

A FARMER'S GUIDE TO THE NEW YORK STATE DEPARTMENT OF LABOR

WE ARE YOUR DOL



Department
of Labor



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A FARMERS GUIDE TO NYSDOL

This booklet has been created to help farmers in New York State understand some of the services available through the New York State Department of Labor as well as their obligations under the labor law.

ABBREVIATIONS USED IN THIS DOCUMENT

NYSDOL = New York State Department of Labor	FLCU = Foreign Labor Certification Unit
DIPA = Division of Immigrant Policies & Affairs	FEIN = Federal Employer ID Number
U.S. = United States	AgLP = Agriculture Labor Program
USDOL = United States Department of Labor	OSHA = Occupational Safety and Health Administration
MSFW = Migrant and Seasonal Farm laborers	WTPA = Wage Theft Prevention Act
AgLS = Agriculture Labor Specialist	WCL = Workers' Compensation Law
SMA = State Monitor Advocate	UI = Unemployment Insurance
OSOS = One Stop Operating System	DEWS = Division of Employment and Workforce Solutions
AEWR = Adverse Effect Wage Rate	OJT = On-the-Job Training

DIVISION OF IMMIGRANT POLICIES AND AFFAIRS

The Division of Immigrant Policies and Affairs (DIPA) works inside and outside of the Department of Labor to serve the needs of immigrants. We make sure the Department's protections, services, and programs are available to everyone, including people with limited English proficiency.

AGRICULTURE LABOR PROGRAM

The Agriculture Labor Program's goal is to make sure that New York's large and diverse agriculture industry thrives as it complies with state and federal laws. All Agriculture Labor Specialists speak both English and Spanish and can assist you and your workers with many labor-related matters.

Employer Outreach: The Agriculture Labor Program partners with industry organizations to ensure that important New York State labor-related information affecting agricultural employers is shared widely.

AgLS's attend community events, conduct workshops, and present online webinars to ensure that the farmers are informed and have access to services they are entitled to.

AgLSs also contact farmers directly by phone, email, and in-person to assist with labor needs, questions about state and federal labor law compliance, and other services. An AgLS can help you create a job posting and spread the information about the job to agricultural job seekers.

To contact an Agriculture Labor Specialist in your county:

<https://labor.ny.gov/immigrants/agriculture-labor-program/agriculture-labor-specialists.shtm>

Free Poster Services for Employers: The Agriculture Labor Program offers a free poster service to employers by providing copies of the New York State required employment posters that must be displayed on an employer's premises. AgLSs visit farms to ensure that all the required posters are present, provide or post copies of any that are missing (if possible), and/or inform employers of what they must obtain to be compliant, such as a Notice of Coverage from the Workers' Compensation Insurance Carrier. For more information, please contact your local AgLS or call **877-466-9757**.

Farm Laborer Outreach: Federal regulations require that states conduct outreach to Migrant and Seasonal Farm laborers (MSFWs) who are not being reached by typical employment services offered at the New York State Career Centers that operate exclusively during normal business hours.

AgLSs may contact MSFWs any day of the week or time of day, in their living, working, or gathering areas. AgLSs provide information to MSFWs about labor laws, services available from the local Career Centers, local support services, and other job development services.

AGRICULTURAL RECRUITMENT SYSTEM (ARS)

The Agricultural Recruitment System (ARS) provides agricultural employers a mechanism to recruit qualified US workers for temporary agricultural work (less than a year-round basis). ARS is a process for handling of local, intra and interstate agricultural job orders through the New York State Career Center. An employer can request to use the ARS system at any time; however, the employer should be cognizant of the time frame workers will be needed for the season. Employers should request workers no later than 10-12 weeks prior to the date of need to provide enough time to go through the entire process (Local, Intrastate, and Interstate recruitment).

Local: Employers submit a local job order with the local Career Center/AgLS staff. If housing is provided, it must be inspected and approved by the appropriate agency. Career Center/AgLS staff can approve and submit the local job order in the One Stop Operating System (OSOS) for recruitment.

Intrastate: If labor needs are not met through local recruitment efforts, the employer has the option to file an intrastate job order, also known as the Intrastate Clearance Order (ICO). This allows employers to recruit outside of the local workforce area but recruits only within the state of NY. Employer along with Career Center/AgLS's assistance, fills out the ETA 790 Form requesting permission to recruit outside the local workforce area.

The employer must agree to some assurances to participate in the ARS process. The following language is included in the job order and the employer must agree to:

- I. Pay highest rate of pay among state, federal or prevailing wage
- II. Register with state as a Farm Labor Contractor
- III. Provide Outreach workers reasonable access to workers

The Intrastate job order is reviewed and approved by the NY State Monitor Advocate (SMA).

Interstate: If labor needs are not met through Intrastate recruitment, the employer can request to expand the search for workers to other US supply states. The employer requests that the ETA 790 form (same as above) be submitted to the USDOL for approval. The SMA submits the signed ETA 790 to Regional Monitor Advocate (RMA) for review and approval. The RMA has 10 days to approve or deny the job order. Once approved, the job order will be shared with the identified US supply states and those State Workforce Agencies (SWA) will promote and recruit applicants.

AGRICULTURAL RECRUITMENT SYSTEM FAQs

How is the H-2A process different from ARS?

The ARS, a free program, is intended to recruit only U.S. domestic workers. The H-2A foreign guest worker program allows employers to expand recruitment to workers internationally. Under the H-2A foreign guest worker program, employers pay an application fee and pay costs associated with recruiting workers from other countries.

Can I use the ARS process and submit an H-2A job order at the same time?

If an employer decides to supplement labor with the H-2A guest worker program, additional steps and paperwork must be completed. The ETA 790 Form is submitted to NYSDOL's Foreign Labor Certification Unit for processing and sent to USDOL's Office of Foreign Labor Certification for approval. However, the ARS can be used prior to applying under the H-2A program to test for domestic worker availability in the area of intended employment or surrounding supply states.

Is there a cost to using the ARS?

Although, there are no required fees or costs that must be paid by the employer to use ARS, there are required assurances that may have a financial impact on worker recruitment. For example, the employer may have to pay to repair worker housing prior to inspection or pay for worker transportation.

Does the SWA screen applicants for work authorization?

Career Center and AgLS staff do not verify work authorization. Staff match available job seekers currently registered in OSOS and refer qualified candidates to your job order. It is the responsibility of the employer to complete the required Federal and State paperwork to successfully onboard workers.

Am I required to hire referrals from the NYSDOL?

No, an employer is not required to hire a referral from the NYSDOL. However, if a screened applicant is not hired, we may follow-up with the employer to determine the reason for not hiring a referral.

THE FOREIGN LABOR CERTIFICATION UNIT

The New York State Department of Labor's Foreign Labor Certification Unit (FLCU), within DIPA, processes H-2A and H-2B job order applications for employers conducting business in New York State. The NYSDOL works with the USDOL to ensure employers comply with state and federal laws.

THE FEDERAL H-2A VISA PROGRAM

The Federal H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

The employment must be of a seasonal nature and tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle. It also must require labor levels far above those necessary for ongoing operations.

The employment must be of a temporary nature when the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

New York State's primary goal in this program is to help the agricultural employer obtain qualified domestic workers for these positions. Our role in this federal program also includes:

- Processing the agricultural employer's application for temporary employment certification
- Reviewing it for compliance with State and Federal regulations
- Placing the approved job order on New York State's One Stop Operating System (OSOS) for interstate and intrastate distribution
- Following up on domestic applicant referrals made on the approved job orders
- Verifying that working and living conditions match those described in the job order
- Providing requested data to the Federal Department of Labor (USDOL)

Here are some facts and tips to keep in mind for H-2A workers and other workers employed on the H-2A job order in New York State:

Domestic Applicants: H-2A employers must provide employment to any qualified, eligible U.S. worker who applies for the H-2A job opportunity until 50% of the work contract has elapsed.

The employer must hire all domestic applicants who:

- Meet the minimum qualifications for the position
- Are available for the entire period of employment
- Have been fully apprised of all terms and conditions of employment in their primary language

DIPA offers free language interpretation and interview assistance to H-2A employers interviewing U.S. applicants. Employers may also use the H-2A Referral Toolkit to help with local and domestic worker recruitment.

H-2A Guest Workers: DIPA offers free language interpretation and interview assistance to H-2A employers interviewing U.S. applicants. Employers may also use the H-2A Referral Toolkit to help with local and domestic worker recruitment:

- For the employer listed on the contract
- At the location(s) stated on the contract
- Only for the period contracted
- On the crop activity stated on the contract
- At the rates of pay stated on the contract (hourly, piece rate etc.)

Disclosure: Every year upon hire, workers must be given a copy of the certified work contract, the ETA790, which states:

- The start and end dates of the contract
- The significant conditions of employment (transportation, housing, meals, etc.)
- The days that workers are not required to work (Sundays, federal holidays, etc.)
- The hours per day and the days per week a worker is expected to work
- The crop and area to be worked
- The rate of pay for each job
- That the employer will provide and pay for all required tools
- That the employer will provide workers' compensation insurance for workers

Deductions: Workers must also be notified in writing of all deductions that are not already required by law, such as health insurance premiums or any other benefits the employer may provide. An employer is prohibited from deducting money from workers' wages for the cost of new or broken tools, spoiled products, cleaning, transportation, laundry, or any other expense that goes with running a business.

Rates of Pay: The employer must pay all covered workers at least the highest of the following applicable wage rates in effect at the time work is performed: the Adverse Effect Wage Rate, the applicable prevailing wage, the agreed-upon collective bargaining rate, or the Federal or State statutory minimum wage.

Wages may be calculated based on hourly or "piece" rates of pay. The piece rate must be no less than the piece rate prevailing for the activity in the area of intended employment and must average no less than the highest required hourly wage rate in a pay period.

