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Minimum Wage & Fair Wage Practices

You have the right to be paid for your work. It is illegal for your employer to steal your wages, pay you below the state minimum wage, or force you to work for no wages.



Women are valued very low, and so is their work. . . . There is a pattern of discrimination against women that . . . we expect to address, as we act to end all forms of discrimination against women.”

– Phumzile Mlambo-Ngcuka,
UN Under-Secretary-General and
Executive Director of UN Women

What is the Minimum Wage?

It is important that you make sure you are being paid in accordance with the law. In New York State, the minimum wage increased in December 2017 and will increase incrementally over the next few years, based on the size of employer and the place of employment, until it reaches \$15 an hour across the state.³¹ Note that there is a lower hourly wage, referred to as the subminimum wage, for workers in tipped industries such as the fast food industry.

To calculate the minimum wage that currently applies to you, use the State's interactive web tool: <https://labor.ny.gov/minimum-wage-lookup>.

To find out the minimum wage in your locality, visit the wage map: <https://www.dol.gov/whd/minwage/america.htm>.

The New York State Department of Labor also provides summaries by industry:

FARMWORKERS: https://labor.ny.gov/workerprotection/laborstandards/farm_labor.shtm

HOSPITALITY AND RESTAURANT WORKERS: <https://www.labor.ny.gov/formsdocs/wp/Part146.pdf>

BUILDING SERVICE: <https://www.labor.ny.gov/formsdocs/wp/Part141.pdf>

NAIL SALON WORKERS: <https://labor.ny.gov/workerprotection/nail-salon-industry.shtm>

OTHER INDUSTRIES: <https://www.labor.ny.gov/formsdocs/wp/Part142.pdf>

What are My Legal Rights?

REGULAR & TIMELY PAYMENTS: Your employer does not have the right to choose whenever they want to pay you or to skip payments and pay you later. You have the right to be paid regularly and in a timely manner.³² Laws and regulations for different industries may impose specific requirements governing when and how often you must receive your paycheck. Most workers should be paid twice a month on a regular (designated) pay day.³³ Salespeople who work on commission should be paid at least once a month.³⁴ Manual workers must be paid at least once a week and not more than a week after wages are earned.³⁵

 **DOMESTIC WORKERS:** If you are a domestic worker in NYS working directly for a family, you must be paid once a week.³⁶

NOTICE OF WAGES: If you work for a private employer, you must receive certain notices regarding your pay. Upon hire, your employer must inform you in writing of your rate of pay; the basis of your pay; your regular pay day; whether you will be paid by the hour, shift, day, week, salary, piece, commission, or other measurement; when you will be paid; and whether any allowances will be claimed from your salary.³⁷ **The employer must also provide the address and telephone number of the main office.**³⁸ This notice must be provided in writing in English and in your primary language if it is Spanish, Haitian Creole, Russian, Polish, Chinese, or Korean.³⁹

You must receive a pay statement every time you are paid.⁴⁰ You must also be given written notice prior to any reduction in your rate of pay or any increases, unless the increase is reflected in your pay statement.⁴¹

You must also be notified in writing or by public posting of your employer's policy on sick leave, vacation, personal leave, holidays, and hours.⁴²

If you are terminated, you must be notified in writing of the date of termination and the date of cancellation of your benefits.⁴³

If you report a violation of this requirement, employers can be fined for failing to provide proper notice of wages or pay statements.

 **HOSPITALITY WORKERS:** If you work in the hospitality industry, your employer must also provide you with a new pay notice each time your pay rate changes, whether it goes down or up.⁴⁴ Your notice should tell you your hourly rate of pay, overtime rate, the amount of tip credit (if any) to be taken from the minimum hourly rate, and state that extra pay is required if tips are insufficient to bring your wage up to the basic minimum hourly rate.⁴⁵

The Tip Credit is a fixed amount that your employer can take out of the minimum wage before tips. If your salary, once supplemented by tips, does not reach the minimum wage, your employer must pay you extra ("top up" your wages) to ensure your hourly salary reaches the minimum wage. Employers often "forget" to do this—or claim it is too difficult—which is illegal.

