

**Regulations Applicable to Each Nonprofit Making Institution Which Certifies it Will Pay
the Statutory Minimum Wage to Each Employee in Lieu of Being Covered Under a
Minimum Wage Order**

Part 143 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the state of New York
(Cited as 12 NYCRR 143)

Promulgated by the Commissioner of Labor Pursuant to the Minimum Wage Act
(Article 19 of the New York State Labor Law)

Statutory authority: State Administrative Procedure Act (SAPA) § 202(6) and Labor Law §§ 21(11) and 659.

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As amended
Effective October 6, 2017

PART 143

REGULATIONS APPLICABLE TO EACH NONPROFITMAKING INSTITUTION WHICH CERTIFIES IT WILL PAY THE STATUTORY MINIMUM WAGE TO EACH EMPLOYEE IN LIEU OF BEING COVERED UNDER A MINIMUM WAGE ORDER

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§ 143.0 Minimum wage requirements applicable to nonprofitmaking institutions which have elected the option to pay the statutory wage exclusive of allowances in lieu of wage order coverage.

(a) *Definition of nonprofitmaking institution.* *Nonprofitmaking institution* means any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) *Statutory minimum wage*, for each hour worked in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$11.00 per hour on and after December 31, 2016;

\$13.00 per hour on and after December 31, 2017;

\$15.00 per hour on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$10.50 per hour on and after December 31, 2016;

\$12.00 per hour on and after December 31, 2017;

\$13.50 per hour on and after December 31, 2018;

\$15.00 per hour on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$10.00 per hour on and after December 31, 2016;

\$11.00 per hour on and after December 31, 2017;

\$12.00 per hour on and after December 31, 2018;

\$13.00 per hour on and after December 31, 2019;

\$14.00 per hour on and after December 31, 2020;

\$15.00 per hour on and after December 31, 2021,

(3) *Remainder of state* (outside of New York City and Nassau, Suffolk and Westchester counties)

\$9.70 per hour on and after December 31, 2016;

\$10.40 per hour on and after December 31, 2017;

\$11.10 per hour on and after December 31, 2018;

\$11.80 per hour on and after December 31, 2019;

\$12.50 per hour on and after December 31, 2020;

\$13.20 per hour on and after December 31, 2021.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

§ 143.1 Definitions of exclusions from the term *employee*.

(a) *Labor on a farm*. (1) The term *farm* includes stock, dairy, poultry, furbearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities.

(2) The term *labor on a farm* includes the service of any person permitted to work on a farm by an employer in connection with:

(i) cultivating the soil;

(ii) raising or harvesting any agricultural or horticultural commodity, including the raising or hatching of poultry, the raising, shearing, feeding, caring for, training and management of livestock, bees, furbearing animals and wildlife;

(iii) the production or harvesting of maple syrup or maple sugar;

(iv) the operation, management, conservation, improvement or maintenance of a farm and its tools and equipment;

(v) the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for removing, supplying and storing water for farming purposes;

(vi) the handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, any agricultural or horticultural commodity.

(b) *Executive, administrative or professional capacity*.

(1) *Executive*. Work in a *bona fide executive... capacity* means work by an individual:

(i) whose primary duty consists of the management of the institution in which he or she is employed or of a customarily recognized department or subdivision thereof;

(ii) who customarily and regularly directs the work of two or more other employees therein;

(iii) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(iv) who customarily and regularly exercises discretionary powers; and

(v) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(b) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(c) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020;
\$990.00 per week on and after December 31, 2021.

(2) *Administrative*. Work in a *bona fide ... administrative ... capacity* means work by an individual:

(i) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of his or her employer; and

(ii) who customarily and regularly exercises discretion and independent judgment; and

(iii) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (*e.g.*, employment as an administrative assistant), or who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; and

(iv) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

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\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.
\$990.00 per week on and after December 31, 2021.

(3) *Professional*. Work in a *bona fide ... professional capacity* means work by an individual:

(i) 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 and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(ii) whose work requires the consistent exercise of discretion and judgment in its performance; or

(iii) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) *Outside salesperson*. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

(1) making sales; or

(2) selling and delivering articles or goods; or

(3) obtaining orders or contracts for service or for the use of facilities.