Adverse Effect Wage Rate (AEWR): All workers performing the duties listed in the ETA790 work contract must be paid at least the AEWR, which is a separate minimum wage rate (a rate that will not adversely affect the employment opportunities of U.S. workers) for each state. The AEWR is published once a year by the USDOL with the assistance of the U.S. Department of Agriculture, for each state. For more information, visit the USDOL's Office of Foreign Labor Certification website at:

www.foreignlaborcert.doleta.gov/adverse.cfm

H-2A Compliant Wage Statements: With each paycheck, employers must give every worker a wage statement that shows:

- The employer's name, address, and telephone number
- The dates covered by the pay period
- The number of hours worked
- The number of hours refused (if applicable)
- The pay for each type of crop
- The pay rate (per hour, piece rate, etc.)
- The total earnings for the pay period
- All deductions from wages (with explanations for each deduction)

<https://labor.ny.gov/formsdocs/dipa/FL446.pdf>

Guarantee: The total pay earned during the employment period must meet the Three-Quarter Guarantee of the entire ETA790 work contract. What that means is that the H-2A employers must guarantee to offer each covered worker employment for a total number of hours equal to at least 75% of the workdays in the contract period – called the "three-fourths guarantee."

For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker must be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360).

If an employer does not offer the required hours or if it is impossible to fulfill the remainder of the contract and it is not the employer's fault, the employer must pay the workers three-fourths (75%) of the total hours stated, for the full period of the contract.

Transportation: The employer must either provide or pay for inbound transportation and daily meals to the place of employment or reimburse workers for reasonable costs when 50% of the work contract is completed. When the work contract is completed or if the contract cannot be fulfilled by the employer, the employer must provide or pay for the worker's transportation and daily meals to his next job or home.

Housing and Daily Transportation: When a worker cannot return to their permanent residence within the same day, the employer must provide safe housing, utilities and daily transportation at no cost to the worker.

Drinking water: Employers must provide safe, clean and cool drinking water in portable containers at the worksite and at no cost to the workers.

Toilets and Hand Washing: If workers will be in the fields for more than three hours (including travel time to and from the fields), employers must also provide one toilet and one hand washing station for every 20 workers. If there are 21 workers, the employer must provide two toilets and two hand washing stations. Toilets must be close to where the employees work. They must be clean, free of pests and have self-closing doors that lock from the inside. There must be enough toilet paper for all workers for the entire day. Hand washing stations must be near the toilets. They must be stocked with clean water and enough soap and clean towels for every use and provide a place to dispose of used towels. Employers must tell employees where they can get drinking water, use the toilet, and wash their hands.

Workers' Compensation: The employer must provide Workers' Compensation Insurance Coverage to workers. A Notice of Workers' Compensation Coverage poster, showing the name of the insurance company, policy number and coverage period must be clearly displayed in an area visible to all workers.

Meal Periods: If the workday or shift is more than six hours, workers must receive at least one thirty-minute meal period. This meal period does not have to be paid but it must be provided. When a shift begins before 11am and goes past 7pm, the employer must provide an additional, 20-minute meal period for dinner, between the hours of 5-7pm.

Other Protections: The employer may not require workers to pay, either directly or indirectly, for any employer-related costs to obtaining the H-2A labor certification, including the employer's attorney or agent fees, the application fees, visa fees, transportation costs or any other recruitment costs.

H-2A Guest Worker Program Cards: The FLCU has created an identification card intended to be a supplemental identification document for foreign guest (H-2A) workers. The card includes the name of the agricultural business, the H-2A job order number, as well as the start and end dates of the job order. The card is approximately 2 ½" x 3 ½" including lamination. This identification card program is offered at no expense to employers with certified H-2A job orders in New York State. Upon request, the FLCU will produce the number of cards that correspond to the number of workers approved on the certified H-2A job order. Employers can request their cards by sending an e-mail to dipa@labor.ny.gov.

HUMAN TRAFFICKING

DIPA coordinates the New York State Department of Labor's (the Department) anti-human trafficking efforts, including receiving and investigating tips of possible trafficking, helping individuals in filing claims for back wages, providing referrals to social service agencies, and, where appropriate, providing certifications for visas for victims of certain qualifying crimes. DIPA additionally raises public awareness through outreach presentations to community organizations, workers, and employers. DIPA also participates in regional taskforces, which bring together advocates and law enforcement to coordinate responses to human trafficking.

OUTREACH TO IMMIGRANT COMMUNITIES

DIPA staff conduct Know Your Rights events around the state targeting immigrant, refugee, and English Language Learners. Recent outreach initiatives have included racetrack backstretch workers, day laborers, and nail salon workers. DIPA partners with immigrant and refugee advocacy groups around the state, including the Consulates representing the larger groups of immigrant workers in the State of New York.

NEW YORK STATE MONITOR ADVOCATE

The New York State Monitor Advocate monitors the NYSDOL's employment services provided to Migrant and Seasonal Farm Laborers ensure compliance with U.S. Department of Labor regulations.

Some of the responsibilities of the State Monitor Advocate are:

- Monitoring New York State Career Centers to ensure equity of services
- Monitoring outreach performed by the Agriculture Labor Program field staff throughout the state

- Ensuring that complaints submitted through the Employment Service Complaint System are addressed or referred to other agencies (i.e. Wage and Hour, OSHA, Human Rights, etc.) and following up on the referred complaints
- Working with the Foreign Labor Certification Unit (FLCU) to ensure that domestic workers that qualify for H-2A jobs are given every opportunity to obtain those jobs

DIVISION OF LABOR STANDARDS

The Division of Labor Standards enforces New York State Labor Laws and:

- Registers garment industry employers
- Licenses and regulates certain employment agencies
- Registers and monitors professional employer organizations
- Regulates the employment of child performers
- Issues Certificates of Registration for:
 - Growers and processors who employ migrant farm labor
 - Farm labor contractors
 - Operators of labor camp commissaries

The New York State Labor Laws enforced by the Division of Labor Standards include:

Minimum Wage and Overtime Pay: Enforcement of the New York State minimum wage and overtime standards that apply, including those under the Federal Fair Labor Standards Act.

Unpaid or Withheld Wages: Claims investigation for unpaid wages, including illegal deductions or charges, kickback of wages and appropriation of tips. We attempt to collect on valid wage claims.

Unpaid Wage Supplements or Fringe Benefits: The Division attempts to collect for valid claims for unpaid wage supplements that employers have agreed to provide to their workers. Wage supplements include pay owed for:

- Vacation
- Sick leave
- Personal days or holidays
- Reimbursement of expenses

- Bonuses
- Similar items

Unlawful Employment of Minors: Enforcement of New York State Labor Laws that:

- Set minimum age to perform certain occupations
- Prohibit certain jobs that are hazardous to young people
- Limit the working hours of youth
- Require employment certificates or permits
- Require overtime pay for hours voluntarily worked over 60 in a week
- Require a day of rest (24 consecutive hours) in a week or time and a half pay for voluntarily working on that day

Farm Labor: Enforcement of New York State Labor Laws that:

- Require written work agreements
- Require overtime pay for hours voluntarily worked over 60 in a week
- Require a day of rest (24 consecutive hours) in a week or time and a half pay for voluntarily working on that day
- Prohibit certain deductions from wages or charges to employees

For more information, contact Labor Standards at Ask.LSask@labor.ny.gov

THE NEW YORK STATE LABOR LAWS

NEW WAGE STANDARDS FOR NEW YORK FARM WORKERS

Effective January 1, 2020:

- All farm workers, including Foreign Visa workers, will now earn one and half times their regular rate for hours worked over 60 in a calendar week (established by the employer).
- Farm employers must provide at least one day (24 consecutive hours) of rest in every calendar week. Farm workers, including Foreign Visa workers, may voluntarily work on the day of rest, but the employer must pay them at the overtime rate.

Read our FAQs about the Farm Laborer Fair Labor Practices Act for more information or call **1-833-NY-FARMS (833-693-2767)** with any questions. For questions about unemployment insurance please call the NYS Department of Labor at **1-888-899-8810**.

Other Farm Laws effective January 1, 2020:

Workers' Compensation

Farm employers, owners and operators are required to provide workers' compensation coverage for their employees, regardless of their annual payroll, and all employers are required to post the mandatory workers' compensation notice of compliance poster in both English and Spanish. Additionally, farm labor contractors, forepersons, and supervisors who receive notice of an injury must notify the employer, owner or operator of the farm where the injury occurred, and employers are prohibited from discriminating against farm laborers who request workers' compensation claim forms. For questions, please contact Workers' Compensation at **877-632-4996** or <http://www.wcb.ny.gov/farmtoolkit/>.

Disability Insurance and Paid Family Leave

Farm employers, owners and operators are required to provide New York's disability benefits (DB) and Paid Family Leave (PFL) insurance coverage to eligible farm laborers. See <https://paidfamilyleave.ny.gov/> for information on PFL employee eligibility and opt out waivers that employers must give to those who qualify. All employers are prohibited from discriminating against employees who request DB or PFL claim forms. For questions, please call **844-337-6303**.

Unemployment Insurance

Farm employers, including certified agricultural crew leaders (FLCs), will now be required to provide farm laborers with Unemployment Insurance coverage once the employer has paid remuneration of \$300 or more to employees in a quarter. H-2A Foreign Guest Workers are now excluded from unemployment insurance coverage. For questions regarding your unemployment insurance coverage, please call **888-899-8810**.

Right to Organize

Farm laborers now possess the right to organize, which includes forming, joining, or assisting labor organizations and the right to bargain collectively through representatives of their own choosing. This includes the right to engage in concerted activities (any activity, discussion, or meeting directed at improving terms and conditions of employment, or the group interests of employees), for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion of

employers. However, farm laborers do not have the right to strike. Farm laborers are protected from retaliation, including termination if they are speaking to each other about labor conditions and organizing. For questions, please contact the Public Employee Relations Board at **518-457-6410** or perb.ny.gov.

