

# 6



## A Safe Workplace & Fair Working Conditions

You have the right to a safe workplace free from hazards that could cause you serious harm and free from coercive working conditions. Depending on your circumstances, you may also be entitled to certain fair work practices such as breaks, days of rest, sick time, leave, and fair scheduling.



It doesn't matter which country we're from, which language we speak, which color is our skin. We are human beings, we are women, and nobody is going to keep stepping on our dignity."

—Lupe Gonzalo,  
Leader Of The Coalition Of  
Immokalee Workers, A  
Worker-Based Human Rights  
Organization

# Workplace Hazards, Health & Safety

Women face a range of workplace hazards and safety risks, many of which are uniquely distinct to women.<sup>75</sup> Examples of workplace hazards include:

- Exposure to toxic chemicals
- Heat and sun exposure
- Injury from hazardous tools and machinery
- Injury from handling or lifting heavy objects
- Exposure to dust, gasses, and mold
- Work duties that cause musculoskeletal disorders
- Exposure to reproductive hazards
- Over-exhaustion
- Heightened risk of sexual assault

Women deserve safe workplaces and fair working conditions. This includes safe and sanitary workspaces, access to necessary safety equipment, breaks, days of rest, and time to recover from illness, injury, and to care for family members. What makes a workplace safe depends on where you work. Women working in male-dominated industries face unique risks because their specific needs and requirements are often not met.<sup>76</sup> For example, your employer may be failing to comply with health and safety requirements if it refuses to provide you safety equipment that fits, or refuses to provide you with protective gear that guards against exposure to toxic chemicals, including pesticides.

It is important for you to know that regardless of where you work, your employer must comply with workplace safety requirements and may be subject to additional requirements that serve to improve working conditions.

## What are My Legal Rights?

**SAFE WORKPLACES:** In the United States, you have the right, regardless of your immigration status, to a safe and healthy workplace free from hazards that could cause you serious physical harm.<sup>77</sup> This includes:

- The right to be trained in a language you understand.<sup>78</sup>
- The right to work on machines that are safe.<sup>79</sup>
- The right to be provided necessary safety gear.<sup>80</sup>
- The right to protection against exposure to toxic chemicals, excessive noise levels, and unsanitary conditions.<sup>81</sup>
- The right to review records regarding workplace injuries, illnesses, and test results for hazards.<sup>82</sup>
- The right to be informed by your employer and given information about any safety or health hazards that you are exposed to in the workplace.<sup>83</sup>

For guidance and resources in New York State, visit the New York Committee for Occupational Safety and Health: <https://nycosh.org>.



**CONSTRUCTION:** If you are a woman working in the construction industry, you may face certain unique risks in addition to the general risks that may exist at your worksite. For example, women may have difficulty obtaining personal protective equipment (PPE) that fits properly or accessing sanitary facilities. For more information on risks and ways to address them, visit: <https://www.osha.gov/doc/topics/women/index.html>.

**BREAKS & REST:** Most workers are entitled to a meal break if you work enough hours per day, but you may not get paid for it.<sup>84</sup> If you work a shift of more than 6 hours (starting before 11 a.m.) and work until 2 p.m., you must be given an uninterrupted lunch period of at least 30 minutes between 11 a.m. and 2 p.m.<sup>85</sup>

If you work in a factory, store, hotel, or restaurant in New York State, you are entitled to at least one full day of rest during each work week.<sup>86</sup>



**DOMESTIC WORKERS:** If you are a domestic worker, you are entitled to one day of rest every 7 days, or overtime if you choose to work on your rest day.<sup>87</sup> After one year of employment, domestic workers are also entitled to at least 3 paid rest days each year.<sup>88</sup> These requirements apply regardless of your immigration or work authorization status. You are also entitled to an unpaid meal break for at least 30 minutes if you work a shift of 6 hours or more. Note that you can negotiate with your employer for more breaks, vacation, and sick time and can ask that these terms be included in a written agreement.