(d) *Taxicab driver*. The term *driver engaged in operating a taxicab* means an individual employed to drive an automobile equipped to carry no more than seven passengers, which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis, and the use of which is generally limited to a community's local transportation needs and which is not operated over fixed routes, or between fixed terminals, or under contract.

(e) *Volunteer*. The term *volunteer* means a person who works for a nonprofitmaking institution under no contract of hire, express or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions of work.

(f) *Learner*. (1) The term *learner* means a person who is participating in a bona fide training program for an occupation in which such person is employed, the required training period for which is recognized to be at least two weeks.

(2) A bona fide training program is one which must involve either formal instruction or on- the-job training during a period when the learner is entrusted with limited responsibility and is under supervision or guidance.

(3) No person shall be deemed a learner at an institution in an occupation for which he or she has completed the required training; and in no case may a person be deemed a learner in such an occupation at an institution after 10 weeks of such training, except that a person may be deemed a learner for a longer period if the commissioner finds after investigation that for the particular occupation a minimum of proficiency cannot be acquired in 10 weeks.

(g) *Apprentice*. (1) The term *apprentice* means a person whose work at an institution:

(i) is in an apprenticeable trade or occupation, and

(ii) is part of a bona fide training program leading to qualification as a journeyman in the trade or occupation.

(2) No such apprentice training program shall be deemed bona fide unless it meets all of the following:

(i) it is for an occupation which is on either the Federal or New York State list of apprenticeable trades and occupations or is commonly recognized as such, but shall not include any of the following:

(a) occupations in the distributive field;

(b) managerial occupations;

(c) clerical occupations;

(d) professional or semi-professional occupations (occupations for which entrance requirements customarily include education of college level);

(ii) it requires at least two years (4,000 hours) of work experience;

(iii) it provides for a schedule of work processes or operations in which experience is to be given the apprentice on the job;

(iv) it involves the development of skill sufficiently broad to be applicable in like occupations rather than to be limited to the requirements of one institution;

(v) the employer keeps and makes available written evidence of the apprenticeship agreement or a detailed schedule of work processes and wages.

(h) *Religious order*. The term *religious order* means a group of persons who are joined together under the authority of a religious leader and are dedicated to the performance of religious works.

(i) *Sexton*. The term *sexton* means an individual who works as a caretaker at a place where religious services are held, or whose duties at such place are solely of a religious nature, or whose duties are partly religious and partly as a caretaker.

(j) *Work in return for charitable aid*. The term *work ... incidental to or in return for charitable aid conferred* means any work or duties performed by a person who is not under any express contract of hire, in or for a nonprofitmaking religious or charitable institution as a means of discharging an obligation to such an institution for charitable aid given to the worker.

(k) *Student in or for a nonprofitmaking institution*. The term *student* means an individual who is enrolled in and regularly attends during the daytime a course of instruction leading to a degree, certificate, or diploma offered at an institution of learning, or who is completing residence requirements for a degree. A person is deemed to be a student during the time that school is not in session if such person was a student during the preceding semester.

(l) *Impairment of earning capacity*. The phrase, *earning capacity ... is impaired by ... age, or by physical or mental deficiency or injury*, applies to a person whose earning capacity for the work to which he or she is assigned to perform is impaired by age, or by physical or mental deficiency or injury; but a person's earning capacity may not be deemed impaired by age until such person's 65th birthday.

(m) *Staff counselor in a children's camp*. (1) A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision, and care of campers in a children's camp, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes but is not limited to: head counselor, assistant head counselor, specialist counselor or instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(2) *Children's camp* means any establishment which, as a whole or part of its activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs or supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play schools, or by any other name. The term *children's camp* does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year.

(n) *Summer camp or conference for not more than three months annually*. (1) A person who works in not more than 13 calendar weeks in a calendar year in or for a summer camp or conference is deemed to have worked for not more than three months annually. A person who works in more than 13 calendar weeks in a calendar year is deemed to be an employee for the entire period of employment.

(2) A *summer camp or conference* means a camp or conference which is open any part of the period from June 21st to September 21st, and which is operated by a nonprofitmaking institution.

§ 143.2 Election by nonprofitmaking institutions.