Migrant Farm laborer Housing Permit Effective January 1, 2021:

Employers are required to contact the New York State Department of Health (or local County Health Department) and apply for a permit to operate a farm or processing labor camp which will be occupied by one or more migrant workers. For information on the permitting process, please contact the New York State Department of Health at **518-402-7600**. Find your county health department: [www.health.ny.gov/contact/contact information/](http://www.health.ny.gov/contact/contact_information/)

FARM LABORER FAIR LABOR PRACTICES ACT FREQUENTLY ASKED QUESTIONS

Who is covered by the day of rest provision?

All farm laborers are covered. The following employees may be excluded from coverage if they meet requirements:

- the foreman in charge (can be more than one)
- members of the employer's immediate family
- Executives
- Administrative employees
- Professional employees

Who is covered by the over-60 hours overtime provision?

All farm laborers, including crew leaders/chiefs and foremen in charge, are covered by the overtime provisions of the Act. The following employees may be excluded from coverage if they meet requirements:

- members of the employer's immediate family
- Executives
- Administrative employees
- Professional employees

Who is an employer's immediate family members?

Overtime, day of rest, and collective bargaining provisions for farm laborers do not apply to members of the employer's immediate family who are:

- related to the third degree of consanguinity or affinity (legal relationship)
- working on a farm out of familial obligations
- not paid wages or other compensation based on their hours or days of work

Employers do not have to execute the Pay Notice & General Work Agreement (LS309) with family members that meet the criteria above.

Who is an Executive Employee?

An Executive is someone whose:

- primary duty consists of the management
- directs the work of two or more other employees
- has the authority to hire or fire other employees or can recommend hiring
- customarily and regularly exercise discretionary powers
- who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities

Who is an Administrative Employee?

An Administrative employee is someone whose:

- primary duty consists of the performance of office or non-manual field work directly related to management policies
- exercises discretion and independent judgment
- directly assists an employer, executive or administrative employee and requiring special training, experience or knowledge
- who is paid for his/her services a salary, inclusive of board, lodging, or other allowances and facilities

What are the minimum salary requirements for Executive and Administrative Employees?

- NYC: \$1,125 on or after December 31, 2019
- Nassau, Suffolk, and Westchester Counties: \$1,050 on or after December 31, 2020 and \$1,125 on or after December 31, 2021
- Remainder of the State: \$937.50 on or after December 31, 2020

Who is a Professional Employee?

A Professional employee is someone whose:

- primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction/study
- work requires the consistent exercise of discretion and judgment
- whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work)

There is no minimum salary requirement for a Professional Employee.

Read our full list of FAQs about the FLFLPA at:

<https://labor.ny.gov/immigrants/farm-laborers-fair-labor-practices-act/flflpa-frequently-asked-questions.pdf>

For more information or call **1-833-NY-FARMS (833-693-2767)** with any questions. For questions about unemployment insurance please call the New York State Department of Labor at **1-888-899-8810**.

MIGRANT OR SEASONAL FARM LABORERS

The Federal Migrant and Seasonal Farm Laborer Protection Act and other federal laws provide certain protections and other services for MSFWs.

Who is a Migrant or Seasonal Farm laborer?

A worker can be a migrant farm laborer, a seasonal farm laborer or a migrant food processing worker.

Seasonal Farm laborer: A person who, during the preceding 12 months, worked doing farm work. Someone who was employed on a farm, year-round, by the same employer, is not a seasonal farm laborer.

Migrant Farm laborer: A seasonal farm laborer who had to travel to the farm and was unable to reasonably return to their permanent residence within the same day. This means that the seasonal farm laborer has temporarily relocated from their permanent residence for working on this job.

Migrant Food Processing Worker: A person who, during the preceding 12 months worked performing food processing (animal slaughtering; fruit and vegetable canning; prepared sauce manufacturing; frozen fruit, juice, and vegetable manufacturing) and the worker was not reasonably able to return to their permanent residence in the same day.

For more information about federal programs and protections for Migrant and Seasonal Farm laborers, visit [www.doleta.gov/Farm laborer](http://www.doleta.gov/Farm_laborer) and <https://www.dol.gov/agencies/eta/agriculture>.

WORKERS RIGHT TO RECEIVE VISITORS

The New York State Attorney General says that workers have the right to receive, in the labor camp where they live (including employer-provided housing), visits by:

- Doctors
- Lawyers
- Labor union representatives
- Clergy
- Persons working for any government or private agencies who care about your health or welfare
- Workers can have guests and visitors at the camp where they live, when they are not working, without asking permission of the employer or the owners of the labor camp/housing

MINIMUM WAGE LAW

What is the Minimum Wage?

Workers must be paid at least the federal minimum wage or the state minimum wage (whichever is higher) per hour for the time worked. If paid on a piece rate basis (by the basket or bushel), the piece rate must result in the minimum hourly wage rate or higher.

New York State Minimum Wage: Historically, the New York State minimum wage has been the same as or higher than the federal minimum wage. The minimum wage in New York is as follows:

General Minimum Wage Rate Schedule			
Location	12/31/19	12/31/20	2021*
New York City	\$15.00 /hour	\$15.00 /hour	\$15.00 /hour
Long Island and Westchester Co.	\$13.00 /hour	\$14.00 /hour	\$15.00 /hour
Remainder of New York State	\$11.80 /hour	\$12.50 /hour	*

*Annual increases for the rest of the state will continue until the rate reaches a \$15 minimum wage.

What must I pay local and domestic workers if I also hire H-2A workers?

If the non-H-2A workers perform a different job from the H-2A workers, the non-H-2A workers must be paid at least the state minimum wage. If they perform the same duties as the H-2A workers, they must be paid the higher of the Adverse Effect Wage Rate (AEWR) or the Prevailing Wage, which are set by the USDOL. To obtain information about the AEWR or the Prevailing Wage for a specific occupation, contact your Agriculture Labor Specialist.

Can I pay a youth under age 18 a rate below minimum wage?

No. A young worker must be paid at least the minimum wage.

Can I pay workers a piece rate?

Yes. However, if you pay on a piece rate basis, the piece rate must yield a wage equal to or greater than the minimum wage, even when the employee is a minor. This calculation must also include overtime if the total hours worked exceeds 60 in a week.

Can I charge workers for meals?

Yes. If you provide meals to your workers, you may take a credit towards the minimum wage in the amount of \$1.70 from the workers' wages for each meal. This must be listed on the Pay Notice and Work Agreement and clearly stated on the pay stub. However, if the workers are migrant seasonal farm laborers who earn less than \$254 every two weeks, you cannot charge or deduct for meals.

Can I charge workers for housing?

If they are migrant farm laborers, no, you cannot charge for housing or utilities. When you provide housing to non-migrant workers, you may take a housing and utilities credit towards the minimum wage in the following amounts:

- \$18.95 per week for a one-person room
- \$12.65 per week for a shared room
- \$ 5.00 per day for a house or apartment with utilities for one person
- \$ 8.00 per day for a house or apartment with utilities, if the worker lives with family (or other family members who are also employees)

Are my packing house employees considered farm laborers?

A person working in a packing house is a farm laborer only if all the produce handled in the packing house is grown on the same farm and by the same grower/processor who owns the packing house and the farm. Farm workers are entitled to overtime if their hours worked exceeds 60 in a calendar week.

If workers are handling goods produced on another farm, then the packing housework is not farm work for the purposes of overtime pay. Those workers would be due overtime if the hours worked exceeds 40 in a calendar week.

Where can I find out the basic standards that migrant farm laborer housing must meet?

For migrant seasonal farm laborer housing, call the New York State Department of Health's Bureau of Community Environmental Health and Food Protection at **518-402-7600** or toll-free at **800-458-1158**.

Can I pay workers with products from the farm (milk, vegetables, fruit or eggs)?

Yes, but only if you have agreed to this form of payment. You must value the products at the price the stores pay, not the price the stores charge their customers. The details of the payment must be listed on the worker's wage statement.

If a worker is covered by federal law, does the state law apply?

Yes. The law most protective of employees applies, whether it is state or federal. You must comply with the law that gives the greatest advantage to the worker. For example, if the state minimum wage is higher than the federal minimum wage, you must pay the higher rate.

Do I have to pay a higher rate for overtime hours?

Farm workers are entitled to overtime if their hours worked exceeds 60 in a calendar week.

However, there may be aspects of your business that are not considered agricultural. For an employee performing non-agricultural work, overtime is required for every hour over 40 in a work week.

The overtime rate, as well as the number of overtime hours worked, must be clearly listed on the paystub.

What about workers in the packing house or processing plant?

Farm laborers in packing and processing plants are entitled to overtime when the hours worked exceed 60 in a calendar week.

If they pack or process food that was not grown on the employer's farm, they are entitled to overtime when the hours worked exceed 40 in a calendar week.

What about workers in a retail farm stand?

Workers in retail farm stands are entitled to overtime if the hours worked exceed 60 in a calendar week. If the stand sells goods not grown or produced on the farm, the workers are then entitled to overtime if the hours worked exceed 40 in a calendar week.

THE WAGE THEFT PREVENTION ACT (WTPA)

The Wage Theft Prevention Act took effect on April 9, 2011. The law requires employers in all industries to give written notice of wage rates to each new hire. The notice must include:

- Rate or rates of pay including overtime rate of pay (if it applies)
- How the employee is paid (by the hour, shift, day, week, commission, etc.)
- Regular payday
- Official name of the employer and any other names used for business (DBA)
- Address and phone number of the employer's main office or principal location
- Allowances taken as part of the minimum wage (tips, meal and lodging)

The notice must be given both in English and in the employee's primary language (if the New York State Department of Labor offers a translation). An employer may provide its own notice, if it includes all the required information, or use the Department of Labor's sample notice forms. The Department of Labor currently offers sample pay notice forms in the following languages: Spanish, Chinese, Haitian Creole, Korean, Bengali, Polish and Russian. They are available at: <https://labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>.

