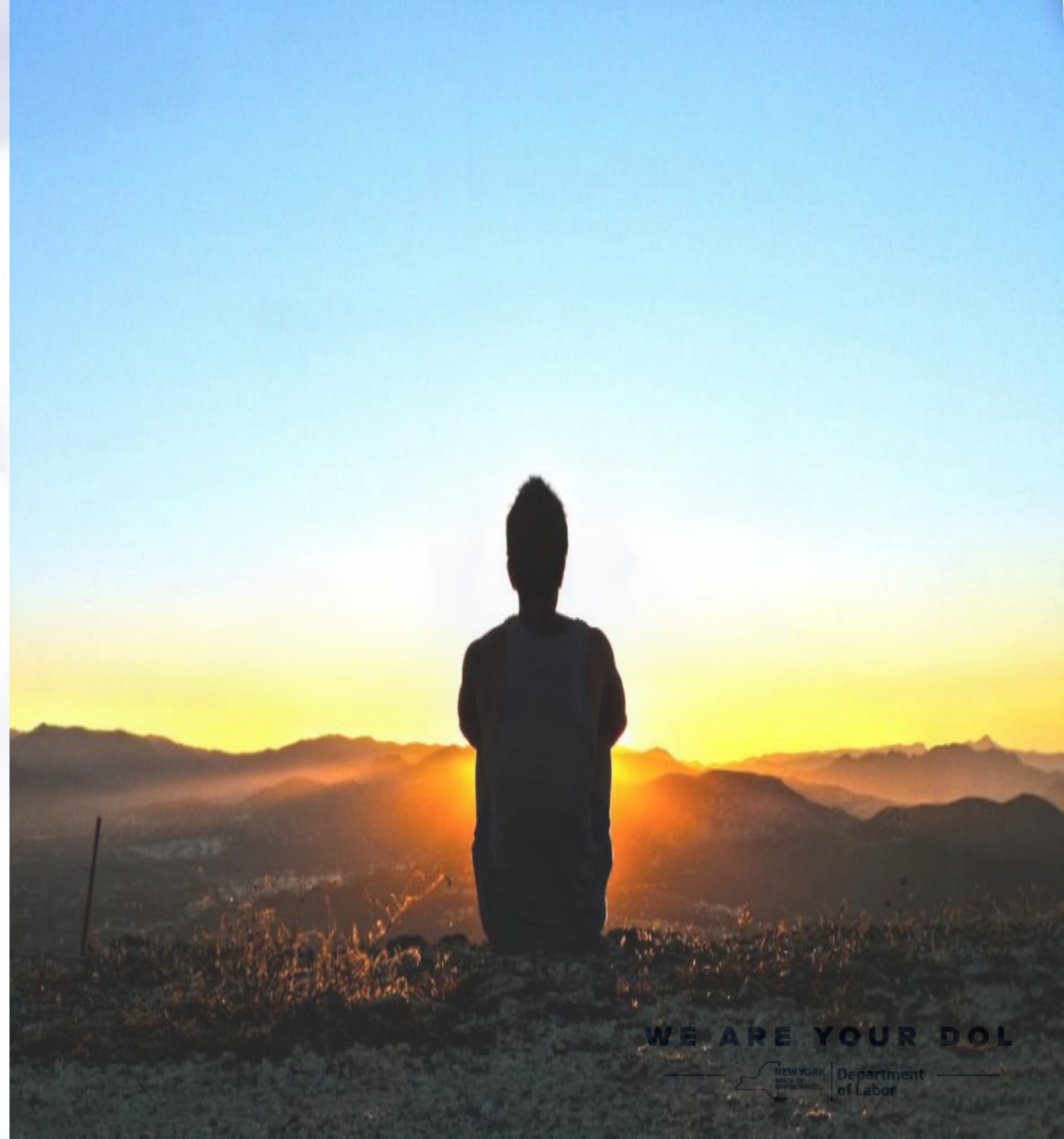
One employee shift exception:

- If alone on duty, employee may eat on the job without being relieved. Must be acceptable to employee and must be paid as time worked.
- Short rest breaks of 10, 15, or 20 minutes are not required by law.
- If an employer permits short rest breaks, they must be counted and paid as time worked under the child labor, minimum wage, overtime, and other labor laws.