**FARMWORKERS:** In New York State, farmworkers are now legally entitled to at least 24 consecutive hours of rest every week.<sup>89</sup> 24 hours spent at rest because of weather or other circumstances counts as a day of rest. If you voluntarily decide not to take your day of rest, you are entitled to overtime pay (1.5 times your regular rate of pay) for the hours worked that day. All farmworkers


are also eligible for workers' compensation.<sup>90</sup> If you are a migrant worker living in employer housing, your employer is required to maintain your home in compliance with all sanitary, health, and safety requirements.<sup>91</sup>

**SICK TIME:** The law in New York State currently does not require your employer to provide paid sick time. However, if your employer is required to provide sick time as a part of your employment contract or policy, your employer must comply—and they are prohibited from instituting procedures that make it impossible to actually take sick time.<sup>92</sup> If your employer is violating your contract or company policy in such a way, you can file a complaint with the Department of Labor.

**NYC:** If you are an employee in NYC and you work for employer with **5 or more employees**, or if you are a domestic worker, your employer must give you paid sick time if you worked more than 80 hours during the year.<sup>93</sup> You are entitled to a minimum of 1 hour of sick time for every 30 hours worked and you can use time as of the 120th calendar day after beginning employment. This law covers full-time, part-time, temporary, per diem, on call, transitional, and undocumented employees who have worked more than 80 hours (and at least 4 months).<sup>94</sup>

 **DOMESTIC WORKERS:** If you are a domestic worker in New York City who has worked for an employer for at least one year and more than 80 hours a year, you must earn at least 2 days of paid sick leave in addition to 3 days of paid rest.<sup>95</sup> This requirement applies regardless of your immigration status. Employees who are not eligible for paid sick time in NYC are still eligible for unpaid sick time. Eligible employees can also take sick leave to care for a close family member.<sup>96</sup>

**WESTCHESTER:** If you are an employee in Westchester County and you work for an employer with **5 or more employees** for more than 80 hours in a calendar year, you are entitled to 1 hour of paid sick time for every 30 hours worked as of April 10, 2019.<sup>97</sup>

 **DOMESTIC WORKERS:** If you are a domestic worker in Westchester, you are entitled to 1 hour of paid sick time for every 7 days worked.<sup>98</sup>


**FAMILY OR MEDICAL LEAVE:** If you work for a private employer with **50 or more employees** or a **public employer**, you are likely covered under the Family and Medical Leave Act (FMLA). The FMLA provides covered employees with up to 12 weeks of **job protected, unpaid** family or medical leave for employees who worked for their employer for at least 12 months and worked at least 1,250 hours over the preceding 12 months.<sup>99</sup>

An eligible employee can take leave **1** for the birth and care

of a newborn child; **2** for the placement of a child through adoption or foster care; **3** to care for an immediate family member (spouse, child, or parent) with a serious health condition; **4** to recover from the employee's own serious health condition; or **5** to address certain military family needs.<sup>100</sup>

**DISABILITY:** Under New York State Law, employers must provide disability benefits to eligible workers for off-the-job injury or illness.<sup>101</sup> If you qualify, you can receive 50% of your average weekly wage capped at the maximum benefit allowed. You can get more information or file a complaint with the NYS Workers' Compensation Board: <http://www.wcb.ny.gov/content/main/Workers/Workers.jsp>.

**WORKERS' COMPENSATION:** If you are injured while working or become ill as the result of workplace conditions, you can qualify for workers' compensation, which is a form of insurance that covers a portion of your lost wages and medical costs connected with your workplace illness or injury to assist you while you recover from your injury. Most workers qualify for workers compensation and are eligible regardless of immigration status. For a list of workers who are not covered, visit: [http://www.wcb.ny.gov/content/main/Employers/Coverage\\_wc/empWhoNotCovered.jsp](http://www.wcb.ny.gov/content/main/Employers/Coverage_wc/empWhoNotCovered.jsp).

 **FARMWORKERS:** If you are a farmworker, you are eligible for workers compensation benefits as of January 1, 2020.

You can get more information or file a complaint with the NYS Workers' Compensation Board: <http://www.wcb.ny.gov/content/main/Workers/Workers.jsp>.

The New York State Occupational Health Clinic Network, which hosts state funded clinics throughout the state, offers specialized medical diagnoses, care, support, and evaluations for workers compensation claims for workers who get sick or are injured on the job. For more information, visit: [https://www.health.ny.gov/environmental/workplace/clinic\\_network.htm](https://www.health.ny.gov/environmental/workplace/clinic_network.htm).