Am I required to provide a farm work agreement in addition to the pay notice?

Before the Wage Theft Prevention Act was enacted, all farmers were required to provide farm work agreements to every employee upon hire and/or at the start of every season. To avoid requiring farmers to provide two different notices to every employee, the Department of Labor created a combination Pay Notice and Farm Work Agreement, Form LS309, to help farmers fulfill both requirements.

Do I have to use The Department of Labor's templates?

No, employers can develop their own notices if they contain all the information required by the law.

When are pay notices required?

Notices are required at the time of hire, and when there are changes in the information contained in the pay notices.

Can the notice be given electronically?

Yes, but there must be a system where the worker can acknowledge the receipt of the notice and print a copy of the notice for their own records.

Do I have to give a new notice every time a wage rate changes?

Except for the employers in the hospitality industry, notice is not required where there is an increase in a rate and the new rate is shown on the next payment of wages. For any reduction of wage rate, an employee must be notified in writing prior to the reduction being implemented. Employers in the hospitality industry currently must give a new notice every time a wage rate changes.

What procedures should be followed if an employee has multiple pay rates?

An employer must put all pay rates on the wage statement.

PAYMENT OF WAGES FREQUENTLY ASKED QUESTIONS

How often do I have to pay workers?

Section 191.1a requires that manual laborers be paid within 7 days after the end of the pay week. This means that manual laborers must be paid weekly (with a lag) or biweekly (with no lag). If you choose to pay your workers biweekly, you must pay on the fourteenth day and include the hours worked that day.

What information must be on the paystubs?

You must provide a wage statement (printed or written paystub) every time you pay your employees. The paystub must show:

- The employer's full name, address and telephone number
- The employee's name
- The dates of the pay period covered
- The total number of hours the employee worked
- Rates paid
- Gross wages
- Legal allowances or deductions
- The total net wages

If paid by piece work:

- The size/weight of the basket, pail, bin or other container
- The number of these containers produced during the pay period

Can I pay workers with cash or a check?

Yes. Employers can pay farm laborers either in cash or by check. Workers must be able to cash their paychecks for the full amount, on pay day and without any fees.

DEDUCTIONS FROM WAGES FAQs

What deductions can be taken from wages?

The only deductions that can be taken from pay include:

- Those required by law, such as social security, income tax and court-ordered garnishments
- Those that have been authorized in writing by the employee and which benefit the employee, such as insurance premiums, savings or allowances for meals or lodging, if permitted by law

For migrant workers, you cannot make any deductions for lodging and utilities you provide.

Can I make deductions for daily commuting to and from work?

No. Employers and farm labor contractors cannot charge workers for daily transportation to and from work or between worksites.

Can I make deductions for clothing, footwear or tools I provide?

No. Nor can you make deductions for the maintenance of workers clothing, footwear or tools.

Can I make deductions for wage advances or loans?

In limited circumstances, this practice may be acceptable. *Please see 12 NYCRR Part 195 for details.*

MEAL PERIODS AND OTHER BREAK FAQs

Must workers receive fifteen-minute breaks?

No. Breaks are not required by law, but you may offer them to workers. However, unlike a meal period, a break must be paid. Additionally, a break is considered a benefit and should appear in the written work agreement.

Do I have to provide meal periods during the workday?

In general, if a shift is greater than 6 hours, the law requires at least a 30-minute, uninterrupted meal period. This time does not have to be and typically is not. However, if an employee is called to work during the meal period, such that they get less than 20 minutes of break time, then the worker must be paid for the full meal period.

Are their exceptions to the 30-minute meal period?

There are instances where additional and/or longer meal periods are required. In some cases, the New York State Commissioner of Labor allows certain employers to shorten the meal period to not less than 20 minutes if they have obtained a special permit.

Please see the New York Labor regulations below:

Shift Length	Meal Break Length
Shift is more than 6 hours and extends over the noonday meal period (11am – 2pm)	At least 30 minutes, between 11am and 2pm
Shift starts before 11am and lasts past 7pm	At least 30 minutes between 11am and 2pm, and at least an additional 20 minutes between 5pm and 7pm
Shift is more than 6 hours and starts between 1pm and 6am	At least 60 minutes (factory); 45 minutes (mercantile/other), somewhere in the middle of the shift

Am I required to provide workers with one day of rest every week?

Yes, workers are entitled to one 24-hour period of rest in every calendar week. The day of rest should coincide with a day of worship, whenever possible. And if the worker agrees to waive the day of rest, the employer must pay the overtime rate for work performed on that day.

BENEFITS/WAGE ENHANCEMENTS FAQs

Is the employer required to provide workers' compensation insurance coverage?

Regardless of annual payroll, all farm employers, owners and operators are required to provide workers' compensation coverage for their employees.

Am I required to pay for holidays, sick days or vacations?

Only if you have agreed to pay them. You may decide to pay for such benefits as vacation, sick leave, or holidays, but it is not a requirement. If offered, these benefits must appear in a written policy and in the work agreement.

Are workers entitled to disability coverage and Paid Family Leave?

Farm employers, owners and operators are required to provide New York's disability benefits (DB) and Paid Family Leave (PFL) insurance coverage to eligible farm laborers. See [PaidFamilyLeave.ny.gov](https://www.paidfamilyleave.ny.gov) for information on PFL employee eligibility and opt out waivers that employers must give to those who qualify.

Am I required to provide workers with unemployment insurance?

Employers are required to continue to provide farm laborers with unemployment insurance coverage, including to crew leaders (FLCs). H-2A Foreign Guest Workers will be excluded from unemployment insurance coverage.

DRINKING WATER AND FIELD SANITATION FAQs

Am I required to provide drinking water near the worksite?

Yes. Employers employing paid farm laborers or food-processing workers must provide safe cool drinking water and disposable cups close to the work location and at no cost to the employees.

Am I required to provide toilet facilities in the field?

Yes. New York State law requires employers to provide toilet, hand-washing facilities and, if necessary, transportation to them. If there are five or more workers at the same location, the employer must provide at least one toilet and hand-washing facility for every 20 workers. Both units shall be:

- Located together
- Within one quarter-mile walking distance or
- If the terrain is impassable, at the closest point reachable by motor vehicle.

If half or more of the 20 workers are women, there must be one toilet designated for men and one for women. Each toilet must be marked with an appropriate sign.

PESTICIDE USAGE

Under federal law, employers must tell workers about the dangers from chemicals in the workplace. People who use pesticides on the job must be certified or supervised by a certified applicator.

For more information, call the New York State Department of Environmental Conservation at **518-402-8788** or the nearest federal OSHA office toll free at **800-321-6742**.

NEW YORK'S MIGRANT REGISTRATION LAW

CERTIFICATE OF REGISTRATION (GROWER/PROCESSOR)

A Grower or Processor who hires five or more out-of-state migrants, not including H-2A workers, must get a Certificate of Registration, even if they use a Farm Labor Contractor for recruiting and hiring.

CERTIFICATE OF REGISTRATION (FARM LABOR CONTRACTOR)

A Farm Labor Contractor that places five or more out-of-state migrants to work on farms must obtain a Certificate of Registration. Each application for a Certificate must be signed by the grower after the Farm Labor Contractor signs it.

Migrant Registration Law FAQs

What is a Farm Labor Contractor?

A Farm Labor Contractor is a person or business that charges a fee to recruit, transport, supply, or hire migrant seasonal farm laborers to work for a farm or food-processing business. The Farm Labor Contractor may be a crew leader who supervises the workers or may be a distant company with no representative on site. The Farm Labor Contractor must register with the New York State Department of Labor, which issues a Certificate of Registration.

What is a Certificate of Registration?

A Certificate of Registration is an official card that allows a Farm Labor Contractor to provide migrant seasonal farm laborers to the employer whose name is on the card. The Farm Labor Contractor must have one certificate for each farm or food processing business they serve. To apply for this certificate, the Farm Labor Contractor must give information about the working and living conditions of the workers to the New York State Department of Labor.

Who pays the Farm Labor Contractor?

The employer pays the Farm Labor Contractor's fees at the employer's own expense. It is against the law for workers to pay an employer or a Farm Labor Contractor to get a job or to keep one. The farmer cannot take money from your wages to pay the Farm Labor Contractor.

Registration is free in New York State. Grower Processor and Farm Labor Contractor registration forms can be found at:

<https://labor.ny.gov/workerprotection/laborstandards/wpcpu.shtm>

CHILD LABOR

There are many types of "employment certificates" or "work permits" for minors under the age of 18 (commonly referred to as "working papers") to work in a variety of industries. In this booklet, only Farm Work Permits will be discussed.

Can children aged 12 or 13 do farm work?

Yes. They may only be employed in:

- Hand-harvesting of berries, fruits, and vegetables, and must have a farm work permit
- Working for parents or guardians, at times when school is not in session, on the home farm or at other outdoor work that is not part of a trade, business, or service (This type of job does not require a work permit.)
- Assisting a parent, aunt, uncle, grandparent or guardian selling produce from their own farm at a farm stand they own or lease during time when school is not in session; the minor must be with the parent or guardian or have their written permission to do this (This type of job does not require a work permit.)

What kinds of working papers are required for farm work?

Workers younger than 16 years of age must obtain one of the following Farm Work Permits:

- Farmwork Permit AT-24 (a yellow permit for 14 and 15-year-olds)
This permit allows these minors to work before and after school, on weekends and during vacations (There is no limit on the hours they can work.)
- Farmwork Permit AT-25 (a white permit for 12 and 13-year-olds)
This permit allows these minors to work in the hand-harvesting of fruits, berries and vegetables. They can work only 4 hours a day as follows:
 - From Labor Day to June 20th between 9am and 4pm
 - From June 21st to Labor Day between 7am and 7pm

The minor (age 12-15) must be with a parent or guardian or give the employer written consent from the parent to the employer.

Can minors aged 14 or 15 do farm work?