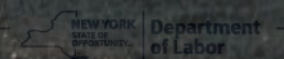


Day of Rest

- One day of rest is required in every calendar week.
- Day of rest is 24 consecutive hours off.
- Calendar week is Sunday through Saturday.
- Some other types of businesses covered by day of rest:
 - Retail and wholesale establishments
 - Restaurants
 - Most hotels
 - Theaters
 - Certain occupations such as elevator operators, building service employees, and security guards.



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Hours Worked Restrictions

No daily or weekly limit on hours for ADULTS. Overtime pay, spread of hours pay requirement is supposed to put a brake on excessive hours.

Adult = 18 years of age and older

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Minors (Under 18)

- Not allowed to work during hours when school attendance is required
- Can work during school hours only if already graduated or withdrawn from school
- School attendance is compulsory until the end of the school year in which the minor turns 16
- Must have Employment Certificate issued by educational authorities - even if no longer in school



Some Prohibited Occupations Ages 16 & 17

Minors aged 16 & 17 may not:

- Clean, oil, or wipe machinery or adjust belts to machinery
- Prepare any composition in which dangerous or poisonous acids are used
- Paint or do exterior cleaning of a building structure from an elevated surface
- Engage in any occupation involving the operation of power-driven hoisting apparatuses (crane, derrick, hoist, fork-lift or high-lift truck). The lifts found in auto repair garages are OK.
- Work as helper on a motor vehicle

The above is not a complete list.





**Summary of New York State Child Labor Law,
Permitted Working Hours for Minors Under 18 Years of Age**

Age of Minor Girls and Boys		Industry or Occupation	Maximum			Permitted Hours
			Daily Hours	Weekly Hours	Days per Week	
Attending School, When school is in session:	14 and 15	All occupations except farm work, newspaper carrier and street trades	3 hours on school days. 8 hours on other days.	18 ¹	6	7 AM to 7 PM
	16 and 17	All occupations except farm work, newspaper carrier and street trades.	4 hours on days preceding school days: Monday, Tuesday, Wednesday, Thursday ² . 8 hours on: Friday, Saturday, Sunday and Holidays. ⁴	28 ⁴	6 ⁴	6 AM to 10 PM ³
Attending School, When school is not in session (vacation):	14 and 15	All occupations except farm work, newspaper carrier and street trades.	8 hours	40	6	7 AM to 9 PM June 21 to Labor Day
	16 and 17	All occupations except farm work, newspaper carrier and street trades	8 hours ⁴	48 ⁴	6 ⁴	6 AM to Midnight ⁴
Not Attending School:	16 and 17	All occupations except farm work, newspaper carrier and street trades	8 hours ⁴	48 ⁴	6 ⁴	6 AM to Midnight ⁴
Farm Work:	12 and 13	Hand harvest of berries, fruits and vegetables.	4 hours	-----	-----	June 21 to Labor Day, 7 AM to 7 PM. Day after Labor Day to June 20, 9 AM to 4 PM.
	14 to 18	Any farm work	-----	-----	-----	-----
Newspaper Carriers:	11 to 18	Delivers, or sells and delivers newspapers, shopping papers or periodicals to homes or business places.	4 hours on school days. 5 hours on other days.	-----	-----	5 AM to 7 PM or 30 minutes prior to sunset, whichever is later
Street Trades:	14 to 18	Self-employed work in public places selling newspapers or work as a bootblack	4 hours on school days. 5 hours on other days.	-----	-----	6 AM to 7 PM

¹ Students 14 and 15 enrolled in an approved work/study program may work 3 hours on a school day, 23 hours in any one-week when school is in session.

² Students 16 and 17 enrolled in an approved Cooperative Education Program may work up to 6 hours on a day preceding a school day other than a Sunday or Holiday when school is in session, as long as the hours are in conjunction with the Program.

³ 6 AM to 10 PM or until midnight with written parental and educational authorities consent on day preceding a school day and until midnight on day preceding a non- school day with written parental consent.

⁴ This provision does not apply to minors employed in resort hotels or restaurants in resort areas.

Additional Child Labor Law Information

The Employer must post a schedule of work hours for minors under 18 years old in the establishment.

An Employment Certificate (Working Paper) is required for all employed minors under 18 years old.

Penalties for Child Labor Laws violations:

- First violation: maximum \$1,000*
- Second violation: maximum \$2,000*
- Third or more violations: maximum \$3,000*

*If a minor is seriously injured or dies while illegally employed, the penalty is three times the maximum penalty.

Also, Section 14A of the Workers' Compensation Law provides double compensation and death benefits for minors illegally employed.

Note: There are many prohibited occupations for minors in New York State.