**RETALIATION:** Employers are prohibited from retaliating against you for making complaints about unsafe working conditions.<sup>102</sup> Further, in New York State, employers are prohibited by law from retaliating against you for filing for workers' compensation benefits. And, under state law, if you have a right to a day of rest during the week and you request a day of rest, an employer cannot retaliate against you for making that request. This means that your employer cannot take an action that negatively impacts your employment such as firing you, demoting you, cutting your pay, or cutting your hours because you exercised one of your rights.<sup>103</sup>

**NYC:** In New York City, an employer is prohibited from retaliating against you for requesting or using sick time. You must comply with any lawful workplace rules the employer has for requesting sick time, such as providing advance notice or providing a doctor's note.<sup>104</sup>

**HUMAN TRAFFICKING:** If you have been forced, threatened, or induced to work against your will, you may be the victim of human trafficking, which is illegal under federal and state law.<sup>105</sup> Victims of human trafficking may be threatened with violence against themselves or family members, made false promises of future benefits such as a green card, forced to work for free to pay off debts, or threatened with deportation or arrest. You may be the victim of human trafficking if, during the course of your employment, you cannot freely come and go, you don't have control of your identification documents or money, you are not paid or paid below the minimum wage, you are given housing but told that you are not entitled to a salary, and/or you owe a debt to your employer. You may be the victim of sex trafficking, which is a form of human trafficking, if you are forced to engage in commercial sex acts against your will (whether by threats, manipulation, lies, debt bondage, or other forms of coercion).

- If you believe that you are the victim of human trafficking, you can contact an advocate for assistance (National Human Trafficking Resource Center Tel: 888-373-7888) or report your case to the New York State Department of Labor, Division of Immigrant Policies and Affairs: 877-466-9757, trafficking@labor.ny.gov, <https://labor.ny.gov/immigrants/>.
- There are a range of additional services that the state may provide, including emergency temporary housing, assistance recovering unpaid wages, job skills training and placement, immigration and legal assistance, assistance establishing permanent residence through special visas for victims of human trafficking, mental and physical health services, counseling, assistance accessing public benefits, translation and interpretation, and criminal or civil action against the trafficker.



**IMMIGRATION STATUS:** You have the right to a safe and healthy workplace regardless of your immigration status. It is illegal retaliation if your employer threatens to report you to immigration authorities because you try to exercise or enforce your rights under these laws.<sup>106</sup> Despite these laws, your employer may still retaliate against you, so you should contact a lawyer or legal advocate for guidance. For assistance, visit the Additional Resources section at the back of this Toolkit.

**WHISTLEBLOWER PROTECTIONS:** Employees, former employees, and independent contractors are now considered whistleblowers when they **reasonably believe** that their employer is violating a law, rule, or regulation, or is creating a substantial and specific danger to public health and safety and they raise this concern with the employer or a government body. As of January 26, 2022, an employer is prohibited from retaliating against these whistleblowers.<sup>107</sup>

**ELECTRONIC MONITORING:** As of May 7, 2022, your employer must inform you if it monitors or otherwise intercepts your telephone calls, e-mail, or internet use.<sup>108</sup>

**INDUSTRY-SPECIFIC REGULATIONS:** There are rules that apply to specific industries that are meant to protect workers against abusive practices in their specific line of work. Many of these laws also aim to provide workers in these industries greater stability and predictability in their work scheduling. Below are some examples of protections that apply in specific industries.

To find out if there are regulations that apply to your job, contact the NYS Department of Labor: 518-457-9000 or 888-469-7365, or, if you work in NYC, the NYC Department of Consumer Affairs: <https://www1.nyc.gov/site/dca/businesses/workplace-laws-for-employers.page>.