Yes. Minors 14 and 15 years of age can do farm work that is not forbidden by regulation for children below the age of 16. There is no restriction on the hours they may work, except that they may not work during school hours. A Farm Work Permit issued by the school and signed by each employer is required.

Can minors 16 or 17 do farm work?

Yes. Minors 16 and 17 years of age can do any type of farm work not forbidden by regulation for children younger than 18. There is no restriction on the hours they may work, except that they may not work during school hours. A farm work permit is not required for this age group.

Are minors allowed to perform all kinds of farm work?

No. New York State and Federal regulations prohibit work that is dangerous or could cause injury to minors under 18 (State) and under 16 (Federal). There are some exceptions to this rule (see exceptions on page 34).

New York State Prohibited Occupations: No one under the age of 18 may work or assist in the following:

- Construction work, including wrecking, demolition, roofing, or excavating operations and the painting or exterior cleaning of a building structure from an elevated surface
- The operation of circular saws, band saws and guillotine shears
- In or about a slaughtering and meat-packing establishment or rendering plant
- The operation of power-driven woodworking, metal-forming, metal-punching, metal-shearing, bakery or paper products machines
- The operation of power-driven hoisting apparatus
- The manufacture of brick, tile and like products
- Exposure to radioactive substances or ionizing radiation, or exposure to silica or other harmful dust
- Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill or cooperage-stock mill
- In mining or in connection with a mine or quarry
- As a helper on a motor vehicle
- In the care or operation of a freight or passenger elevator, except that a minor over 16 may operate automatic, push-button control elevators
- In manufacturing, packing, or storing of explosives or in the use or delivery of explosives
- Operating or using any emery, tripoli, rouge, corundum, stone, silicon carbide, or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or iridium are manufactured

- Adjusting belts to machinery or cleaning, oiling, or wiping machinery
- Packing paints, dry colors or red or white leads
- Preparing any composition in which dangerous or poisonous acids are used
- Operating steam boilers subject to Section 204 of the Labor Law
- In penal or correctional institutions, if the job relates to the custody or care of prisoners or inmates

Exceptions: These rules do not apply to:

- Workers younger than 18 who are apprentices individually registered in Department of Labor-registered apprenticeship programs
- Student-learners enrolled in recognized cooperative vocational training programs
- Trainees in approved on-the-job training programs
- Workers 16 or 17 years old who have completed training as a student learner or trainee in an approved on-the-job training program
- Workers 16 or 17 years old who have completed a training program given by a public school or a non-profit institution that includes Department of Labor-approved safety instruction

Farm Labor (Under 16 Years of Age): In addition, there is a Federal Hazardous Occupations Order covering minors younger than 16 years of age engaged in farm work. The order lists 16 forbidden jobs for minors younger than 16 years of age, including working with certain power-driven farm machinery, operating a tractor with over 20 PTO horsepower, and working with explosives or certain chemicals.

These rules on child labor on farms do not apply to minors who work on a farm owned or run by their parents or to students in a recognized vocational education training program. In addition, there are exemptions for 4-H members who have completed certain training programs and students in other approved farm training and education programs.

If the federal regulations are stronger or more protective than the state regulations, then the federal rules apply.

Who can provide working papers?

Schools supply working papers to their students upon request. Children can find out about getting working papers at the school office. If the child does not attend school, they or their parent or guardian can contact any high school within New York State.

Are working papers required for out-of-state minors?

Yes. All minors 12 to 15 years old who want to do farm work in New York State, no matter where they are from, must get working papers to work.

The minor may obtain working papers from the school closest to the farm or place of employment.

Do you have to obtain a Farm Work Permit for each job?

No. A Farm Work Permit can be used for more than one job in the same type of work, but each employer must sign it. The permit remains valid so long as the minor is in the covered age group.

Posting Provisions: Employers must make a schedule for all minors and post it in a conspicuous place. The schedule must show the hours that minors start and end work. The hours of work can be changed, if the changes are posted on the schedule.

More information: For more information about employment certificates including Farm Work Permits, contact a local high school or visit the state Education Department's web site at www.p12.nysed.gov/sss/pps/workingpapers.

NEW YORK STATE SEXUAL HARASSMENT PREVENTION REQUIREMENTS

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment
- Such conduct is made either explicitly or implicitly a term or condition of employment
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment

A sexually harassing hostile work environment includes, but is not limited to words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Sexual harassment is a form of workplace discrimination and is against the law. All employees have a legal right to a workplace free from sexual harassment and employers must commit to a discrimination-free work environment.

Sexual Harassment Prevention Policy: New York State Labor Law requires that every employer in the New York State to adopt a sexual harassment prevention policy. Employers that do not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:

- Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- Provide examples of prohibited conduct that would constitute unlawful sexual harassment
- Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment and a statement that there may be applicable local laws
- Include a complaint form
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially

- Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue
- Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful

Sexual Harassment Prevention Policy Notice: This poster, which is an optional tool, is one way to direct both employees and non-employees to your Sexual Harassment Prevention Policy and should be displayed in a highly visible place.

<https://www.ny.gov/programs/combating-sexual-harassment-workplace>

Model Complaint Form: New York State Labor Law requires all employers to adopt a sexual harassment policy that includes a complaint form for employees to report alleged incidents of sexual harassment. Employers can download the model complaint form and share with their employees.

www.ny.gov/combating-sexual-harassment-workplace/employers

The Sexual Harassment Prevention Training Requirements:

Every employer in New York State is required to provide employees with sexual harassment prevention training. An employer that does not use the model training developed by the Department of Labor and Division of Human Rights must ensure that the training that they use meets or exceeds the following minimum standards. Model training materials are available to employers to download. The training must:

- Be interactive
- Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- Include examples of conduct that would constitute unlawful sexual harassment
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment.
- Include information concerning employees' rights of redress and all available forums for adjudicating complaints

- Include information addressing conduct by supervisors and any additional responsibilities for such supervisors

Each employee must receive training on an annual basis.

Training Videos: New York State has created model training videos that are available online at the links below. These videos, which may be watched via YouTube or downloaded, meet all state minimum training requirements except one: the videos alone are not considered interactive. If you are using this video to meet the training requirements, you must also:

- Ask questions of employees as part of the program
- Accommodate questions asked by employees, with answers provided in a timely manner
- Require feedback from employees about the training and the materials presented

During this interactive portion, employers should be prepared to address questions raised by employees including those specific to their industry, questions about the organization's reporting process and questions about how hypothetical cases would be handled.

Sexual Harassment Prevention Training Part 1

www.youtube.com/watch?v=sL7LwBsV9bM

Sexual Harassment Prevention Training Part 2: Case Studies

www.youtube.com/watch?v=1za7gs9S2H0

Policy and Training Overview for Employers: This webinar will review the law and what it means for employers across New York State.

www.youtube.com/watch?v=waQhoG06hBw

SEXUAL HARASSMENT PREVENTION FAQs

What type of records must employers maintain to verify compliance?

No signed acknowledgement of having read the policy is required, but employers are encouraged to keep a signed acknowledgement and to keep a copy of training records. These records may be helpful in addressing any future complaints or lawsuits.

Does this law apply to New York City employers and will the mandated New York City training meet the training requirements of the New York State Law?

Yes. It applies to all employers in New York State, including New York City. The New York City Commission on Human Rights partnered with the New York State Division of Human Rights and the New York State Department of Labor so NYC-based employers can meet compliance with both the New York State and New York City training requirements by using the online training provided by the New York City Commission on Human Rights. New York City's online training is available here.

Languages:

Will New York State make resources available for training in languages other than English?

Yes. Materials have been translated into Spanish, Chinese, Korean, Russian, Italian, Polish, Bengali and Haitian-Creole. Additional languages may be added in the future.

Am I required to provide the notice, policy and training in languages other than English?

Yes. Employers must provide employees with these materials in both English and in an employee's primary language if it is Spanish, Chinese, Korean, Polish, Russian, Haitian-Creole, Bengali or Italian. Model materials are available online. However, as employers may be held liable for the conduct of all their employees, employers are strongly encouraged to provide a policy and training in the language spoken by the employee.

Sexual Harassment Prevention Notice:

Can the required sexual harassment prevention notice be delivered digitally?

Yes. The notice must be delivered in writing, which includes in print or digitally (for example, via email). The notice must link to or include, as an attachment or printed copy, the policy and training materials.

What constitutes training materials as part of the notice?

Training materials include any printed materials, scripts, Q+As, outlines, handouts, PowerPoint slides, etc.

What if the training materials are delivered through software or video?

If you are using the model state materials or other training materials available online, an electronic or printed copy, or a link to such materials is sufficient. In other instances, employers and training providers should make reasonable efforts to provide the information, including providing printouts or links to training materials, scripts, or PowerPoint slides, etc.

What does “at the time of hiring” mean?

It is recommended that the employer provides this notice prior to or at the beginning of their first day of work.

Policy:**How can employers provide their policy to employees?**

Employers must provide employees with their policy in writing both at the time of hiring and during each annual training. This is done in the form of a notice that must also include sexual harassment prevention training materials. This may be done in print or electronically (for example via email). If a copy is made available on a work computer, workers must be able to print a copy for their own records.

Is there any employer responsibility to train third-party vendors or other non-employees who interact one-time or regularly in an office located in New York State?

No. However, posting a copy of your policy in an area that is highly visible further communicates your effort as a responsible employer.

What should I do if a temporary employee is being harassed by an employee of another company?

In such circumstances, you should inform both the company and the temporary employee’s firm. However, if you can act to prevent or end such harassment you should do so, as outlined in the policy.

What policy, if any, must be provided to contractors, subcontractors, vendors and consultants?

Employers do not have to provide any policy to independent contractors, vendors or consultants as such individuals are not employees of the employer. However, the State Human Rights Law imposes liability on the employer for their actions, and you are encouraged to provide the policy and training to anyone providing services in the workplace.

