

## WOMEN VALUED

EMPOWERING WOMEN IN THE WORKPLACE



# A Legal Toolkit for Women's Economic Equality

Guidance for Women & Advocates





# Contents

4	<b>Acknowledgments</b>
5	<b>About Women Valued</b>
8	<b>Introduction</b>
10	<b>Legal Checklist for Women’s Economic Equality</b>
12	<b>Sex and Gender Discrimination</b>
17	<b>Sexual Harassment</b>
21	<b>Equal Pay</b>
25	<b>Minimum Wage and Fair Wage Practices</b>
29	<b>Economic Opportunity</b>
34	<b>A Safe Workplace and Fair Working Conditions</b>
39	<b>Domestic Violence, Sexual Assault, and Stalking</b>
45	<b>Reproductive and Maternal Health</b>
49	<b>Pregnancy, Childbirth, and Breastfeeding</b>
53	<b>Paid Family Leave</b>
57	<b>Child Care Assistance and Protections for Caregivers</b>
60	<b>Public Benefits</b>
66	<b>Protecting Our Rights Together</b>
70	<b>Additional Resources</b>
71	<b>Endnotes</b>



# Acknowledgments

The Legal Toolkit for Women's Economic Equality is a project of Legal Momentum's *Women Valued Initiative*. *Women Valued* was generously funded by a *Cy Pres* Award from Mehri & Skalet, PLLC. This project was also made possible in part by a grant from the New York Bar Foundation.

Legal Momentum extends its deep gratitude to the organizations that participated as members of our Women Valued Advisory Council. These organizations volunteered their time to provide targeted expertise to improve our guidance to better serve the most vulnerable women in New York State.

## **Women Valued Advisory Council**

Center for Family Life

National Domestic Workers Alliance

New York Civil Liberties Union

Restaurant Opportunities Center of New York

Sanctuary for Families

The Worker Institute at Cornell

Worker Justice Center of New York

Legal Momentum also extends special thanks to all of the individuals and entities who generously contributed their time, skills, and expertise to helping us improve this Toolkit, including:

Catherine Barnett, Maru Bautista, Maria Figueroa, Sharon Hang, Jill Hopfield, Hughes Hubbard & Reed LLP, Rachel Isreeli, Emma Kreyche, Beth Lyon, Yamila Ruiz, MARRISA SENTENO, Tarra Uddin, KC Wagner, Shaina Weisbrot, Wenqing Zhu, and Lisa Zucker.

The layout for the Legal Toolkit for Women's Economic Equality was designed by Randall Martin, Randall Martin Design.

© 2022 Legal Momentum. This publication is copyrighted, but may be used free of charge for education, advocacy, and the provision of client services, provided that the source is acknowledged and accredited in full. For questions regarding additional uses, please contact Legal Momentum through our website: <https://www.legalmomentum.org>.





## About Women Valued

Harnessing Legal Momentum's long history and experience working on gender discrimination in the workplace, *Women Valued* takes a uniquely intersectional approach to women's economic empowerment and workplace equality that prioritizes the unmet needs of the most underserved women. By implementing a two-part strategy of holistic empowerment and policy advocacy, Legal Momentum is leading the way to establish a workplace culture of equal opportunity and system-wide accountability for ALL women.

With this goal in mind, the *Initiative* provides and engages in targeted legal education and advocacy on behalf of the most undervalued women in the workplace and in our economy, including:

**1** women with a low-income; **2** women earning a low-wage, particularly those working in high-risk industries, such as domestic workers, hospitality workers, and farmworkers; **3** immigrant women; **4** women of color; and **5** victims of domestic violence, sexual assault, and stalking.

Taking a holistic approach to addressing existing obstacles, *Women Valued* provides comprehensive guidance and engages in advocacy on 13 core issues that can profoundly impact a woman's economic security.

Sex Discrimination • Sexual Harassment • Equal Pay • Minimum Wage and Wage Theft  
Economic Opportunity • Safe Workplaces and Fair Working Conditions • Workplace Protections for Survivors of Domestic Violence, Sexual Assault, and Stalking • Reproductive and Maternal Health • Pregnancy, Breastfeeding, and Childbirth • Paid Family Leave • Child Care Assistance  
Public Benefits • Collective Action

*Women Valued* is strongly committed to ensuring that ALL women are better informed about their rights. Through this Toolkit, the *Initiative* educates women and their advocates on the 13 core issues, including available legal rights, protections, and benefits. With this knowledge, advocates working on the front lines with the most vulnerable women will be better equipped to provide their clients with critical information that impacts their economic security. With this knowledge, women in all walks of life will be better equipped not only to defend themselves, but to proactively pursue equality in the workplace before discrimination occurs.

*Women Valued* is similarly committed to ensuring that our laws achieve meaningful and comprehensive workplace equality for ALL women. Through Legal Momentum's Working Women's Bill of Rights, the *Initiative* has set forth an integrated legislative agenda for women's economic equality, setting priorities in the same 13 cross-cutting issue areas.



The most common way people give up their power is by thinking they don't have any."

– Alice Walker,  
Writer & Activist

## **WOMEN VALUED**

---

**EMPOWERING WOMEN IN THE WORKPLACE**

# **A Legal Toolkit for Women's Economic Equality**

Guidance for Women & Advocates



## Women are Undervalued

---

Due to persistent gender discrimination, women continue to be undervalued in the workplace. As a result, women often have difficulty finding decent work, face unfair treatment from employers, and encounter barriers to advancement.

If you are a woman working or trying to find a job, you may at some point find yourself in a situation where you are treated worse or paid less than a male coworker, sexually harassed or abused at work, subjected to unsafe working conditions, robbed of your wages, or unable to find or keep a job because you have to care for a child or other family member.

To make matters worse, many of these disadvantages often intersect and weave together in ways that add up or can spiral out of control. For example, you may be more likely to be a target of sexual harassment because you earn low-wages and care for your family, and your employer knows that you cannot afford to lose your job.

While women often accept these conditions as inevitable, it is important to remember that it doesn't have to be this way. There are a range of laws designed to protect you in these scenarios. In fact, when actions that your employer is taking seem unfair, they may be in violation of the law. To safeguard yourself, it is critical that you are aware of your rights and informed about ways you can assert them.

## Reclaiming Your Value Through Knowledge

---

All women—regardless of economic situation or immigration status—have certain legal rights. Recognizing that women often face a range of overlapping problems in the workplace, this Toolkit identifies 13 rights and benefits in New York State, based on federal, state, and local laws, that women and advocates should know about.

By providing basic information about rights in these 13 core areas and ways to assert these rights, this Toolkit will also prepare you to **1** better identify when your rights are being violated, **2** ask the right questions to find out what rights and benefits are available, **3** take steps to preserve your rights, **4** gain the confidence to assert these rights when necessary, **5** take preventative steps to keep one discriminatory act from spiraling into others, and **6** demand more comprehensive support to achieve economic equality.

To be proactive, we must know our rights and obligations even before we face discrimination. The more we assert our rights, and when we do so together, the more meaningful these legal protections become.



## How to Use This Toolkit

This Toolkit is for women working and/or residing in New York State and for advocates providing support to women in New York State. The Legal Checklist provides a synopsis of the 13 rights and benefits covered in this Toolkit. Each subsequent section provides more detailed guidance on applicable legal protections, who is covered, ways you can assert your rights, resources available to assist you, and options for where you can go at the federal, state, and local levels to file a complaint.

**APPLICABLE LAWS:** The Toolkit provides guidance on your rights under federal, state, and local laws. Federal laws are enacted by Congress and apply nationwide. In addition to federal laws, states often have similar (and sometimes stronger) laws in place. The county, city, or town where you work or live may also have passed laws that protect you, which we refer to as local laws. In some cases, if your situation is not covered by federal law, you may be covered by state or local laws, or vice versa. In New York State, many state and local laws provide stronger protections for women than federal laws. This Toolkit provides guidance on all three types of laws that apply in New York State.

**WHO IS COVERED:** This Toolkit focuses on legal protections based on sex and gender, as defined under federal, state, and local laws. Depending on the law, many of the rights covered in this Toolkit apply regardless of sexual orientation, to people of all gender identities, transgender people, working families, and men.

The Toolkit also provides targeted guidance for women who are most undervalued in our economy, including **1** women with a low-income; **2** women working a low-wage job, especially those in a high-risk industry such as domestic work, farm labor, or hospitality; **3** women of color; **4** women with unstable immigration status; and/or **5** victims of domestic violence, sexual assault, or stalking.

**HOW TO USE THIS TOOLKIT:** The Toolkit should be used as a starting point to guide you when trying to determine what rights you have based on where you live.

*Note that this Toolkit is for informational purposes and is not intended to provide legal advice.* It is a starting point, not a substitute for a conversation with an attorney. While some protections apply generally to all individuals in New York State, regardless of immigration status, certain protections may not apply to you depending on your specific circumstances or based on the number of people who work for your employer. Additionally, there may be costs and risks associated with asserting your rights. Therefore, if you have questions about your rights in one or more of these areas or believe your rights have been violated, contact a legal advocate or an attorney.