 **CONSTRUCTION:** If you work in the construction industry, contractors and subcontractors who were previously found to have failed to pay wages must provide written notice of these violations to all current employees. These notices should be part of your wage statements.⁴⁶

PAYING YOU THE PROPER WAGE: It is illegal for your employer to pay you less than the state minimum wage (or subminimum wage if you work in a tipped industry).⁴⁷ This

applies to all workers even if you lack work authorization or are paid off the books, in cash, or paid hourly/daily/weekly.⁴⁸ If you are a member of a union, your union may have negotiated a higher wage, in which case your employer must pay you the salary agreed to by your union. Certain exclusions may apply based on the type of work that you do.

WAGE THEFT: Employers are required to pay all workers for all hours worked. This is true regardless of your immigration status or whether you have legal work authorization. It is illegal for any employer to steal any employee's wages. There are many ways your employer may try to do so. For example, your employer is prohibited from withholding full or partial wages; taking out any additional deductions that are not required by law; taking your tips; making you work off-the-clock; paying you with bad checks; failing to pay you overtime; and deducting wages for trainings or equipment. For tipped workers, this also means that if your salary, after tips, does not reach the minimum wage, your employer must pay you to make up the difference to ensure your salary meets the minimum wage for all hours worked.

Keep in mind, your employer can *only* take deductions that are required by law, such as payroll taxes and wage garnishments, or that you have authorized in writing for your benefit, such as for insurance premiums, health benefits, or union dues.⁴⁹ Examples of illegal deductions are deductions for breakages, cash shortages, fines, losses to the business, charges for check replacement, and overcharges for paid family leave premiums.

OVERTIME: Most workers are entitled to extra pay when they work beyond their standard work schedule, which means that if you work more than 40 hours a week, you must get paid extra (1.5 times your normal pay) for each hour you work in excess of 40 hours.⁵⁰ This is called overtime pay. Certain categories of workers are not yet covered by this requirement, including government employees, executive employees, professional employees, and part-time babysitters. However, if you are in a union, your union may have negotiated some type of overtime benefits on your behalf, so you should check with your union representative. For a list of employment categories not covered by overtime, visit: <https://www.labor.ny.gov/legal/counsel/pdf/overtime-frequently-asked-questions.pdf>.



FARMWORKERS: Farmworkers who work more than 60 hours per week must get paid overtime (1.5 times your regular rate of pay) for each hour worked beyond 60.⁵¹



NURSES: Overtime for nurses is covered under a different provision. Under Section 167 of the New York State Labor Law, healthcare employers must set a predetermined regularly scheduled number of work hours that a nurse has agreed to work, including prescheduled on-call time and time spent for the purposes of communicating shift reports regarding patient status.

Health care employers are prohibited from requiring nurses to work beyond these regularly scheduled work hours, although nothing in the law prohibits an employer from regularly scheduling a nurse to work more than 40 hours a week.⁵² For more information, visit: https://www.labor.ny.gov/workerprotection/laborstandards/workers_rights/Mandatory_OT_FAQ.shtm#0.

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.⁵³ Victims of human trafficking are often subjected to various abusive practices, including being forced to work without pay, being forced to work to pay off a debt, or being denied payment on the ground that the employer provides housing. For example, it is illegal for your employer to keep your passport, immigration papers, or other identifying documentation. If you believe that you are the victim of human trafficking, you can contact an advocate for assistance at the National Human Trafficking Resource Center: 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 placement and skills training; legal assistance; immigration assistance, including help 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.

BENEFITS: Under current state law, most employers are not required to provide health insurance, pensions, paid vacation, paid sick days, or expenses. However, if your employer commits to providing certain benefits, either verbally or in writing, or they are included in your employment contract, your employer must provide them. Your employer's failure to provide such benefits when they have been promised is an example of illegal wage theft.