An election by a nonprofitmaking institution to pay each of its employees in every occupation a wage, exclusive of allowances, of not less than the amount specified in subdivision 1 of section 652 of the Labor Law shall be made on a form furnished for this purpose by the commissioner.

§ 143.3 Notice requesting application of minimum wage orders.

A nonprofitmaking institution which, having elected to pay to each of its employees in every occupation a wage, exclusive of allowances, of not less than the statutory minimum wage, wishes to change its election and become subject to minimum wage order coverage shall notify the commissioner in writing, over the signature of an authorized official thereof:

(a) that it requests to have all the provisions of applicable minimum wage orders apply to its employees beginning 60 days from the date of the notice; and

(b) that until such 60th day the institution will continue to pay wages in accordance with the election in effect until such date.

§ 143.4 Revocation of exemption.

(a) An exemption, elected by a nonprofitmaking institution when it certified under oath to the commissioner to pay to each of its employees in every occupation a wage, exclusive of allowances, of not less than the statutory minimum hourly rate may be revoked by order of the commissioner if he finds:

(1) that the certification contained misrepresentations; or

(2) that the nonprofitmaking institution has violated the provisions of article 19 applicable to it.

(b) No such order of the commissioner shall be issued unless the nonprofitmaking institution is given an opportunity to be heard by the commissioner. A record will be made of such hearing.

§ 143.5 Employer personnel records requirements for nonprofitmaking institutions.

(a) Every such institution must establish, maintain and preserve for not less than six years, records with respect to each individual permitted to work:

(1) as an apprentice;

(2) as a learner;

(3) in an executive, administrative, or professional capacity;

(4) if the individual is a student;

(5) as a staff counselor;

(6) in or for a summer camp or conference;

(7) if the work performed is not under any express contract of hire and is incidental to or in return for charitable aid conferred on such individual;

(8) if the earning capacity of such individual is impaired by age, physical or mental deficiency or injury.

(b) These records shall contain the following data:

(1) the date of commencement of work;

(2) a statement indicating the classification under which he is permitted to work;

(3) the nature of work performed; and

(i) for an apprentice, a copy of the apprentice program and agreement;

(ii) for a learner, a statement as to the nature and extent of the instruction and supervision;

(iii) for an individual permitted to work in return for charitable aid conferred, a statement as to the dates, nature and extent of the charitable aid conferred;

(iv) for an individual permitted to work whose earning capacity for the work to which he is assigned is impaired by age, physical or mental deficiency or injury:

(a) statement as to the age;

(b) report from a doctor or other competent authority concerning the nature and extent of the deficiency or injury;

(c) statement as to the manner in which, and extent to which age, deficiency or injury impairs the earning capacity for the work to which he is assigned.

§ 143.6 Employer payroll records.

(a) Every nonprofitmaking institution employing persons within New York State shall establish, maintain, and preserve for not less than six years, records:

(1) for each employee; and

(2) for each individual permitted to work whose earning capacity is impaired by age, physical or mental deficiency, or injury; and

(3) for each individual permitted to work as a learner.

(b) These records shall contain the following data:

(1) name and address;

(2) social security number, if any;

(3) a record of hours worked during each payroll period (time cards, time sheets, etc.);

(4) a record for each payroll period of:

- (i) the amount of gross wages;
- (ii) deductions, if any;
- (iii) amount of cash wages.

(c) Every such institution employing persons in an executive or administrative capacity shall establish, maintain, and preserve for not less than six years records which will show for each such individual:

- (1) name and address;
- (2) social security number, if any;
- (3) total wages and the value of allowances, if any, for each payroll period.

(d) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at a place within New York State specified by the commissioner.

§ 143.7 An hour.

The term *an hour* shall include each hour an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee—one who lives on the premises of the employer—shall not be deemed to be permitted to work or required to be available for work:

- (a) during such employee's normal sleeping hours solely because he or she is required to be on call during such hours;
- (b) at any other time when he or she is free to leave the place of employment.

Notwithstanding the above, the term *an hour* shall not be construed to include meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

§ 143.8 Allowances.

The term *allowances* means any deduction for gratuities, and any charge or deduction for meals, lodging, apparel, and other such items, services and facilities furnished by an employer to an employee when the employee must utilize such items, services or facilities as a condition of his employment.