We specifically urge men, as bystanders, as fathers, as husbands or partners, as brothers, as sons, and as employers to use this Toolkit to educate themselves about the broad-ranging issues that profoundly impact women's economic security and to recognize their equal role in raising families and working to achieve equal, inclusive, and diverse workplaces.

**FOR FURTHER ASSISTANCE:** For information, referrals, and resources (in English and Spanish), contact Legal Momentum's Helpline at (1-800-649-0297) or [Help@LMHelpline.org](mailto:Help@LMHelpline.org) or visit the Additional Resources section at the end of this Toolkit.

## Legal Checklist for Women's Economic Equality

This Checklist provides a synopsis of the 13 rights, protections, and benefits covered in the Legal Toolkit for Economic Equality. Some of these rights overlap—but the Toolkit is divided into 13 core areas for ease of reference. For example, the prohibition against sex and gender discrimination is an overarching prohibition that covers many of the individual prohibitions in the subsequent sections, which provide more detailed guidance. Note that, depending on your circumstances, certain protections may not apply to you or additional protections may apply. For more information, visit the appropriate section in the Toolkit.

1



### Sex & Gender Discrimination

You have the right not to be discriminated against at work on the basis of your sex or gender. This right is fundamental and encompasses many of the specific protections below. The law also protects you based on your gender identity, sexual orientation, and familial status.

2



### Sexual Harassment

You have the right to a workplace free of sexual harassment and abuse. Sexual harassment is a form of sex discrimination.

3



### Equal Pay

The law prohibits employers from paying you less because of your sex or gender. This type of treatment is a form of sex discrimination. Your employer is also prohibited from punishing you for discussing or disclosing rates of pay with your colleagues, and, depending on where you work, an employer may be prohibited from asking about or relying on your prior salary to set your new salary.

4



### 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.

5



### Economic Opportunity

It is unlawful for a lender or financial institution to deny you a loan or financing based on your sex or gender. Resources are available to help you find a job; improve your finances; start a business; and obtain education, language, and skills trainings to get a job, including jobs in higher paying fields.

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.

7



## Domestic Violence, Sexual Assault & Stalking

It is unlawful for an employer to discriminate against you in the workplace based on your status as a victim of domestic violence. Depending on where you live additional protections may exist, including protections for victims of sexual assault or stalking, that can help you keep or leave your job while addressing the abuse.

8



## Reproductive & Maternal Health

You have the right to a safe and confidential abortion until your 24th week of pregnancy or at any point medically necessary to protect your life or health. If you receive Medicaid or have health insurance, your provider must cover critical family planning services, including contraception and abortion services at no additional cost.

9



## Pregnancy, Childbirth & Breastfeeding

It is unlawful for an employer to treat you less favorably in the workplace on the basis of pregnancy, childbirth, or a related medical condition. This type of treatment is a form of sex discrimination. An employer is also prohibited from discriminating against workers for pumping breast milk at work and you have the right to take breaks to do so. Depending on your situation, you may have the right to additional workplace protections to adjust your working conditions or to take paid or unpaid leave if needed.

10



## Paid Family Leave

If you have worked enough days and hours, you have the right to paid, job-protected leave to care for a newborn, a newly adopted child, or a sick family member, or to address certain family needs that result from military deployment. You may also have the right to other forms of leave to assist you with caring for yourself and your family.

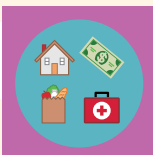
11



## Child Care Assistance & Protections for Caregivers

It is unlawful for an employer to discriminate against you because you have children. Based on your income, you may be eligible for child care assistance to help you get or keep a job.

12



## Public Benefits

Based on your income, you may be eligible for critical public benefits, including cash assistance, food assistance, free healthcare, and housing assistance. If your benefits are denied or terminated, you must be informed in advance and have an opportunity to contest the determination. If you do not speak English and need assistance, you can request language assistance (translation and interpretation).

13



## Protecting Our Rights Together

You may have certain rights and opportunities to organize, join a union, and take action with other workers to improve your pay and working conditions without being punished by your employer.

# 1



# Sex and Gender Discrimination

You have the right not to be discriminated against at work on the basis of your sex or gender. This right is fundamental and encompasses many of the specific protections below. The law also protects you based on your gender identity, sexual orientation, and familial status.



No country can ever truly flourish if it stifles the potential of its women and deprives itself of the contributions of half of its citizens.”

– Michelle Obama,  
Lawyer & Former First Lady  
of the United States

# What is Sex or Gender Discrimination?

Sex and gender discrimination are still a common reality, and they can occur in many different ways. You may be a victim of unlawful discrimination if you are treated differently than other applicants or employees and that treatment negatively impacts your employment or application for employment by an employer or potential employer, because of your gender, gender identity, and/or sexual orientation.

Note that sex discrimination includes conduct covered in certain sections that follow, such as sexual harassment, unequal pay based on sex or gender, and pregnancy discrimination. Those sections provide more detailed guidance on those forms of discrimination.

Sex or gender discrimination comes in many forms. Some examples of discrimination may include the following scenarios where an employer:

- Hires a man over a woman with the same qualifications.
- Refuses to hire you for a position, telling you that women aren't physically strong enough for the job.
- Has a practice of promoting men with less experience when there are women with more experience.
- Assigns women in the workplace to lower paying jobs. This

can occur in many types of workplaces, including at the office, on the farm, or in the service industry.

- Denies a request for an accommodation for a pregnancy-related medical condition when similar accommodations are provided to non-pregnant workers for other medical conditions.
- Pays a male worker with similar training and work experience more than a female worker doing the same work.
- Makes women, rather than men do tasks historically assigned to women, like making the coffee for the office or cleaning up.
- Issues an employee a poor performance evaluation due to the fact that the employee is perceived as lacking femininity or masculinity or is not "conforming" to a gender role.
- Engages sexual harassment (see next section on sexual harassment).

**NOTE:** Depending on the size of your employer, other forms of discrimination are also prohibited, some of which often overlap with sex- or gender-based discrimination, including discrimination based on age, race, color, national origin, religion, disability, and family status.

## Who is Protected by the Law?

Generally, all employers are covered, although exceptions do exist.

Anywhere in the United States, you have the right to work in an environment free from sex discrimination if you **work for an employer with 15 or more employees**, including private employers, government employers, employment agencies, and labor organizations.<sup>1</sup>

In New York State and New York City, sex discrimination is prohibited if it is based on your gender (including actual or perceived gender identity), familial status, or sexual orientation **if you work for an employer or licensing agency with 4 or more employees**. As of February 8, 2020, this prohibition will apply to all employers regardless of the number of individuals employed.<sup>2</sup> The law specifically protects women planning on having a family (for example, women who are trying to get pregnant or adopt), and also protects trans women and others within the LGBTQ community.

The law now extends protections to non-employees such as contractors, vendors, and consultants.<sup>3</sup>

New York State law now makes clear that protections against discrimination in employment extend to all state and local government employees throughout the executive, judiciary, and legislative branches, including the staff of elected officials and judges.<sup>4</sup>

**DOMESTIC WORKERS:** Domestic workers, even those working as the sole employee, are protected against sex discrimination.<sup>5</sup>

**NYC:** In New York City, employers are also prohibited from discriminating against you because you are a caregiver. You are a caregiver if you are responsible for caring for a young child, a covered relative (such as your spouse, partner, parent, sibling, grandchild, or grandparent), or a person who resides in your household who relies on you for medical care and assistance.<sup>6</sup>

**IMMIGRATION STATUS:** Although an employer can refuse to hire you if you do not have work authorization,<sup>7</sup> once you are hired, it is unlawful for your employer to discriminate against you based on your sex (or other factors such as race or ethnicity), regardless of your immigration status. This applies even if you don't have work authorization. It is also against the law for your employer to threaten to report you to authorities if you file a complaint or try to assert your legal rights to protect yourself from sex discrimination. In short, once you are hired, it is unlawful for your employer to use your immigration status against you

if you seek to report workplace discrimination or to penalize you for doing so.<sup>8</sup>

Federal law also protects certain individuals from employment discrimination based on national origin or immigration/citizenship status.<sup>9</sup> For example, while the law does not protect “unauthorized aliens,” it does protect U.S. citizens, recent permanent residents, asylees, and refugees. The law prohibits employers from discriminating against individuals based on their citizenship or immigration status in hiring, firing, recruitment, and referral for a fee. For example, you may have suffered unlawful discrimination if you were not hired for a job or fired from one because you are a non-citizen with work authorization and an employer chooses not to hire you or keep you on because it does not want to “deal with the hassle” of completing additional paperwork.