If an employer already has established investigative procedures which are similar, but not identical to those provided in the model, can the employer deviate from these specific requirements and remain compliant with the law?

Yes. But the investigative procedures that the employer will be using should be outlined in the employer’s policy.

Must the complaint form be included, in full, in the policy?

No. Employers should, however, be clear about where the form may be found, for example, on a company’s internal website.

Training:**Who is considered an Employee for the training requirement? And when must the training be completed?**

“Employee” includes all workers, regardless of immigration status. Employee also includes exempt or non-exempt employees, part-time workers, seasonal workers, and temporary workers.

How often must employees receive sexual harassment training?

Employees must be trained at least once per year. This may be based on the calendar year, anniversary of each employee’s start date, or any other date the employer chooses.

How soon must new employees be trained?

As employers may be liable for the actions of employees immediately upon hire, the State encourages training as soon as possible. Employers should distribute the policy to employees at the time of hiring as part of a notice, which also includes training materials.

Is there a minimum number of training hours employees must complete each year?

No, if they receive training that meets or exceeds the minimum standards.

What are the obligations of employment agencies? What about employees who received the same training from another employer within the past year?

The law requires that employers provide a sexual harassment prevention policy and training on an annual basis to all employees. An employer may choose to deem the training requirement satisfied if a new employee can verify completion through a previous employer or through a temporary help firm.

An agency or any other worker organization (e.g. labor union) may choose to provide training to workers, however, the employer may still be liable for the employee's conduct and understanding of policies and should train the employee on any nuances and processes specific to the company or industry.

I am an employer based in New York State but also have employees who only work in other states. Do those employees have to be trained as well?

No. The training is only required for employees who work or will work in New York. However, if an individual works a portion of their time in New York, even if they're based in another state, they must be trained.

Are minor employees (e.g., child actors) required to take sexual harassment training?

Yes. However, those employing children under the age of 14 may opt to simplify the training and policy while still meeting the minimum requirements.

What does "interactive training" mean?

New York State law requires all sexual harassment training to be interactive. Training may be online, so long as it is interactive.

Examples of employee participation include:

- If the training is web-based, it has questions at the end of a section and the employee must select the right answer;
- If the training is web-based, the employees have an option to submit a question online and receive an answer immediately or in a timely manner.
- In an in-person or live training, the presenter asks the employees questions or gives them time throughout the presentation to ask questions;
- Web-based or in-person trainings that provide a Feedback Survey for employees to turn in after they have completed the training

NOTE: Any one of the above examples would meet the minimum requirement for being interactive. An individual watching a training video or reading a document only, with no feedback mechanism or interaction, would NOT be considered interactive.

Is a live trainer required and is that trainer required to have a certification?

While a best practice for effective and engaging training, a live trainer is not specifically required. Live trainers may appear in person or via phone, video conference, etc. No certification is required, and the State does not currently certify or license training providers.

May I use a third-party vendor to provide training? How do I ensure it meets the standards?

You may use a third-party vendor or organization or deliver the training by existing employees or managers. You should review any third-party training to ensure it meets or exceeds the minimum standards required under the law.

Are there different training requirements for employees in managerial/supervisory roles?

Employers must make managers and supervisors as well as all employees aware of the extra requirements for those in managerial/supervisory roles. The model training does address the additional requirements, and employers may choose to provide additional or separate training to supervisors and managers.

What happens if some employees fail to take the training despite an employer's best efforts to make it available, and to require everyone to take it?

Employers are required to ensure that all employees receive training on an annual basis. Employers may take appropriate administrative remedies to ensure compliance.

Are businesses required to pay workers for the time spent in training, for instance, during the onboarding process before their actual assignment begins?

Employers must follow federal regulations (see e.g., 29 CFR 785.27-785.32), which generally require that employer-provided training time be counted as regular work hours.

How does the Sexual Harassment Prevention training time impact the Hospitality Wage Order's 80/20 rule?

Like other mandatory training, this does not impact the percentage in the Order and should be treated in line with other employer training. It should be either added in line with the existing proportion or training hours should be excluded from the 80/20 calculation.

Are sections in the model training materials that are not expressly required in the law mandatory?

No, but they are strongly recommended. In addition, employers are encouraged to exceed the minimum training requirements.

ENHANCED RULES AGAINST RETALIATION

The WTPA extends the protections under Labor Law Section 215, which prohibits an employer from retaliating against an employee for complaining about a violation of Labor Law. Employers must know that:

- Threats, including calling or threatening to call immigration, are included as forms of retaliation
- It is illegal for any person to retaliate, not just the employer
- Employers or their agents can be fined up to \$20,000 and assessed another \$20,000 in liquidated damages
- The employer may be ordered to reinstate the worker's job; or the employer may have to pay the person for lost salary or pay a lump sum in lieu of reinstatement
- Retaliation carries criminal penalties for employee complaints about any section of the labor law
- The protection applies to any worker who alleges that the employer has done something that the employee thinks breaks a labor law; this applies even if the employee is mistaken about the law, if they acted in good faith; it also applies even if the employee does not cite a specific part of the labor law
- This law protects employees even if the employer incorrectly believes the employees made a complaint

What is retaliation?

Retaliation is any action which negatively affects a worker because that worker has engaged in a protected activity. Even threatening an employee can be considered retaliation. Examples of retaliatory actions can include discharge, suspension, transfer to another shift or a reduction in wage or hours.

What are some of these protected activities?

Employees have the right to complain to their employer, the Department of Labor or the Attorney General about a possible violation of the Labor Law and regulations issued under it. They can file a complaint about these possible violations, give information about their conditions of employment to the Department of Labor or Attorney General, and testify at hearings or other proceedings.

Does there really have to be a violation for the worker to be protected?

No. If the worker has a good faith belief that there is a problem in the workplace, their activities are protected.

What happens if I am accused of retaliation?

The Department of Labor will discuss the accusation with you and give you a chance to prove that the negative action was not a result of the workers exercising their rights.

What are the penalties for retaliation?

Employers or their agents can be fined up to \$20,000 and assessed another \$20,000 in liquidated damages. The Department of labor can also request reinstatement of the worker and/or compensation for lost wages. There are also potential criminal penalties but those would be prosecuted by an agency other than the Department of Labor.

What if I have any other questions about the Wage Theft Prevention Act?

You can email your questions to labor.sm.ls.ask@labor.ny.gov.

DIVISION OF UNEMPLOYMENT INSURANCE

The Unemployment Insurance Division of the New York State Department of Labor administers the New York State Unemployment Insurance Law. The Unemployment Insurance Division distributes benefits, which are funded by employer contributions to the Unemployment Insurance Trust Fund and paid to claimants.

The Unemployment Insurance Division has four major subdivisions:

- Adjudication Services
- Employer Liability Services
- UI Benefit Services
- UI Integrity and Quality Control Bureau

Unemployment Insurance: Unemployment Insurance (UI) is a cash benefit provided by law to workers who have lost their jobs through no fault of their own. To qualify, the unemployed person must be ready, willing and able to work. The payments help the unemployed person with their financial obligations while they search for another job.

All employers who are liable under the provisions of the New York State Unemployment Insurance Law must register with the Unemployment Insurance Division of the New York State Department of Labor. The Unemployment Insurance Division maintains a separate account for each employer.

Employers of agricultural workers become liable for unemployment insurance contributions:

- At the beginning of any calendar quarter in which they pay total remuneration of \$300 or more
- As of the date they purchase or otherwise become a successor to another liable employer (and continue to have employment)

A farm labor crew leader would also become liable if any of the conditions above are met and:

- The leader is not the employee of the farm operator
- The leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the crew operate or maintain mechanized equipment which the crew leader provides

Voluntary Coverage: The Unemployment Insurance Law permits an employer who is not liable for contributions to cover their employees on a voluntary basis. Liability begins the first day of the calendar quarter in which an approved application is filed and continues at least until the end of the following year. Partial coverage is not permitted. The election must include all employees except persons in certain types of employment excluded by law whose services cannot be covered by voluntary election, such as:

- Independent contractors
- The spouse or children (under 21 years of age) of an individual proprietor

Unemployment Insurance is not available for H-2A workers.

Termination of Coverage: An employer shall cease to be liable as of the last day of the calendar quarter following the filing of a written application to terminate liability with the Department of Labor, provided the employer:

- Has not paid to persons employed in agricultural labor cash remuneration of \$300 or more for four consecutive calendar quarters preceding such date

For more information, read the Unemployment Insurance Employer Guide available at: www.labor.ny.gov/formsdocs/ui/P820.pdf or call the Employer Hotline at **888-899-8810**.

DIVISION OF EMPLOYMENT AND WORKFORCE SOLUTIONS (DEWS)

The Division of Employment and Workforce Solutions (DEWS) provides policy leadership, program direction, and administrative oversight for the integrated workforce investment system under the Workforce Investment Act (WIA). WIA supports economic growth and barrier-free access to programs and services for adults, dislocated workers, youth, and special populations.

A primary responsibility of DEWS is to lead the State's Workforce Development System toward increasingly higher performance in the delivery of workforce services to jobseekers and businesses statewide.

Ultimately, the goal of DEWS is to provide a competitive advantage in the marketplace for its customers, whether they are the individuals or businesses served.

Business Services: Business Services staff offer many services to help you with your workforce needs. These include:

- The New York State Job Bank and NYTalent
- Customized Recruitments and Career Fairs
- Hiring Incentives: Tax Credits and On-the-Job Training (OJT)
- Workforce Intelligence
- Apprenticeship Programs
- Human Resource Consultation Services
- Layoff Aversion

To learn more about any of these programs and services, Contact your local Business Services Representative:

Capital Region

W.A. Harriman State Office
Campus Building 12, Room 412
Albany, NY 12240
518-457-2483

Central New York

450 South Salina Street,
Room 302
Syracuse, NY 13202
315-479-3228

Finger Lakes

276 Waring Road
Rochester, NY 14609
585-258-8875

Hudson Valley

3 Washington Center, 4th Floor
Newburgh, NY 12550
845-568-5371

Long Island

303 West Old Country Road
Hicksville, NY 11801
516-797-4560

Mohawk Valley

207 Genesee St
Utica, NY 13501
315-793-2271

New York City

9 Bond Street
Brooklyn, NY 11201
718-613-3657

North Country

194 US Oval
Plattsburgh, NY 12901
518-561-0430

Southern Tier

2001 Perimeter Road, Suite 3
Endicott, NY 13760
607-741-4518

Western New York

284 Main Street, Floor
Mezzanine Buffalo, NY 14202
716-851-2600

DISABILITY BENEFIT (DB) & PAID FAMILY LEAVE (PFL) COVERAGE

What are DB and PFL?