RETALIATION: An employer is prohibited from engaging in "retaliation" or punishing you for reporting a wage violation. If you report that you were not properly paid for working overtime, or that you are not receiving the minimum wage, an employer cannot legally retaliate against you. Retaliation includes any negative employment action, such as firing you, suspending you, giving you a verbal or written warning, or changing your work schedule to give you unfavorable or unwanted shifts. While retaliation is illegal, it is unfortunately not uncommon. If an employer retaliates against you for reporting a wage violation, you can file a complaint with the Department of Labor. Your employer may be required to reinstate you if you were fired and may have to pay damages and/or fees to cover the cost of your attorney.⁵⁴

 **IMMIGRATION STATUS:** The law requires that you receive overtime pay regardless of your immigration status.

 **DOMESTIC WORKERS:** If you are a domestic worker, you are entitled to receive minimum wage and overtime pay if you work more than 40 hours. This applies even if you are a live-in worker and you are being paid a set salary. There may be some differences in the amount of overtime you are entitled to depending on the type of work you do.

 **FARMWORKERS:** If you are a farmworker, you are covered by minimum wage requirements unless you are under 17 years old and employed on the same farm as your parent or guardian. The minimum wage applies to piece-rate jobs as well as regular wage jobs.⁵⁵ In addition, when you are hired, your employer must provide you with a farm work agreement that must list your pay rate, type of work, housing arrangement, hours of work, and benefits.⁵⁶ As discussed above, if you are a farmworker, your employer is not legally required to pay you overtime but must still pay you for hours worked. For the minimum wage schedule for farmworkers, visit: <https://www.labor.ny.gov/formsdocs/wp/Part190.pdf>.



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:

KEEP TRACK OF YOUR WAGES: It is important that you keep track of your wages to ensure that your employer is paying you your full wage. Your employer may pay you properly at first and then slowly start to take unexplained deductions or pay you more irregularly. Therefore, you should review your paystubs regularly and ask your employer about any deductions that you don't understand. Although keeping track of your wages can take time and may be complicated, especially if you are paid per day or per project, it's important to keep a record each day, week, or couple of weeks, so that you know whether you are being paid fairly and in accordance with the law. Keep track of the amounts that you are paid, the dates that you are paid, and any deductions that are taken from your pay. Keep a written record either in a notebook or in notes on your phone, highlighting any irregularities. This will help you if you need to report wage theft later on.

GET ASSISTANCE: If you believe that your employer is not paying you fairly but you **1** need assistance to verify your concerns, **2** are afraid to report the violation and you need additional guidance, or **3** need help filing a complaint, then consider contacting a local advocate or seeking assistance from your local worker center. Visit the Additional Resources section at the back of this Toolkit for a list of Worker Centers in New York State.

REPORT WAGE THEFT, FILE A COMPLAINT, OR FILE A LAWSUIT: If you believe that your employer

is stealing your wages or violating other state wage requirements, you can speak to your employer about the violation, file a complaint with the New York State Department of Labor, or file a state or federal lawsuit.

Consider contacting an attorney or legal advocate for guidance and to help you figure out a plan that is best for you. While it is illegal for your employer to retaliate against you for filing a complaint, that does not mean that it will not happen. Many employers do engage in retaliation. It is good to speak to an advocate so that you are aware of the risks. It is also useful to speak with an attorney to discuss the best strategy for you. In some cases, filing a state or federal lawsuit may be more beneficial than filing a complaint with the Department of Labor. Depending on the nature of the violation, you may be entitled to broader legal remedies in court. For example, in court the law allows workers to seek unpaid wages going back **6 years**, which may be advantageous if you were the victim of wage violations over a longer period.

To contact the Department of Labor about filing a complaint, call: 1-888-4-NYS-DOL (1-888-469-7365). If you don't speak English, they will provide language assistance upon your request. Note that your employer may be guilty of a misdemeanor for violating the above requirements and could be required to pay a fine of up to \$20,000. If the Department of Labor obtains a judgment against your employer, a portion of that judgment must go to you if you were the employee harmed by your employer's actions. Additional penalties and reporting requirements may apply to employers who have engaged in repeat offenses or who have engaged in willful, or egregious violations.