In conducting its employment verification, an employer must accept any document you present from the designated verification list so long as it reasonably appears to be genuine and relates to you and not another person. Employers are prohibited from demanding only specific documents, from requiring more documents than required by the government, or from requiring an applicant to submit documents before accepting a job offer. For more information, including the list of acceptable documents, visit: <https://www.uscis.gov/i-9-central/employee-rights-resources/preventing-discrimination>.


You also have certain privacy protections. For example, if you file a federal, state, or local discrimination complaint in New York State, the agency or the court should not ask you about your immigration status and you can assert your right to privacy if they do.<sup>10</sup>

**NYC:** In New York City, city agencies and law enforcement are prohibited from asking you about your immigration status or disclosing your status, except in limited circumstances.<sup>11</sup>

Note that if you decide to file a complaint or take legal action, you are equally protected by the law but you may not be entitled to the same remedies in court.<sup>12</sup>

It is unlawful for an employer to retaliate against you for exercising your rights under these laws; however, that does not mean that your employer will not penalize you. If you think your rights have been violated, contact a legal advocate or an attorney to determine the best way to protect yourself. For assistance, visit the Additional Resources section at the end of this Toolkit.

 **DOMESTIC WORKERS:** If you are a domestic worker (e.g., someone working for another person in a private home caring for children, an elderly person, or a person with a disability, or someone providing home care services, house cleaning, cooking, or gardening services), New York State prohibits employers from discriminating against and harassing you on the basis of your gender if the harassment creates an intimidating, hostile, or offensive working environment.<sup>13</sup> For more information regarding your rights, see the Domestic Workers Bill of Rights: <https://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>.

 **FARMWORKERS:** Note that if you are a farmworker, certain labor laws may not apply to you. However, you are covered by anti-discrimination laws, and it is unlawful for your employer to discriminate against or harass you because you are a woman or based on your race, ethnicity, national origin, or any other protected category.

**NOTE:** Certain laws only apply to workers classified as “employees.” However, just because you are not considered an “employee” by your employer does not mean that you are not covered as an “employee” under the law. If you have questions about whether a law applies to you, speak with a lawyer or legal advocate. One common misconception (which employers use to their advantage) is that whatever your employer calls you—for example an “independent contractor”—is what you are under the law. That may not be true for you depending on the circumstances of your employment.

## What are My Legal Rights?

In New York State, if you are covered by the law, the law prohibits your employer from treating you negatively because **1** you are a woman or identify as a woman, **2** you are pregnant, or **3** you have, or are responsible for caring for, a young child. For the unfavorable treatment to qualify as prohibited conduct, it must negatively impact the “terms and conditions” of your employment. This means that your employer cannot use one of the characteristics above to decide to not hire you, or to fire you, demote you, deny a promotion, pay you less, change your work duties or conditions in a bad way (such as schedules, shifts,

or locations), or deny or limit your access to advancement and training opportunities.

If you believe you are being discriminated against and you report it to your employer, your employer has a responsibility to investigate your complaint and correct any discrimination in a timely manner.

**RETALIATION:** Employers are legally prohibited from engaging in “retaliation” (punishing you) if you address or challenge discrimination. This includes: reporting discrimination, helping your

coworkers to report, working with other employees to challenge discrimination in the workplace, filing a discrimination complaint or lawsuit, or participating in an internal or external investigation.

In New York State, “retaliation” is defined as any negative employment action taken by the employer. In other words, your employer cannot fire you, demote you, suspend you, cut your pay or work hours, assign you more difficult work duties, or start issuing poor performance evaluations to punish you for reporting sex discrimination. Retaliation can also include more intensive or critical supervision, surveillance, or bad-mouthing you to your coworkers.

**As of March 16, 2022**, the law specifies that it is “retaliation” if your employer leaks your personnel file in response to you challenging discrimination.<sup>14</sup>

**NYC:** In New York City, “retaliation” is defined more broadly because it is not just limited to a negative employment action and, instead, includes *any* action taken by the employer to discourage you, or any other employee, from reporting discrimination. Therefore, for immigrants and migrant workers, it is unlawful for an employer to threaten to report you to immigration authorities if you report discrimination.

While retaliation is illegal, your employer may still do it. Engaging in retaliation is a separate violation of the law, meaning that, in some cases, even if an employer is found not to have discriminated against you, if they retaliated against you, that is still illegal—and they may still be required to pay damages.

Note, however, that even if you have complained of discrimination you must still comply with workplace rules, and you can still be subject to discipline or penalized for poor performance or for breaking workplace rules.

**NOTE:** In New York, workers are generally employed “at will,” which means that you can be fired at any time for almost any reason or for no reason, so long as it is not for an illegal reason such as discrimination or retaliation based on a protected classification like sex or gender. However, you may not be an “at will” employee if you are covered by a union or if you have an employment contract that establishes different standards. In that situation, you may have greater protections than an “at will” employee.



## What Can I Do to Assert My Rights?



Each time a woman stands up for herself, without knowing it possibly, without claiming it, she stands up for all women.”

— Maya Angelou,

Poet and Civil Rights Activist

If you believe you have been discriminated against in the workplace, there are various actions you can take to advocate for yourself.

**CONSULT WITH COLLEAGUES:** Speak with trusted colleagues regarding their workplace experiences. Talking with co-workers is a good way to identify broader or similar problems.

### **REVIEW YOUR WORKPLACE POLICY, EMPLOYMENT CONTRACT, AND/OR UNION CONTRACT:**

If you feel you have been the victim of sex discrimination in the workplace, you should obtain a copy of your workplace policy, if one exists, so that you know the procedure to follow and how to make a complaint. Your employer may provide stronger protections than what is in the law. If you have a contract or some form of employment agreement, review that as well to determine if it places any limitations on how you can challenge your employer or if it

includes extra protections. If you are in a union, contact your union representative to find out about the union’s policies, ways they can advocate on your behalf, and any additional protections they may have negotiated on your behalf.

**SEEK LEGAL GUIDANCE EARLY:** If you think you have been subjected to sex discrimination in the workplace, you should contact an attorney or legal services organization early in the process. Sometimes simply informing your boss about the law can solve the problem. Existing law is also complicated and imposes certain procedural requirements, reporting deadlines, and legal standards that you must meet in order to bring a claim. New laws are also creating new legal protections of which you may be unaware. Many non-profits provide free consultations and may be able to provide free or low-cost legal assistance depending on your income or status. An attorney or advocate can provide you with necessary legal advice, help determine if you have a valid complaint, and help you figure out a strategy.

For guidance or a referral, contact Legal Momentum’s Helpline:

(212) 925-6635, ext. 650 or [help@legalmomentum.org](mailto:help@legalmomentum.org).

**DOCUMENT THE DISCRIMINATION:** Discrimination can be difficult to prove and employers can often justify negative treatment by pointing to factors other than an employee's gender. To strengthen your case, you should document everything that happens in detail as early as possible (including names, dates, places, times, witnesses, and the nature of any incident). Your documentation should include, if possible, the names and treatment of employees of the opposite (or favored) gender so that you can better prove the difference in treatment. Keep a paper trail of relevant evidence, including threats of retaliation. Save copies of any and all evidence that relates to your complaint such as copies of emails, text messages, written letters or notes, voicemails, and photos. Save and print copies of all documentation and keep electronic and/or hard copies on a personal device or a folder that you maintain at home in case you are terminated or have to leave work and can no longer access your work computer or files.

**REPORT INTERNALLY:** Once you notify your employer of workplace discrimination, your employer has a responsibility to act quickly to take reasonable steps to correct the problem and prevent it in the future. In fact, your employer may be legally responsible if it does not take adequate corrective measures to address the discrimination. Therefore, if you want your employer to take action or if you seek to hold your employer accountable, it is important that you report the discrimination to your employer. If you decide not to report discrimination to your employer, you may not be able to raise legal claims against your employer.

If and when you are ready to report discrimination to your employer, start by requesting a copy of your workplace policy to find out the procedures to follow and who to contact. If your workplace does not have a policy, start by reporting to Human Resources or your supervisor (if s/he is not the one who discriminated against you). In a small business setting, this may be the only avenue for reporting. If you belong to a union, you can contact your union representative for additional guidance. You should keep a clear record of the complaint you filed and your employer's response, so try to submit everything in writing and request decisions in writing. If your employer refuses to provide written decisions, you should keep a written record, either by memorializing your verbal conversations in emails or by keeping detailed notes of your verbal conversations.

**FILE AN ADMINISTRATIVE COMPLAINT:** If you feel like your employer did not appropriately address your discrimination complaint, you can contact or file a formal administrative complaint with the following agencies:

- Your local fair employment agency
- The New York State Division of Human Rights (NYS-DHR): <https://dhr.ny.gov/contact-us>.

- The federal Equal Employment Opportunity Commission (EEOC): <https://www.eeoc.gov/field/newyork/charge.cfm>.