- **NYC RETAIL REQUIREMENTS ON SCHEDULING:** If you work in the retail or fast-food industry in NYC, your employer may have to comply with requirements that prohibit many abusive last-minute scheduling practices. For example, all covered retail employers can no longer engage in certain forms of on-call scheduling, last minute schedule shift changes, or last minute cancellations of shifts.<sup>109</sup> Retail employers must also provide and post written work schedules at least 14 days before an employee's first shift in the schedule and contact affected workers within 24 hours (or as soon as possible) if the schedule changes.<sup>110</sup>
- **NYC FAST-FOOD REQUIREMENTS ON SCHEDULING:** Covered fast-food employers in NYC must regularly provide and post written work schedules and provide 14 days of notice for before day one of a new schedule.<sup>111</sup> Employers must pay a "premium" fee, between \$10 and \$75, for any last minute schedule changes depending on how little notice they provide.<sup>112</sup> The law also places limitations on how an employer can schedule consecutive shifts.<sup>113</sup> **As of July 4, 2021,** covered fast food employers cannot, following a 30-day probationary period, terminate, lay off, or reduce the hours of employees by more than 15% without "just cause"<sup>114</sup> and must provide written notices explaining the reason for termination.<sup>115</sup>
- **NAIL SALON REGULATIONS:** If you work for a nail salon in New York State, your employer must comply with various requirements including paying you minimum wage and overtime, providing protective safety gear, and posting the Bill of Rights for Nail Workers in your place of work. The state can shut down your shop if your employer is not in compliance. For more information or to file a complaint call the Task Force Hotline, 888-469-7365, or visit <https://www.ny.gov/programs/nail-salon-safety-what-you-need-know>.



**FARMWORKERS:** Under NY labor law, if you are a farmworker, you have the right to be paid at least the minimum wage and you are eligible to receive unemployment insurance benefits. Most farmworkers (those whose employers paid at least \$1,200 for farm

labor in the preceding calendar year) are eligible for workers' compensation coverage.<sup>116</sup> Note that you probably still qualify for benefits even if you were recruited by a farm labor contractor. You also have the right to be paid within seven days of the work week on an agreed upon payday.<sup>117</sup>

Farmworkers are also covered by the laws and regulations discussed above that require workers to have a safe workplace. If you feel that your health and safety on the farm is at risk, you can file a complaint by

phone or email to report a violation and try to address the risk.<sup>118</sup> However, if you work for a farming operation with **10 or fewer employees**, you may be limited in the type of enforcement you can seek under federal law.<sup>119</sup> Typical risks include pesticide exposure, heat and sun exposure, hazardous tools and machinery and the risk of sexual harassment. Farmworkers are also covered by anti-discrimination laws that prohibit sexual harassment in the workplace.<sup>120</sup>



## What Can I Do to Assert My Rights?

If you have concerns or believe that your rights have been violated, there are various actions you can take to advocate for yourself. In addition to the general guidance in Section 1, consider the following:

**MONITOR YOUR WORKPLACE CONDITIONS:** In some jobs you voluntarily take on health and safety risks. But often, many risks and hazards are avoidable and workers can be protected with safety equipment, protocols, and procedures. When you go to work each day, think about whether your workplace is affecting your health and safety, whether you are exposed to any serious hazards, and whether your employer is taking precautions to guard against risks that can be avoided.

**SEEK ASSISTANCE:** Consider contacting a local advocate or Worker Center to obtain assistance navigating your workplace issue and identifying which laws and protections apply to you. Worker Centers provide resources and guidance for a range of issues including problems with wages, safety issues, and training. See the Additional Resources section at the end of this Toolkit for a list of Worker Centers in New York State.

**FILE A COMPLAINT:** If you believe you are working under unsafe conditions that have caused a serious hazard or that your employer is not complying with safety regulations, you can file a confidential complaint with the U.S. Occupational Safety and Health Administration (OSHA) and request an inspection of your workplace. Visit <https://www.osha.gov/>

[workers/file\\_complaint.html](#) or call 1-800-321-OSHA.

It is unlawful for your employer to punish you for filing a complaint about your workplace conditions. Note that complaints can only be filed for current violations or violations occurring within the past 6 months.

If you are challenging a violation of NYS requirements pertaining to disability or workers compensation benefits, you can file a complaint with the NYS Workers' Compensation Board. If you do not think you are getting required breaks or time off, you can obtain more information or file a complaint with the NYS Department of Labor: <https://www.labor.ny.gov/workerprotection/laborstandards/faq.shtm>.

**NYC:** In New York City, you can report violations of workplace laws, such as paid sick time requirements, to the NYC Department of Consumer Affairs (DCA). To file a complaint, visit: <https://www1.nyc.gov/site/dca/workers/workersrights/file-workplace-complaint.page>. Within DCA, the Office of Labor Policy and Standards (OLPS) protects and promotes labor standards and policies to create fair workplaces. OLPS provides targeted resources and support for people of color, women, and immigrants. For more information, visit: <https://www1.nyc.gov/site/dca/about/office-of-labor-policy-standards.page>.