For more information about New York State Child Labor Laws and provisions please visit the Department of Labor's website at <http://www.labor.ny.gov>. If you have questions, please send them to one of the offices listed below at:

New York State Department of Labor, Division of Labor Standards:

Albany District

State Office Campus
Bldg. 12 Room 185A
Albany, NY 12240
(518) 457-2730

Buffalo District

290 Main Street
Room 226
Buffalo, NY 14202
(716) 847-7141

Garden City District

400 Oak Street
Suite 101
Garden City, NY 11530
(516) 794-8195

New York City District

75 Varick Street
7th Floor
New York, NY 10013
(212) 775-3880

Rochester

Sub-District
276 Waring Road
Room 104
Rochester, NY 14609
(585) 258-4550

Syracuse District

333 East Washington Street
Room 121
Syracuse, NY 13202
(315) 428-4057

White Plains District

120 Bloomingdale Road
White Plains, NY 10605
(914) 997-9521

Wage Supplements

- Payments Owed by Promise or Agreement:
 - Paid holidays off
 - Paid vacation days
 - Paid personal time
 - Other benefits



End of Employment

- Must pay final wages no later than regular payday
- Must allow employee to pick up final wages at workplace
- Must mail wages if employee requests mailing



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End of Employment

- Must pay final wage supplements within 30 days of date due in agreement
- Forfeiture of earned benefit is permitted only if forfeiture conditions were clearly stated in the written policy notifying employees before the benefit was earned
- Advance notice of resignation or dismissal is a courtesy not required by law. It may be required by a written agreement or policy in order to receive terminal benefits.



Employment At Will

Employer has right to dismiss, and employee has right to quit, with or without reasonable cause

Unless parties to a contract outlining cause for termination (such as a collective bargaining agreement negotiated with a union)

or

Have agreed elsewhere (such as in a company handbook) to certain conditions concerning discharge or resignation

or

Have made an oral commitment to the contrary



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Retaliatory Action is Forbidden

Employer may not penalize or discharge an employee for making complaints concerning an alleged violation of Labor Law.

Dismissal From Employment	Demotion
Cutting Hours	Cutting Wage Info
Re-assigning to Worse Hours	Re-assigning to Worse Duties
Re-assigning to Less Desired Location	

Most other labor laws also prohibit retaliation; for example, the National Labor Relations Act (NLRA) and the Occupational Safety and Health Act (OSHA).

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Discrimination is Forbidden

Discrimination on the following basis is forbidden:

Race, color, religion, national origin, sexual orientation, military status, age, sex, marital status, disability, arrest record, conviction record under certain circumstances, and genetic characteristics or carrier status.