*Act quickly* because the law imposes strict deadlines for filing a formal complaint with local, state, and federal agencies and for bringing a lawsuit. In New York State, if you want to file a federal complaint with the EEOC, you generally must do so within 300 calendar days from the date the discrimination took place. To file a state complaint with the New York State Division of Human Rights, you generally must file your complaint within one year from the date the discrimination took place. Local agencies have different deadlines as well. Keep in mind, however, that figuring out the deadline that applies to you can be a complex determination, involving various factors, so consult an attorney for guidance.

The sooner you compile your documentation and file your complaint, the better—even if the discrimination is still ongoing (you can always supplement a complaint with additional instances if necessary). Depending on where you file, the agency can take different forms of action, such as helping you mediate the dispute, investigating your employer, requiring your employer to change practices, imposing fines, awarding damages, prohibiting your employer from firing or terminating you, or ordering your employer to rehire you if you were fired.

You can file a complaint with an administrative agency on your own. However, if you can obtain legal representation, having the assistance of a lawyer can help you comply with legal requirements and put the strongest complaint forward.

**FILE A LAWSUIT:** If you feel like your employer did not appropriately address your discrimination complaint, you can file a lawsuit against your employer under federal, state, and/or local law. To do so, you may have to meet certain prerequisites or follow certain procedures. For example, if you want to file a federal suit under Title VII of the Civil Rights Act for sex discrimination, you must first file a complaint with the EEOC. If you choose to only bring claims under New York State law, you do not need to file a complaint with an administrative agency before going to court, however, you should consult an attorney or legal advocate to determine which option is best for you.

If you file a lawsuit in federal or state courts, there are various types of remedies you can obtain, including lost wages, future wages, out-of-pocket expenses, and compensatory damages for emotional distress. You may now also be eligible to obtain punitive damages (damages that exceed compensation and are intended to serve as a penalty) and attorney's fees in state court.<sup>15</sup>

Keep in mind that bringing a lawsuit can be a complicated, costly, and lengthy process, so you should consult an attorney or a legal services organization to help you assess your claim and to find out what steps you must follow. As noted above, you may be able to obtain free or low-cost legal assistance depending on your income or status.



# 2



## Sexual Harassment

You have the right to a workplace free of sexual harassment and abuse. Sexual harassment is a form of sex discrimination.



I watched her walk away from me as she tried to recapture her secrets and tuck them back into their hiding place. I watched her put her mask back on and go back into the world like she was all alone and I couldn't even bring myself to whisper...Me too."

– Tarana Burke,  
Founder of the #MeToo Movement

# What is Workplace Sexual Harassment?

Sexual harassment is a form of sex discrimination. It is unlawful under federal, state, and local laws and it includes harassment on the basis of your sex (as perceived or self-identified), sexual orientation, gender expression, gender identity, and transgender status.

Sexual harassment includes unwelcome physical or verbal conduct based on your sex that negatively impacts your work, is a term or condition of employment, or creates a hostile work environment. If you are an applicant or employed, you may be the victim of sexual harassment if you are subjected to the following:

- Unwelcome sexual advances, including unwanted touching or comments of a sexual nature. E.g., you feel uncomfortable because your co-worker keeps telling you that you look pretty or sexy.
- Requests for sexual favors and/or threats to take negative or positive action, depending on how you respond to the request. E.g., your boss threatens to notify immigration authorities, to fire you, or to assign you to another location or position if you do not go out on a date with him or if you do not engage in certain sexual acts. E.g., you were hired to provide house cleaning services and then asked to provide a massage for your employer.
- Unwanted physical or verbal conduct that creates a hostile work environment such as sexually offensive comments

or jokes, gestures, leering or staring, using sexual slurs, sending sexually explicit emails or voicemails, or displaying pornography, sexually explicit images, or written materials. E.g., your co-worker regularly stares at you at work and tells you “you’re looking really good” or texts you pornographic images; or, you are a domestic worker and your employer regularly walks around the house in a towel or in minimal clothing.

- Sex stereotyping, talking about a gender in a derogatory way, or issuing gender-based work assignments. E.g., you are regularly scolded at work by your supervisor who tells you that men are just smarter than women or makes you, but not your male coworker, get him coffee every morning.

**NOTE:** Conduct that occurs outside the workplace can still be sexual harassment depending on if and how it affects your work. Just because you engaged in a consensual romantic or sexual relationship with a co-worker or felt pressured to do so because of fear of losing your job, you are not obligated to continue that relationship.

Additionally, acts of sexual harassment do not have to be directed at you. For example, sexual harassment could be the result of a poster on a co-worker’s wall or from comments between coworkers made in passing.

## Who is Protected by the Law?

In New York State and New York City, all employers must comply with laws that prohibit sexual harassment, so you have the right to be free from sexual harassment regardless of the size of your employer, regardless of your immigration status, and even if you are the only person who works for your employer such as a domestic worker.<sup>16</sup> In New York State, protections now apply to anyone who provides services in a workplace based on a contract, including contractors, subcontractors, vendors, consultants, or anyone providing services in the workplace. Protected individuals include independent contractors, “gig” workers, temporary workers, and persons providing equipment repair or cleaning services.

**NOTE:** The law in New York State now protects against harassment not just based on your sex or gender but based on any protected characteristics such as race and national origin.<sup>17</sup> This also applies to domestic workers.<sup>18</sup>


**NYC:** In New York City, protections against harassment based on your gender-identity, including sexual harassment,

now apply to all employers, regardless of the size of your employer.

**IMMIGRATION STATUS:** You have the same right to work in an environment free from sexual harassment regardless of your immigration status. Of course, your employer may still unlawfully retaliate against you for reporting so you should seek assistance from a lawyer or advocate to determine how best to respond. For assistance, visit the Additional Resources section at the back of this Toolkit.


Note also that if you are an immigrant victim of certain crimes, you may qualify for a special visa to stay in the country and obtain a green card. For example, you may qualify for a U Visa if you are an immigrant victim of certain violent or sexual crimes and you are willing to assist law enforcement in a criminal investigation or prosecution. Alternatively, you may qualify for a T Visa to obtain lawful status and employment authorization if you

are a survivor of sex or labor trafficking and you are willing to assist law enforcement in a criminal investigation and/or prosecution. For more information, visit the Department of Labor: <https://www.dol.gov/general/immigration/u-t-visa> or contact an attorney with expertise in immigration matters.

 **DOMESTIC WORKERS:** If you are a domestic worker (i.e., someone working for another person caring for children or an elderly person, keeping a home, or doing other domestic jobs in the home), then you are covered by protections that prohibit sexual and other forms of harassment. It is unlawful for your employer to threaten or base your employment on your submission to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.<sup>19</sup>

If you are a domestic worker, it can be difficult to report

sexual harassment because you may fear that your employer will fire you. If you are subjected to sexual harassment or encounter unsafe or uncomfortable conditions, document the behavior (see the next section for more guidance on how to document). Even if you do not think the conduct is serious enough to meet the legal definition but it makes you feel uncomfortable, you can take steps to try to address it. Consider reaching out to the National Domestic Workers Alliance or a local community based group or worker center for assistance to help you strategize about how to address the problem without leaving your job. See our Additional Resources section for more information.

 **FARMWORKERS:** If you are a farmworker in New York State, you are equally covered by the protections against sexual harassment described above.<sup>20</sup>

## What are My Legal Rights?

In New York State, if you are covered by the law, you have the right to work in an environment free from sexual harassment, which is a form of sex discrimination.<sup>21</sup>

Your employer must ensure that sexual harassment does not negatively impact your employment, meaning your employer cannot fire you, refuse to hire you, pay you less, or reduce your work hours based on how you respond to sexual harassment at work.

This also means that your employer or other actors (e.g., executives, managers, supervisors, co-workers, or clients) are prohibited from engaging in unwelcome sexual conduct that creates a hostile working environment. Note that conduct does not have to be “severe or pervasive.” While conduct must still be more than “petty slights or trivial inconveniences”, based on the new standard in New York State, your employer cannot subject you to inferior terms, conditions, or privileges of employment.<sup>22</sup>

Your employer not only has a responsibility to refrain from sexual harassment, it has a duty to investigate complaints. Your employer must take immediate and appropriate action to correct sexual harassment and must also take reasonable steps to prevent it. Failure to do so means your employer is violating the law.

**NYC:** If you work for an employer in NYC, conduct similarly does not have to be severe or frequent to create a hostile work environment. Thus, if an employer treats you less well than your co-workers because you rejected the employer’s sexual advances or requests, you may have a claim under the law in New York City.

**RETALIATION:** It is unlawful for your employer to engage in “retaliation” (punish you) for reporting sexual harassment, objecting to sexual harassment (for example, providing support to a co-worker who reports sexual harassment), filing a complaint or lawsuit, or participating in an investigation. Remember, in

New York State, retaliation is prohibited if it results in action that negatively impacts your job. In New York City, however, retaliation includes **any action** taken by the employer which could discourage you, or other employees, from reporting sexual harassment.