DB and PFL are types of insurance coverage that most employers in New York State are required to provide to their employees. Both provide partial wage replacement when an employee must be out of work; however, DB is used for an employee's own care, while PFL is used to care for a family member.

What responsibilities do farm employers, owners and operators have for DB and PFL as of January 1, 2020?

PFL is generally included as a rider on a DB policy. Employer responsibilities depend on whether the employer already has a DB and PFL policy in place for other employees.

How do I obtain DB and PFL coverage?

Visit the Paid Family Leave section of the DFS website for the list of insurers that are approved by the DFS to sell DB and PFL insurance in New York or apply to the Workers' Compensation Board to become self-insured.

What do I need to know about employee qualifications for benefits and deductions for DB and PFL?

Employee qualifications for benefits are different for DB and PFL, as are the amounts you can withhold from employees' paychecks to pay for these insurance policies.

Obtain Coverage: If you have a policy, contact your insurance carrier to obtain additional coverage for farm laborers. This coverage must be in place by January 1, 2020.

If you do not have a policy, and you have employees as of January 1, 2020, you will be considered a covered employer 30 days after that date. You will then have another four weeks until coverage is required to be in place. If you don't have any employees on January 1, 2020, when you eventually hire them, you will have four weeks from their 30th day of employment to have coverage in place.

- PFL is generally included as a rider on a DB policy.
- Visit the PFL section of the Department of Financial Services (DFS) website for a list of insurance carriers offering DB and PFL policies.
- For information on self-insurance, visit the self-insured employer section of the Workers' Compensation Board (Board) website.
- Employers are not required to obtain coverage for their own minor children, or students in elementary and secondary schools.

Inform your Employees: Include information about DB and PFL in your employee handbook and/or other written guidance to employees. Model language is available in the Employer section of <https://paidfamilyleave.ny.gov/>

Have a Statement of Rights for DB (Form DB-271S) and a Statement of Rights for PFL (Form PFL-271S) available for employees by January 1, 2020.

Those are available at <https://paidfamilyleave.ny.gov/> or from your insurance carrier.

Post notices of DB and PFL Coverage: Get the DB Notice of Compliance (Form DB-120) and PFL Notice of Compliance (Form PFL-120) from your insurance carrier, or from the Board if you are self-insured.

Post these forms where your employees are sure to see them.

Offer PFL Waivers to Those Employees Who Qualify: Identify employees who:

- regularly work fewer than 20 hours per week and won't work 175 days in a year, and/or
- regularly work 20 or more hours per week but won't be in employment for 26 consecutive weeks

Offer these employees a waiver form, available at

PaidFamilyLeave.ny.gov/

Keep all employee waivers on file.

Collect Employee Contributions to Pay for Coverage: For DB, employee payroll contributions pay for a portion of the coverage. You may withhold one half of 1% of an employee's gross wages, up to a maximum of \$0.60 per week. You must pay the remaining cost.

For PFL, employee payroll contributions pay for the entire cost of coverage. The withholding rate is set by DFS each year.

Details on the current deduction rate and annual maximum contribution for PFL, as well as a deduction calculator, are available at PaidFamilyLeave.ny.gov/cost.

It is strongly recommended that you notify employees before taking any deductions.

NEW YORK STATE PAID SICK LEAVE

All private sector workers in New York State are now covered under the state's new sick and safe leave law, regardless of industry, occupation, part-time status, overtime exempt status, and seasonal status. The law requires employers with five or more employees to provide their employees with paid sick and safe leave. Businesses with fewer than five employees and a net income of \$1 million or less must provide unpaid sick and safe leave to employees

On September 30, 2020, covered employees in New York State began to accrue leave at a rate of one hour for every 30 hours worked. On January 1, 2021, employees may start using accrued leave.

Amount of Leave: Amount of sick leave for employees depends on the size the employer:

- Employers with 100 or more employees must provide up to 56 hours of paid sick leave per calendar year.
- Employers with 5 to 99 employees must provide up to 40 hours of paid sick leave per calendar year.
- Employers with 4 or fewer employees and net income of greater than \$1 million in the previous tax year are required to provide up to 40 hours of paid sick leave per calendar year.
 - For counting employees, small employers with 4 or fewer employees and who reported a net income of \$1 million or less are not required to pay their employees sick leave but must provide the additional allotted leave time.

Note: "calendar year" means the 12-month period from January 1 to December 31. For other purposes, including use and accrual of leave, employers may set a calendar year to mean any 12-month period.

Eligibility: All private-sector employees in New York State are covered, regardless of industry, occupation, part-time status, and overtime exempt status. Federal, state, and local government employees are NOT covered, but employees of charter schools, private schools, and not-for-profit corporations are covered.

PAID SICK LEAVE FAQs

Who qualifies as a "family member" for the purpose of this law?

"Family member" is defined as an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent; and the child or parent of an employee's spouse or domestic partner. "Parent" is defined as a biological, foster, step, or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child. "Child" is defined as a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

What is a calendar year?

To determine the total number of employees, "calendar year" means the 12-month period from January 1 to December 31. For other purposes, including use and accrual of leave, employers may set a calendar year to mean any 12-month period.

Can I require an employee to telecommute from home instead of taking sick leave?

No. An employer cannot require an employee to work from home or telecommute instead of taking sick leave. But an employer can offer the employee the options of working from home or telecommuting. If employees voluntarily agree to work from home or telecommute, employees will retain the paid or unpaid sick leave that they have accrued.

Do employees continue to earn sick leave while using paid sick leave under this law?

No. Employees are only required to be credited with leave time for hours worked and not for hours spent using sick leave time under this law.

Do employees accrue leave for pay received for non-working time?

No. Employees do not accrue leave for payments that are not for hours worked, such as bonuses or subject-to-call time. However, time that is considered “hours worked,” including on-call time, training time, and travel time, must be counted for the purposes of accruing leave.

The law provides that employees accrue sick leave at a rate of not less than one hour per every thirty hours worked. If an employee for a medium-size business with 50 employees works in excess of 1,200 hours during a calendar year, is the employer required to provide over 40 hours of paid sick leave?

No. For employers with between 5 and 99 employees in any calendar year, this law requires that each employee be provided with up to 40 hours of paid sick leave in each calendar year. While an employer may provide additional paid sick leave hours for their employees, they are not required to do so.

Can an employee use safe leave if the police have not been contacted or the perpetrator has not been convicted?

Yes. An employee’s eligibility for safe leave is not dependent on reporting to law enforcement or a criminal conviction.

If my business has been ordered to close temporarily due to a public health emergency, may employees use accrued sick leave during the period of closure?

Whether or not the usage of sick leave in this scenario would be fact specific depending on the type of health emergency, including the risk of contagion, and other health considerations. Accrued sick leave may be used by an employee for preventive care of a mental or physical illness, injury or health condition. Sick leave under this law is separate and additional to the quarantine leave for employees subject to a precautionary or mandatory order of quarantine or isolation related to COVID-19 (Ch. 25 of the laws of 2020), and use of COVID-19 leave does not impact or otherwise utilize an employee’s paid sick leave accruals or usage.

More information on COVID-19 Leave is available at: paidfamilyleave.ny.gov/covid19.

Can an employee use sick leave for doctor, dentist, eye doctor, or other routine appointments?

Yes. Employees may use sick leave for appointments when they require treatment for a condition or for preventive medical care.

Does sick leave include bereavement leave? Can an employee use have accrued sick leave when there is death in their family?

Permissible reasons to use accrued sick leave does not include a period of bereavement. However, employers must provide sick leave for a mental or physical illness, injury, or health condition, regardless of whether they have been diagnosed or require medical care, as well as for the preventative care for such illnesses, injuries, or conditions.

Is there a minimum period of employment before I am responsible for providing sick leave?

No. Employees are immediately eligible to accrue leave under the law.

Is there a minimum period of employment before an employee can use their accrued sick leave?

There is no minimum period of employment before an employee can use sick leave. However, unless an employer provides the required amount of sick leave up-front at the beginning of a calendar year or otherwise has a sick leave policy that exceeds the requirements of the law, an employee would have to work at least 30 hours before accruing any sick leave.

If my business is jointly owned by two individuals and the business fails to provide sick leave as required under the law, which owner is responsible?

Both owners would be jointly and severally responsible for the failure to comply with the law. The term “employer” includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business, or service.

If my business employs 15 full-time, year-round employees also hires seasonal part-time workers, must the employer provide sick leave to these part-time seasonal workers as well?

Yes. For the purposes of this law, an employee is defined as “any person employed for hire by an employer in any employment.” If an employer has five or more employees but fewer than 100, all employees, including part-time seasonal workers, are entitled to accrue one paid sick hour for every 30 hours they work.

Does my small business with only three employees but with just over one million dollars earnings must provide paid leave to employees?

A business employing four or fewer people is obligated to provide Paid Sick Leave if it has over one million dollars in net income.

Do I have to provide sick leave to employees who telecommute outside of New York State?

Employees who telecommute are covered by the law only for the hours when they are physically working in New York State, even if the employer is physically located outside New York State.

If I have multiple business locations within New York State, with four or fewer employees at each location, does the employer have to provide Paid Sick Leave under the law?