discrimi

nation

Further information at website of NYS Division
of Human Rights: www.dhr.ny.gov

Other Protective Laws

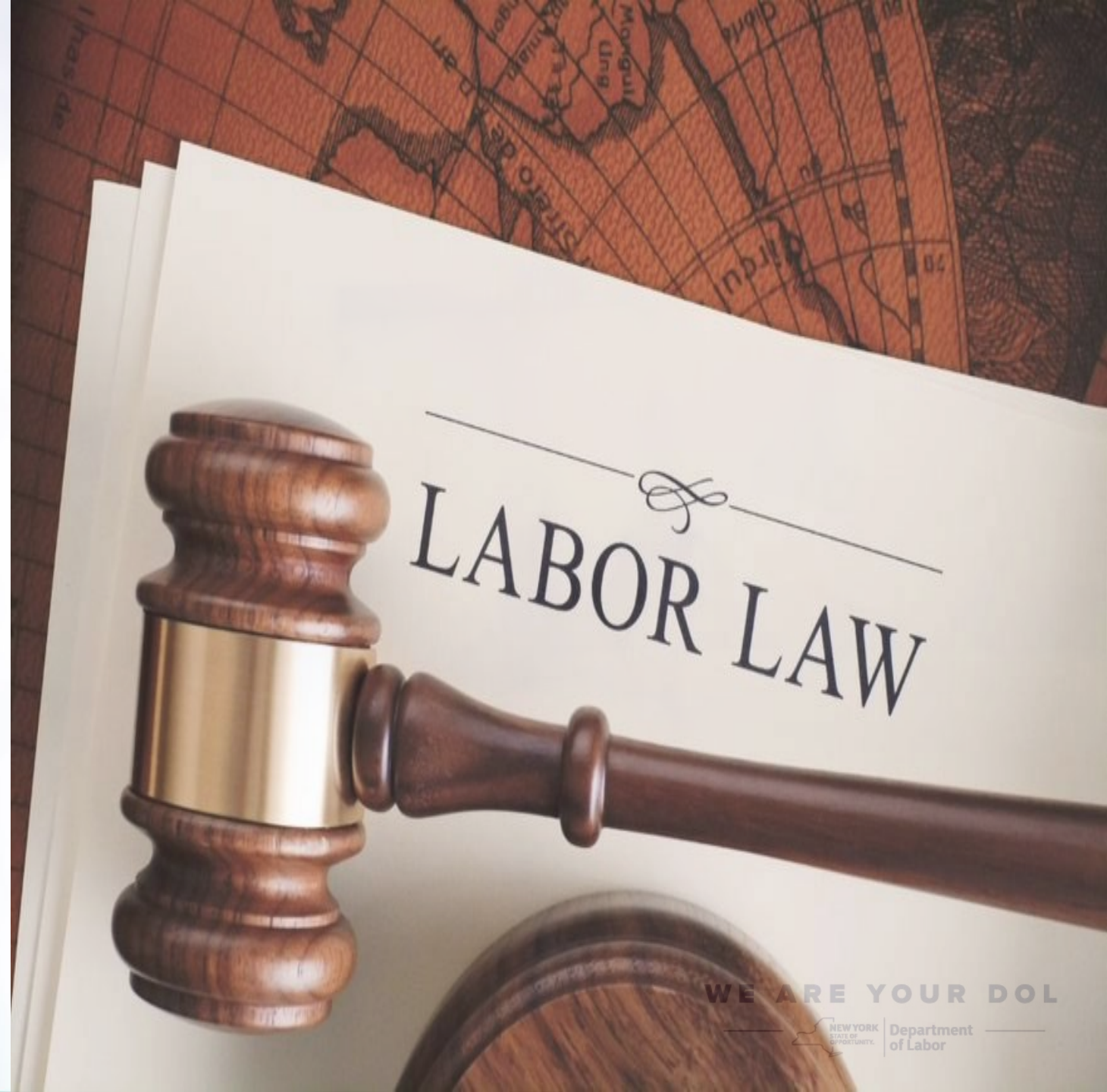
Expression of Breast Milk

NYS Paid Sick Leave

Pay Equity

Salary History

Sexual Harassment
Prevention Policy & Training



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Enforcement of Labor Laws

Division of Labor Standards
Harriman State Office Campus
Building 12, Room 266B
Albany, NY 12240



Office Use Only:	
LS ID	_____
LCM	_____
PV <input type="checkbox"/>	Priority _____
Taken by	_____
Date	_____

Labor Standards Complaint Form

Use this form to claim unpaid wages, illegal deductions, wage supplements, minimum wage, overtime, no meal period, etc.

Note: This complaint form is available in languages other than English. Anyone working in New York State may make a complaint to the New York State Department of Labor. Be sure to read Information About Filing a Claim (LS223.2) before filling out this form.

Please answer all questions for each part related to your claim. Providing complete information helps us review your complaint and accept it for investigation. Return your completed form to the address above.

We will contact you if we do not have enough information to proceed or if your claim appears invalid. If you have questions about how to complete this form call (888) 469-7365.

We cannot accept the following wage or supplement claims:

- For work performed outside of New York State.
- From anyone employed in an administrative, executive, or professional capacity who earns over \$900 gross per week (they are excluded from coverage under Sections 190[7] and 198-c[3]).
- From individuals employed by a public entity such as a town, county, or city.
- From individuals who are in business for themselves.
- For work performed on a public work project (use form PW-4).

Part 1. Person Filing Claim (Employee/Complainant Information)

1. Name:(first) _____ (middle) _____ (last) _____
2. Another name known by at work: _____
3. Mailing address: No: _____ Street: _____ Apt. # _____
City/town: _____ County: _____ State: _____ Zip code: _____
4. Phone: (_____) _____ 5. Other phone:(_____) _____
6. Email: _____ 7. Your primary/preferred language: _____

Part 2. Claim Filed Against (Business/Business Owner Information)

- 8a. Business name: _____
- 8b. Legal name (if different): _____
- 8c. Legal entity type: Individual LLC Partnership Corporation Other: _____
- 8d. Mailing address: No.: _____ Street: _____ Fl/Rm/Suite#: _____



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Thank You!

Division of Labor Standards

Web site: www.labor.ny.gov

E-mail: lsask@labor.ny.gov

Phone: 1-888-469-7365