Note that while retaliation is illegal, your employer may still do it. Retaliation is a separate offense so your employer could be found guilty of punishing you for reporting sexual harassment even if your employer is not found guilty of the sexual harassment itself. As a result, your employer may be required to pay you damages.

Note, however, that you must still comply with legitimate workplace rules, and you can still be subject to discipline or adverse action for non-compliance or poor performance.

In other words, it is unlawful for your employer to fire you, demote you, suspend you, cut your pay or work hours, assign you more difficult work duties, or start issuing poor performance evaluations to punish you for reporting sex discrimination. Retaliation can also include more intensive or critical supervision, surveillance, or bad-mouthing you to other employees.

**POLICIES & TRAINING:** In New York State, all employers must now adopt a sexual harassment prevention policy and must conduct an annual interactive training on sexual harassment.<sup>23</sup> Your employer’s policy must set forth clear steps on how and to whom you can report and must include a written form that you can complete to report sexual harassment. Your employer must also include a procedure to ensure your complaint is investigated confidentially and in a timely manner, and in a way that is fair to all parties. The policy must also provide you with information regarding the applicable laws and on how to file a lawsuit or file a complaint with an administrative agency. You should review this policy to see what steps your employer must take to combat sexual harassment in the workplace. Your employer must provide you with a copy of its policy and training

material in English and in your primary language when you are hired and annually during your training.<sup>24</sup>

For more information, visit: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

**NYC:** Starting on April 1, 2019, If you work for a city agency or a private employer in New York City with **15 or more employees**, your employer's annual anti-sexual harassment training must include information about bystander intervention.

Your employer must also train supervisory and managerial employees on their responsibility to prevent sexual harassment and retaliation at work, and how to appropriately address sexual harassment complaints. All employers in NYC must post an anti-sexual harassment poster outlining rights and responsibilities under the law. If you work for a city agency, your employer must now report annually on the number of sexual harassment complaints received and the outcomes of those complaints. This information will be publicly available on the NYC Commission on Human Rights' website.



## What Can I Do to Assert My Rights?

While taking action can be intimidating, you should never have to work in an environment where you are subjected to sexual harassment, which can result in anxiety, depression, fear, and disempowerment. If you have concerns or believe your rights have been violated, there are various actions you can take to advocate for yourself. Consider contacting an advocate for assistance to strategize ways to address sexual harassment and if you want to report, to figure out how to navigate the process with your employer and beyond.

You can contact Legal Momentum's Helpline at (212) 925-6635, ext. 650 or [help@legalmomentum.org](mailto:help@legalmomentum.org) or visit our Additional Resources section at the end of this Toolkit.

In addition to the general guidance in Section 1, consider the following:

**MAKE CLEAR THAT SEXUAL HARASSMENT IS UNWELCOME:** It is important to make clear that sexual harassment is unwelcome. Even if you submitted to certain behavior in the past, you can always change course and make it known that the behavior is unwanted.

**DOCUMENT THE HARASSMENT:** You may have to show that conduct was frequent or severe, so try to document everything that happens in detail.

**CONTACT LAW ENFORCEMENT, IF NECESSARY:** Keep in mind that certain acts such as unwanted physical touching, forced confinement, or forced sex acts may rise to the level of a crime, which can be reported to local police and can result in the criminal prosecution of your harasser. If you are working without work authorization and concerned about how reporting will affect you, contact a lawyer or legal advocate. See the Additional Resources section at the end of this Toolkit for more information.

**INTERVENE IN SUPPORT OF OTHERS:** You do not need to be the victim of sexual harassment in order to report it or take action. If you are a bystander who witnesses sexual harassment, it is important to speak up, support your co-workers, and intervene. The more people who speak out

to combat sexual harassment in your workplace, the less isolating and acceptable it becomes. If you are a supervisor and you receive a complaint about sexual harassment, find out what steps you must take and report the conduct so that appropriate actions can be taken by your employer.

**FILE AN ADMINISTRATIVE COMPLAINT:** If you made a sexual harassment complaint with your employer and feel like your employer did not take corrective action to address it, you can file a formal administrative complaint with your local fair employment agency, the New York State Division of Human Rights (<https://dhr.ny.gov/contact-us>), and/or the federal Equal Employment Opportunity Commission (EEOC) (<https://www.eeoc.gov/field/newyork/charge.cfm>). You must do so quickly in order to comply with applicable reporting deadlines. **As of July 14, 2022**, the New York State Division of Human Rights will operate a toll-free confidential hotline for complaints of workplace sexual harassment, which can connect you with pro bono attorneys who can advise you of your legal rights.<sup>25</sup> You can reach the hotline at 1-800-HARASS-3.

In New York State, if you want to file a federal complaint with the EEOC, you generally must do so within 300 calendar days from the most recent date of the harassment. To file a state complaint with the New York State Division of Human rights, you generally must file your complaint within one year from the date of the harassment. As of August 12, 2020, you will have three years from the date of harassment to file any sexual harassment complaint at the state level.<sup>26</sup> Local agencies have different deadlines as well. And certain localities like New York City provide longer filing deadlines for sexual harassment claims. Keep in mind, however, that figuring out the deadline that applies to you can be a complex determination, involving various factors, so consult an attorney for guidance.

**As of March 3, 2022**, under federal law, you have the right to sue for sexual harassment or sexual assault in court even if you previously signed an arbitration agreement with your employer that requires you to resolve a dispute in arbitration.<sup>27</sup>

# 3



## Equal Pay

The law prohibits employers from paying you less because of your sex or gender. This type of treatment is a form of sex discrimination. Your employer is also prohibited from punishing you for discussing or disclosing rates of pay with your colleagues, and, depending on where you work, an employer may be prohibited from asking about or relying on your prior salary to set your new salary.



We still are not paid equally. And if you believe that it's a myth, do the math. Unequal pay hurts women. It hurts their families. And it hurts us all. You and I have to continue fighting for equal pay for equal work. I get up each day with that on my mind, because I need to make a difference."

– Lilly Ledbetter,  
Plaintiff in *Ledbetter v. Goodyear Tire & Rubber Co.*,  
which resulted in Congress passing the Lilly  
Ledbetter Fair Pay Act of 2009

# What Qualifies as Unequal Pay?

You should never be paid less because you are a woman. Receiving lower pay based on your sex or gender is a form of sex discrimination. All too often, however, women are paid less than their male colleagues doing similar work, and they are often unaware of this fact because workers are discouraged from sharing or discussing salaries. Moreover, since women have historically made less money, women often start new positions at a lower salary and with less bargaining power than their male peers when negotiating their new salary. This trend further depresses salaries for women.

There are various ways in which an employer may engage in discriminatory pay practices.

Below are a few of many examples:

- Your employer pays you less than your male colleague

because you (like many women) were paid less in your past job and your employer asked about your prior salary and used that salary as a basis to set your new salary when hiring you.

- Although you have the same title and job responsibilities as your male colleague, your employer pays him more, claiming he has more experience, even though you know that he previously worked in a different field and had less relevant experience than you do. Or, your employer pays him more telling you, “He has a family to support.”
- Your employer gives your male coworker, who has the same title, a raise but decides not to give you a raise, despite your similar years of experience, because you took parental leave or worked part-time to care for a child. Your employer may even say, “Let’s wait to talk about raises until you have come back full-time.”

## Who is Protected by the Law?

Federal law prohibits all employers from engaging in pay discrimination based on gender.<sup>28</sup> New York State law prohibits employers from engaging in pay discrimination based on gender. NYS law now also prohibits pay discrimination based on any other protected characteristic.<sup>29</sup>

**NYC:** In New York City, pay discrimination is illegal as a form of gender discrimination under the New York City Human Rights Law, which covers both private and government employees who work for employers with **4 or more employees**.<sup>30</sup>

## What are My Legal Rights?

### Equal Pay

Under federal and state laws, you can bring an equal pay complaint as well as a sex discrimination complaint. Under the equal pay laws (unlike the anti-discrimination laws) you do not need to prove that your employer intentionally discriminated against you on the basis of your sex or gender.

Covered employers are prohibited from paying you a lower rate of pay than a male colleague if you are doing substantially equal work (under federal law) or substantially similar work (under New York State law) taking into account skill, effort, and responsibility on jobs performed under similar working conditions.<sup>31</sup> Protections cover all forms of compensation including salary, overtime pay, bonuses, stock options, profit sharing, life insurance, and other benefits.

Your employer can still pay you a different rate based on factors such as seniority, merit, quantity or quality of production, or a “bona fide factor other than sex, such as education, training, or experience,” which are job-related.<sup>32</sup> If your employer raises one of these factors as a defense, be sure to do your own assessment of your education, training, or experience. You may be able to raise factors that your employer was not considering. Additionally, if your employer claims that your lower pay is based

on a “bona fide factor other than sex,” they must demonstrate that the factor is not based on a sex-based differential, is job-related, and is consistent with business necessity.