To determine the number of employees in this scenario, the employer would count the total number of employees across all locations. For example, if there were 3 employees who worked at one location, and 4 employees who worked at another location, the employer would have 7 total employees, and would be required to provide up to 40 hours of paid sick time in each calendar year, for each employee.

Does an employee’s immigration status affect whether they are entitled to sick leave under the law?

No. An employee’s immigration status has no effect on their eligibility for sick leave benefits under this law.

Can an employee use sick leave for only half of a workday?

The maximum increment an employer may set for the use of sick leave under this law is four hours. An employee may use four hours of accrued sick leave as needed (or less, if an employer allows for smaller increments of sick leave usage, such as one or two hours).

How do employees who are paid on a commission, flat rate basis, or other non-hourly basis accrue sick leave?

When employees are paid on a non-hourly basis, accrual of sick leave is measured by the actual length of time spent performing work.

If an employee uses leave during hours that would have been overtime if worked, do I have to pay the overtime rate of pay?

No. Employees are required to be paid their normal pay for leave time under the law.

Am I required to pay employees for lost tips and gratuities during leave time?

No. Employers are not required to pay employees for lost tips or gratuities, but employers may not take a tip credit for leave time and must pay the employee their normal rate of pay or the applicable minimum wage, whichever is greater.

What if an employee is paid at different rates for different tasks?

Employees who are paid at more than one rate of pay must be paid for leave under the law at the weighted average of those rates. The weighted average is the total regular pay divided by the total hours worked in the week. Overtime exempt employees who are paid on an hourly basis are assumed to work 40 hours per workweek, when deriving their regular rate unless the terms and conditions of the employment specify or require otherwise. However, as noted above, employers are prohibited from reducing an employee’s rate of pay for leave time hours only.

Am I required to pay employees for unused leave at the end of the employment relationship?

Unless required by another agreement or policy, including the employer's own written leave policy, employers are not required under this law to pay employees for unused sick leave at the end of an employment relationship. Seasonal employees who maintain an ongoing employment relationship with their employer maintain their leave accruals through such breaks in employment.

Can I front-load accrual for part-time employees?

Yes. At the beginning of each calendar year, an employer can provide part-time employees with the hours of sick leave they would accrue based on the hours they are anticipated to work at the accrual rate of one hour of sick leave for every 30 hours the employee is anticipated to work. However, if the employer front-loads fewer than 40 hours, the employer must still track the employee's hours worked and accrual of sick leave because a part-time worker may work more hours than anticipated. If the employee works more hours than anticipated, the employer must allow the employee to accrue leave at the rate of one hour for every 30 hours worked until the total amount of front-loaded plus accrued sick leave in a calendar year equals 40 hours. Employees who are front-loaded less than 40 hours in a calendar year must be allowed to use up to 40 hours of sick leave in a calendar year if they have accrued it. An employer who front-loads fewer than 40 hours must allow employees to carry over up to 40 hours of unused sick leave into the new calendar year, in addition to front-loading the amount of time the employer expects the employee to earn in the new calendar year. Reminder: If the employer has not calculated employees' use and accruals, the employer cannot change the policy in the new calendar year since employees are entitled to carry over unused sick leave and use those hours at the beginning of the new calendar year.

What is required for collective bargaining agreements that are entered into on or after September 30, 2020?

The law further provides that collective bargaining agreements entered into on or after September 30, 2020 may provide for different leave benefits, so long as such benefits are "comparable benefits for the employees" to those required by the law, and the agreement specifically acknowledges the provisions of Section 196-b of the Labor Law. Such acknowledgement should also specifically identify any benefits deemed comparable to the leave in the law.

Must a collective bargaining agreement acknowledge the state sick leave requirements, or is a general reference sufficient?

To satisfy the requirements of this law, any agreement entered into after September 30, 2020 must specifically reference Labor Law Section 196-b. DOL recommends that the "comparable benefits for the employees" be explicitly identified and labeled as such in the agreement to avoid confusion or misunderstanding.

May Paid Family Leave be used consecutively with Paid Sick Leave (e.g. three days of Paid Sick Leave, two days of Paid Family Leave)?

An employee can only choose to use sick leave during Paid Family Leave (PFL) if the employer allows it. Taking sick leave at the same time as PFL may allow the employee to receive their full salary for all or part of the leave. However, an employee cannot receive more than their full wages while receiving PFL benefits.

Can employees overlap state and federal requirements?

The New York State Paid Sick law operates independently from other State and Federal leave requirements and must therefore be paid in addition to any other State or Federal leave entitlements.

Does leave required under New York Labor Law Section 196-B expire at the end of a calendar year?

Sick leave that is unused by an employee over the course of the year must be carried over to the next calendar year. However, employers may limit employee use to the number of hours that the employee is entitled to use within any calendar year (i.e., 56 hours for employers with 100 or more employees and 40 hours for employers with 99 or fewer employees). This may result in an employee maintaining a leave balance in excess of the amount they are permitted to use in any calendar year.

What is the benefit of carrying over sick leave when usage is still limited?

When sick leave is carried over into a new calendar year, an employee can use it right away instead of waiting to accrue leave.

Can I require that an employee locate a replacement worker to cover a shift/ job if the employee elects to use their sick leave?

No. So long as an employee is using the sick leave for one of the reasons prescribed under the law, an employer may not require any additional preconditions.

How much does an employee have to give to me prior to using their accrued sick leave?

There is no specified notice or time period requirement under the law, provided, however, that there is an oral or written request to the employer prior to using the accrued sick leave, unless otherwise permitted by the employer.

Does Paid Sick Leave transfer if an employee is promoted, demoted, or takes a different position within a company?

Yes. Leave accruals may not be reduced or otherwise restricted if an employee changes positions, roles, or locations with the same employer. Paid sick leave under this law must be paid out at the employee's rate of pay at the time the leave is taken.

If my company changes ownership or merges with another entity, will employee sick leave accruals be affected?

It depends. The obligation to provide sick leave under the law derives from an individual or entity status as an employee's employer and is not limited to a single employer as the Labor Law imposes such obligations on "joint" employers (those who employ an individual with one or more others). When investigating a claim for unpaid leave, DOL will evaluate the continuing obligations of employers on a case by-case basis to determine if the circumstances are such that the employee, in fact, changed employers and no longer works for their former employer. As stated above, employees may file a complaint with the Department of Labor by calling **888-469-7365**.

What are the penalties if I do not provide the required sick leave to its employees?

Under New York State Labor Law, failure to provide employee benefits such as sick leave, is equivalent to a failure to pay employee wages. Should an employer fail to provide their employees with sick leave as required under the law, they may be subject to civil/administrative actions and/or criminal penalties, including but not limited to, an order assessing the full amount of the wage underpayment, 100% liquidated damages, and civil penalties in an amount up to double the total amount to be due.

Can I have a policy that permits employees to donate unused leave to other employees?

Yes. An employer can have a policy that allows employees to donate unused leave to other employees if the policy is entirely voluntary.

Can I discipline an employee who misuses sick leave?

Yes. An employer may take disciplinary action, up to and including termination, against an employee who uses leave for purposes other than those provided for under the law, or who lies to their employer in connection with taking such leave.

You can read the complete list of Paid Sick Leave FAQs at: https://www.ny.gov/sites/ny.gov/files/atoms/files/PSL_FAQ_PaidSickLeaveFAQ.pdf

Questions about Disability Benefits:

wcb.ny.gov
877-632-4996

Questions about Paid Family Leave:

PaidFamilyLeave.ny.gov
844-337-6303

WORKERS COMPENSATION

What is workers' compensation?

Workers' compensation provides partial wage replacement and/or medical care when an employee has an on-the-job injury or illness.

How do I obtain workers' compensation coverage?

You may purchase a workers' compensation insurance policy from one of the more than 200 private insurers authorized by the Department of Financial Services (DFS). You may also purchase a policy from the State Insurance Fund, a public insurer in New York State, by calling **888-875-5790**. Self-insurance may also be an option; visit the self-insured employer section of the Workers' Compensation Board website for more information.

Who pays for workers' compensation coverage?

Employers are responsible for paying for workers' compensation coverage. You cannot take any deductions from employees to pay for coverage.

Do I have any other obligations?

When a worker is injured on the job and needs transportation to a medical provider for treatment, while not required, any assistance you can provide can help the worker in healing and returning to work faster.

What are the WCB posting requirements?

These forms must be posted in English and Spanish and in a conspicuous spot in your place of business. You can get the Notice of Compliance (Form C-105) from your workers' compensation insurance carrier or from the Board if you are self-insured.

ADDITIONAL CONTACTS

New York State Department Of Labor Division of Immigrant Policies and Affairs

877-466-9757

www.labor.ny.gov/immigrants/index.shtm

New York State Monitor Advocate

State Office Campus
Building 12, Room 570
Albany, NY 12240
Email: SMA@labor.ny.gov

Counsel, Division of Immigrant Policies and Affairs

75 Varick Street, 7th Floor
New York, NY 10013
Hotline: **877-466-9757**
Fax: **212-775-3389**
Email: trafficking@labor.ny.gov

Agriculture Labor Program (Agriculture Labor Specialists)

877-466-9757

www.labor.ny.gov/immigrants/agriculture-labor-program.shtm

Email: dipa@labor.ny.gov

Foreign Labor Certification Unit

276 Waring Road,
Rochester NY 14609
Fax: **585-339-9457**
E-Mail: H2A@labor.ny.gov

New York State Career Centers

800-447-3992

www.labor.ny.gov/career-center-locator/

New York State Department of Labor Division of Labor Standards

Call: **888-4-NYSDOL (888-469-7365)**

This publication was prepared by the Office of Communications of the New York State Department of Labor, State Office Building Campus, Building. 12, Albany, NY 12240-0012. It gives general information on some of the laws related to farm laborers in New York State. It is not an official interpretation of the laws.

WE ARE YOUR DOL



1-877-466-9757

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