Even if they prove this, you can still win, if you can show that the practice has a disproportionate impact on the basis of your sex, that your employer could have served the same purpose without causing that impact, and that your employer refused to adopt such an alternative practice.<sup>33</sup> Your employer may be responsible for correcting the pay differential and may be responsible for additional damages if it violates the law.

**DISCUSSING SALARIES:** In New York State, employers are also prohibited from stopping or preventing you from asking about, discussing, or disclosing pay with your co-workers and cannot punish you for doing so.

**PAY TRANSPARENCY:** As of November 2022, employers in New York City with four or more employees, or one or more domestic workers, must disclose the minimum and maximum salary in any advertisement for a job, transfer, or promotion opportunity. Failure to do so constitutes discrimination under New York City Human Rights Law, and you can file a complaint about employers that fail to post their salary range with the NYC Commission on Human Rights.<sup>34</sup>

## Requesting or Relying Upon Prior Salary

Because women have been paid less, on average, than men over time, various localities and now New York State have passed laws that limit an employer's ability to ask and/or rely upon applicants' salary history during the hiring process. The purpose of these laws is to stop the cycle of inequality from continuing by preventing employers from relying on prior salary disparities to set applicants' future salaries.

As of January 6, 2020, if you are applying for a job in New York State, regardless of the size of your employer, it is illegal for an employer to ask you how much you were paid in your prior positions during the hiring process or to rely upon your salary history to determine your salary during the hiring process.<sup>35</sup> Keep in mind, that certain exceptions may apply based on your employment status, contract, or collective bargaining agreement.

An employer can still ask you about your expectations regarding salary and benefits. While you should not be prompted, you are permitted to voluntarily disclose your prior salary, which can then be taken into account by an employer.

If asked about your salary history, you can report the violation to your local fair employment agency. During the hiring process, if you are asked an impermissible question about your salary history, you can try to reframe the conversation by discussing your salary expectations based on the requirements and responsibilities of the job, noting that they differ from your prior work, and ask questions about the salary range set for the position.

NYC: For more information, visit: <https://www1.nyc.gov/site/cchr/media/salary-history-frequently-asked-questions.page>.

Note that certain localities, including New York City, Westchester County, Suffolk County, and Albany County passed their own salary history laws, which may include stronger protections.

**RETALIATION:** It is illegal for an employer to engage in "retaliation" (to punish you) for reporting pay discrimination, sharing salary information, filing a complaint or lawsuit, or participating in an investigation. In other words, your employer is prohibited from firing you, demoting you, suspending you, cutting your pay or work hours, assigning you more difficult work duties, or starting to issue poor performance evaluations to punish you for reporting discrimination. Retaliation can also include more intensive or critical supervision, surveillance, or bad-mouthing you to other employees.

Note that even though retaliation is illegal, your employer may still do it. Retaliation is a separate offense from pay discrimination. Therefore, even if a court determines that there was no pay discrimination, if an employer retaliated against you, they have violated the law and may be required to pay you damages and attorneys' fees.

Keep in mind that you can still be subject to discipline or penalized for poor performance or breaking legitimate workplace rules insofar as your employer's actions are not based on your sex or gender.



## 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:

**SPEAK TO YOUR CO-WORKERS:** Because many employers have historically relied on job applicants' salary history to set the salary for a new position and because men have historically been paid more, on average, than women, you may be making less than your male colleagues. If you have concerns that you are being paid less than a male colleague who is doing the same or similar type of work, one option is to ask your co-worker about his salary. Note that your co-worker is not obligated to disclose this information and may choose not to do so. Also be aware that while employers are legally prohibited from retaliating against you for speaking to your coworkers about salary, this does not mean that your employer will follow the law. Your employer may still engage in retaliation.

**ADVOCATE FOR YOURSELF:** Many women often assume they will be rewarded based on merit and hard work and are well into their careers before they realize that their colleagues (often men) received raises because they actively requested them. If you believe that you deserve a raise, speak with your supervisor and request one. Be prepared to discuss the work that you do, your responsibilities, accomplishments, skills, performance, the ways in which you have excelled, and the value you bring to the workplace.

**NOTIFY YOUR EMPLOYER AND REQUEST THAT THE PAY DIFFERENTIAL BE CORRECTED:** If you learn that you are being paid less than a male co-worker and you don't think there is a valid rationale for the pay differential, then you should speak to your supervisor and request that it be corrected. Before doing so, try to get as much information as you can about your male co-worker's past experience, your titles, classifications, and the responsibilities and skills required in your job description.

Speaking to your employer about pay discrimination can be difficult, but it can be easier if you are prepared. During this conversation, you will want to highlight that you do equal work, have equal responsibilities, work under substantially similar conditions, and that you have equivalent or complementary skills and experience compared to your male colleague(s). Be prepared to provide some of the following information:

- Explain that you discovered you were being paid less than your male colleague even though you both perform equal work.
- Explain how your job duties and responsibilities are the same when compared to your male colleague's job duties and responsibilities.
- Highlight your skills and experience and ways in which they are superior, equivalent, or complementary to your male colleague's experience.
- If it is helpful, raise your job performance and highlight ways in which you have excelled in the position.

Depending on the nature of the pay discrimination, you may want to do the following:

- Ask your employer to raise your pay so it is equal to your male colleague's pay by the next pay period.
- Ask your employer to correct the pay disparity retroactively, meaning that they pay you the difference of what you should have been earning going back to when the pay disparity began.
- If your employer refuses to correct the situation, ask them to provide their rationale for why they think the pay differential is fair (preferably in writing).
- If your employer refuses to correct the situation, find out if there is an appeal process or equal opportunity office with which you can file a complaint.

**DOCUMENT ANY COMPLAINTS:** Keep a record of your request by putting it in writing as an email or a formal complaint. You should also try and get a response from your employer that is in writing. This record can serve as written evidence if you decide to file a discrimination complaint or lawsuit. Take notes about your verbal conversations so that you have a record of what was said during these conversations.

**NOTE:** When you tell your employer the above, remember, you are **automatically** protected under the law. This means that it is illegal for your employer to fire you, discipline you, cut your hours, cut your pay, or do anything negative to your employment because you requested equal pay or inquired about it. If your employer does take any of the above actions, it has violated the law. While retaliation is illegal, your employer may still do it. You may have to take administrative or legal action to protect your rights. If your employer fails to correct the problem, you may be entitled to additional damages if you decide to challenge the pay discrimination in court.

**FILE A LAWSUIT OR AN ADMINISTRATIVE COMPLAINT ABOUT UNEQUAL PAY:** If you feel like you were subjected to pay discrimination, you can file a state or federal lawsuit under the state and federal equal pay laws. If you also want to file an employment discrimination claim under Title VII, you will first need to file a discrimination complaint with the federal Equal Employment Opportunity Commission (EEOC).

You can also file a formal administrative complaint with: the New York State Department of Labor (<https://labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>), the New York State Division of Human Rights (<https://dhr.ny.gov/contact-us>), the EEOC (<https://www.eeoc.gov/employees/charge.cfm>), or your local fair employment agency.

**NOTE:** You should consult a lawyer or legal services organization to get guidance on how and where to file your complaint because there are often complex considerations involved and you often must file quickly in order to comply with applicable reporting deadlines. For example, if you file your complaint with one of the agencies above, you may not be able to file with others **and** you may not be able to file a lawsuit later on.

**FILING A NYC COMPLAINT TO CHALLENGE A SALARY HISTORY REQUEST:** If you work for an employer in New York City who improperly inquired about or relied upon your prior salary in setting your salary, you can file a complaint with the NYC Commission on Human Rights, which has the authority to impose fines on employers or award compensatory damages. Visit: <https://www1.nyc.gov/site/cchr/about/contact-us.page>.



# 4



## 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.<sup>36</sup> 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](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.<sup>37</sup> 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.<sup>38</sup> Salespeople who work on commission should be paid at least once a month.<sup>39</sup> Manual workers must be paid at least once a week and not more than a week after wages are earned.<sup>40</sup>

 **DOMESTIC WORKERS:** If you are a domestic worker in NYS working directly for a family, you must be paid once a week.<sup>41</sup>


**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.<sup>42</sup> **The employer must also provide the address and telephone number of the main office.**<sup>43</sup> 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.<sup>44</sup>

You must receive a pay statement every time you are paid.<sup>45</sup> 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.<sup>46</sup>


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.<sup>47</sup>

If you are terminated, you must be notified in writing of the date of termination and the date of cancellation of your benefits.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup>

**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).<sup>52</sup> This

applies to all workers even if you lack work authorization or are paid off the books, in cash, or paid hourly/daily/weekly.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>



**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.<sup>57</sup> For more information, visit: [https://www.labor.ny.gov/workerprotection/laborstandards/workers\\_rights/Mandatory\\_OT\\_FAQ.shtm#0](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.<sup>58</sup> 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](mailto: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.<sup>59</sup>

 **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.

**HOME CARE WORKERS:** As of October 1, 2022, the hourly minimum wage for home care aides will increase by \$2 and will increase by an additional dollar beginning on October 1, 2023.

 **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.<sup>60</sup> 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.<sup>61</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:

**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.

# 5



## Economic Opportunity

It is unlawful for a lender or financial institution to deny you a loan or financing based on your sex or gender. Resources are available to help you find a job; improve your finances; start a business; and obtain education, language, and skills trainings to get a job, including jobs in higher paying fields.



My sisters, black and white... We have really come too far to, again, be danced backwards into what others consider to be our place. Our place here and now is in America's mainstream, and the upper swifter currents of the mainstream where we can assume greater responsibilities and collect the greater rewards that we are due."

—Shirley Chisholm,

First black woman elected to the United States Congress, representing New York's 12th Congressional District, and the first woman to run for the Democratic Party's presidential nomination

# What Do We Mean by Economic Opportunity?

Women have long been discriminated against in our economy, which may mean that whether you are trying to find employment, find a higher paying job, or start your own business, you may face unique obstacles.

Whether or not you have prior work experience, it can be difficult to get a job, especially in your field of choice. To get a job, you may need assistance creating a resume and cover letter, preparing for an interview, or getting work-appropriate clothing. Or, you may need to obtain a certain level of education or acquire certain skills, training, or language ability. If you are looking to start your own business, you may need help figuring out where to begin or how to get the money, licenses, and general information necessary to start and maintain a business.

Improving your financial situation often requires access to economic opportunity; fair and equal treatment; and access to resources, services, and assistance that gives you a chance to improve your financial condition. If you are a woman trying to improve your economic stability, it's important that you are aware of certain resources and legal protections that exist to help you navigate the process and to put you on equal footing.

## Job Placement

If you are actively looking for a job, you can speak with a career advisor at your local New York State Career Center. To find your local Career Center, visit: <https://labor.ny.gov/career-center-locator/>. You can also search for positions using the New York State Job Bank: <https://newyork.usnlx.com>.

## Job Readiness

If you are trying to find a job or change careers, there are resources available to help you start that process. Whether you are interested in creating a cover letter and resume, preparing for an interview, learning about educational opportunities such as earning your high school Diploma or GED or going back to school, or learning about specialized training or skill-building opportunities to start a new career, you can contact your local Career Center for information on available resources and speak with a career counselor, who can guide you through the process.

New York State offers resources such as assistance with resume writing, interview preparation, job search strategies, salary negotiations, training classes, educational opportunities, and also hosts job fairs. For more information, visit: <https://www.ny.gov/services/find-job#resources>.

To find your local Career Center, visit: <https://labor.ny.gov/career-center-locator/>.

For more information about the different programs available, <https://labor.ny.gov/careerservices/planyourcareer/training.shtm/training.shtm>.

**LOCAL RESOURCES:** Check with your local government about similar resources to help connect you to jobs in your areas.


**NYC:** In NYC, for example, the NYC Department of Small Business Services provides resources to connect individuals to better jobs in New York City, offering workshops and counseling to help develop job readiness skills, including developing your resume package and preparing for interviews. The Department also holds recruitment events and offers special services for veterans and individuals seeking employment after leaving the criminal justice system. You can contact your local Workforce1 Career Center to find out more about available services: <https://www1.nyc.gov/site/sbs/careers/prepare-for-an-interview.page>.

The Department also offers training programs for in-demand occupations in different sectors and locations across New York City and offers grants to cover the cost of tuition, registration fees, testing fees, and books. For more information and to find out if you are eligible, visit <https://www1.nyc.gov/site/sbs/careers/access-training.page>.

## Specific Protections for Certain Applicants

**APPLICANTS WITH A CRIMINAL RECORD:** You may have trouble getting a job if you have had contact with the criminal justice system. Public and private employers with **10 or more employees** are prohibited from hiring or retaining an employee because of a past conviction unless the conviction bears a direct relationship with the job in question.<sup>62</sup> Before denying employment, employers must analyze an applicant's conviction by applying factors listed in Article 23-A of the New York Corrections Law. In addition, Employers must provide a copy of Article 23-A, along with the analysis for the employment decision to the applicant.<sup>63</sup> Additionally, employers cannot inquire about an arrest or criminal accusation that is no longer pending, was resolved in favor of the applicant or employee, or resulted in a sealed conviction.<sup>64</sup>

**NYC:** In New York City, employers with **4 or more employees** are prohibited from inquiring about your criminal background or conducting a background check until after they have made a conditional job offer.<sup>65</sup> If an employer asks about your criminal record after a conditional offer and then rescinds the offer, they must provide a copy of your record and explain why and show how your record would undermine your ability to fulfill the job duties or show how it would create an unreasonable risk.<sup>66</sup>

 **IMMIGRATION STATUS:** Federal law protects certain individuals from employment discrimination based on national origin, immigration status, or citizenship status.<sup>67</sup> For example, while the law does not protect “unauthorized aliens,” it does protect U.S. citizens, recent permanent residents, asylees, and refugees. The law prohibits employers from discriminating against individuals based on their citizenship or immigration status in hiring, firing, recruitment, and referral for a fee. For example, you may have suffered unlawful discrimination if an employer tells you it prefers hiring citizens because it doesn’t want to deal with the hassle of hiring non-citizens with work authorization, or if it requires you to submit verification documents before making you an offer, or if it demands more paperwork than is legally required when conducting its employment verification. For more information, including the list of acceptable verification documents, visit: <https://www.uscis.gov/i-9-central/employee-rights-resources/preventing-discrimination>.

## Apprenticeships

Due to the long-term effects of discrimination, women often work in occupations where they are paid less. However, with the right skills, women can get higher paying jobs in other industries, often referred to as “nontraditional fields” where women have typically had less opportunity to work, such as construction, plumbing, and electrical work. Participating in training can help you gain skills to help you get and hold down your first job, move up and earn a higher salary in your existing job, or enter a new field with a higher salary.

If you are interested in pursuing a career in a new field, the state has an apprenticeship program that allows you to learn a skilled trade through classroom education and on-the-job training while getting paid. More than 100 occupations offer training through NYS Department of Labor Registered Apprenticeship programs.

It is important to know that apprenticeship programs must select candidates based solely on the candidate’s qualifications, and is prohibited from discriminating against you on the basis of your gender, race, or national origin.<sup>68</sup>

To learn more about how to become an apprentice, visit: <https://www.labor.ny.gov/apprenticeship/general/registration.shtm>.

To find an apprenticeship opportunity, visit: <https://labor.ny.gov/pressreleases/apprenticeshiparchive.shtm>.

You can also find out more information from your local field office: <http://www.acces.nysed.gov/aapp/apprenticeship-program>.

## Adult Education: English Language, Literacy, Test Prep, and Career & Technical Training

The NYS Office for New Americans provides various resources, including a map that identifies free ESOL (English-for-Speakers-of-Other-Languages) trainings that are available across New York State: [https://www.newamericans.ny.gov/learn\\_english/esol\\_class.html](https://www.newamericans.ny.gov/learn_english/esol_class.html). Check with your local government to see if they provide additional adult education opportunities.

**NYC:** If you live in New York City, you may be eligible to receive Adult Education. Adult education in NYC includes free classes for adults (age 21 and over), which are held during the day and at night on Mondays through Saturdays in all 5 boroughs. Classes cover English as a second language, basic literacy, preparation for the High School Equivalency Assessment Exam, and career and technical education (computer literacy, health careers, technology, auto mechanics, carpentry, plumbing, and electrical training). If you are interested in Adult Education classes, visit: <https://www.schools.nyc.gov/enrollment/other-ways-to-graduate/adult-education/enroll-in-adult-education-classes>.

NYC provides several additional resources to help learn English. For example, the City has drop-in centers called Literacy Zones, that help families with limited English proficiency connect to classes and resources on housing, legal, medical, and employment issues. To find a Literacy Zone drop-in center, visit: <https://www.schools.nyc.gov/enrollment/other-ways-to-graduate/adult-education>.

We Speak NYC, the City’s English language learning program, also provides various additional resources, such as online videos, web, and printed materials, and free community classes in all 5 boroughs that help you learn English. To learn more, visit: <https://wespeaknyc.cityofnewyork.us>.

## Managing Your Finances

To improve your financial condition, it is important to make financially responsible decisions. This often requires a better understanding of how certain things work like money management, budgeting, credit, debt, bank accounts, and interest. To learn more, try searching for “financial literacy” courses in your area. Many of these courses are provided free of charge.

For resources on home buying, visit: <https://esd.ny.gov/home-buyer-financial-literacy-program>.

**NYC:** If you live in New York City, the Financial Education Network provides information and resources about financial education programs and services, including classes and workshops. You can also receive free one-on-one financial counseling by professionals in English and Spanish at a Financial Empowerment Center. Topics covered include getting a bank account, saving money, managing credit and debt, money management, and homeownership. For more

information, visit: <https://www1.nyc.gov/nyc-resources/service/2488/financial-education-network>.

In New York City, you can also now open your own SafeStart savings account, which has no overdraft fees, no monthly fees if minimum balances are met, and a low minimum balance of \$25 or less. You can open an account at a participating bank or credit union in NYC. For more information, visit: <https://www1.nyc.gov/site/dca/consumers/open-savings-account.page>.

## Starting a Small Business

If you are looking to start your own business, you may need help figuring out where to start, including how to develop a business plan and how to get the money, licenses, tax credits, and space to start or maintain your business. If you are looking to start your own business in New York State, you can access helpful resources on the State's Business Express site, which includes guides, checklists, and support services: <https://www.businessexpress.ny.gov>.

To run a business, you may be required to maintain or renew certain licenses, permits, or certifications on a regular basis. Many licenses can be renewed online. To find out what regulations apply to your business and to get more information, you can visit the Business Express site and use the Business Wizard: [https://www.businessexpress.ny.gov/app/portal/content/renewal\\_page](https://www.businessexpress.ny.gov/app/portal/content/renewal_page).

**FINANCING: ACCESS TO CREDIT & LOANS:** Women seeking access to credit or loans often have a harder time getting approval from the bank, and, while it may not be obvious at the time, a credit card company, bank, or lender may be discriminating against you when they deny you credit or financing.<sup>69</sup>

When seeking credit or financing as a woman, it is illegal for a lender to deny you credit because of your sex, gender, marital status, or because you receive workers' compensation or income or assistance from a public assistance program like SNAP or cash assistance.<sup>70</sup> Credit includes credit cards, small business loans, and mortgages. Lenders are also prohibited from discouraging you from applying for credit or flatly rejecting your application, granting you a loan with less favorable terms (higher interest rate, fees, or minimum payments), or charging higher interest rates or fees because you are a woman.

If you are denied credit or a loan, make sure to get detailed information regarding why you were denied and find out how you can challenge the determination if you believe you were discriminated against. If you believe you have been discriminated against, either in the denial of financing or because you were discouraged from applying, you can also file a complaint with the federal Consumer Financial Protection Bureau at <https://www.consumerfinance.gov/complaint/>.

There are, however, legal reasons why a lender may deny you credit or a loan. For example, you may be denied for having an

income that is too low, or debt that is too high, or a history of late payments, a low credit score, or little to no credit history. If this is the case, ask the bank if it has resources on financial literacy or other programs that could assist you with improving your credit.

**OPPORTUNITIES FOR WOMEN & MINORITY-OWNED BUSINESSES:** If you are a woman looking to start a business or if you already run a business in New York State, it is important to know that certain protections and benefits exist, including opportunities to obtain contracts with the state to sell goods and services.

If you are seeking a contracting opportunity with the state, note that it is illegal for a state government agency to discriminate against you because of factors such as your gender, race, or national origin.<sup>71</sup> Therefore, a government agency is prohibited from denying you a business or operating license, refusing to renew a license, or revoking your license because you are a woman or an immigrant who is lawfully present.

Additionally, if you are a woman running your own business in New York State, you may be eligible to have your business certified as a minority and woman-owned business by the state's Division of Minority and Women's Business Development. This certification can give you a better shot at obtaining a public contract with the state. For more information, and to find out about being certified, visit: <https://esd.ny.gov/doing-business-ny/mwbe>.

Depending on the type of business you run, you may be in a good position to apply for various contracting opportunities with state and local agencies. Visit their websites for more information.

**LOCAL OPPORTUNITIES:** Check with your local government to see if it provides similar opportunities for women- and minority-owned businesses.

**NYC:** New York City, for example, has a similar program through its Minority and Women-owned Business Enterprise (M/WBE) Program. The M/WBE Program also provides minority and/or woman-owned businesses with access to exclusive programs, networking events, and technical assistance to better compete for city contracts. To learn more about applying to be certified with the M/WBE program, visit: <https://www1.nyc.gov/nyc-resources/service/2479/minority-and-woman-owned-business-enterprise-mwbe-program>.

Through its WE Fund: Crowd program, NYC also offers to help women entrepreneurs raise crowdfunded loans of up to \$10,000 as well as provides loans with no-interest repayment terms for up to 42 months. The program provides courses on topics such as leadership and how to seek funding, in multiple languages, as well as "How To" guides with tailored information for business owners who are considering starting a salon, professional office, restaurant, convenience store, grocery store, or laundromat. To learn more about how to take part in the



program or to see what courses or resources are available, visit: <https://we.nyc>.

New York City's Department of Small Business Services (SBS) also offers business courses, financing assistance, pro-bono legal services, and more in multiple languages throughout the city at no cost. To see what resources are available, visit: <https://www1.nyc.gov/site/sbs/businesses/businesses.page>.

**USE OF CREDIT SCORES IN NYC:** In New York City, it is also illegal for employment agencies or government agencies to request or use, for licensing or permitting purposes, information contained in the consumer credit history of an applicant, licensee, or permittee.<sup>72</sup> In other words, you cannot be denied a license, nor denied the opportunity to work with an employment agency, because you have a low credit score.

**WORKER COOPERATIVES:** An alternative option to starting a traditional business is to start a worker cooperative. In contrast to traditional businesses that are hierarchically owned and managed, worker cooperatives are owned and controlled by the workers: the workers elect the board of directors, make business decisions democratically, invest collectively in the business, and typically distribute a portion of the profits annually to all of the worker-owners based on their own determination. Further, worker cooperatives are committed to creating a non-exploitative economy by creating socially just jobs and supporting the community.

There are successful worker cooperatives in all industries, including healthcare, manufacturing, education, food/restaurant, plumbing, publishing, childcare, commercial and residential cleaning, and other trades.

By starting a cooperative, you have a voice that counts, more control over setting work hours and wages, leadership roles and career advancement opportunities, and the ability to establish healthier relationships with managers, co-workers, and the community.<sup>73</sup>

For resources on worker cooperatives, visit:

The U.S. Federation of Worker Cooperatives: <https://usworker.coop/home/>.

Democracy at Work Institute: <https://institute.coop>.

**NYC:** The City Council provides funds to organizations in the Worker Cooperative Business Development initiative. Find out about these resources for worker cooperatives here: <https://www1.nyc.gov/nycbusiness/article/worker-cooperatives>. The New York City Network of Worker Cooperatives also provides leadership development, training programs, courses, and networking events, as well as a list of other organizations that provide similar services. You can access or review these resources here: <https://nycworker.coop/home/>.

**IMMIGRANT-OWNED BUSINESSES:** If you do not have and are not eligible to obtain a Social Security number (SSN), you can apply for an Individual Taxpayer Identification Number (ITIN), which is issued by the Internal Revenue Service. Both resident and nonresident aliens may obtain ITINs regardless of immigration status. The ITIN allows taxpayers who don't have a Social Security Number (SSN) to file income tax returns so that you can comply with tax filing or reporting requirements. For more information, visit: <https://www.irs.gov/individuals/individual-taxpayer-identification-number>.

**NYC:** Under New York City's Immigrant Business Initiative, the NYC Department of Small Business Services offers a range of resources to immigrant business owners and individuals looking to start a business.<sup>74</sup> For example, the City provides offers business courses, financing assistance, pro-bono legal services, and more in multiple languages throughout the City at no cost. For more information, visit: <https://www1.nyc.gov/nycbusiness/article/immigrant-business-initiative>.

# 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>.

# 7



## Domestic Violence, Sexual Assault & Stalking

It is unlawful for an employer to discriminate against you in the workplace based on your status as a victim of domestic violence. Depending on where you live, additional protections may exist, including protections for victims of sexual assault or stalking, that can help you keep or leave your job while addressing the abuse.



Domestic violence causes far more pain than the visible marks of bruises and scars.”

— Dianne Feinstein,  
U. S. Senator, CA

# How Can Domestic Violence, Sexual Assault, or Stalking Impact Your Job?

Domestic violence, sexual assault, or stalking can destabilize your life at home and at work. Victims of domestic violence, sexual assault, or stalking often face unique challenges in the workplace due to consequences of the abuse. You may have trouble performing your work duties, getting to work on time, or you may need time off due to various factors, including:

- Psychological impact of the abuse, including difficulty concentrating, anxiety, and depression.
- Physical injuries from the abuse that require rest, recovery, and/or medical care.
- Housing instability, including the need to flee, find a safe place to stay, find new housing, or enroll children in a new school.

- Legal obligations, including the need to go to court to get an order of protection, attend a court appearance, meet with the district attorney's office, or attend a custody hearing.
- Safety concerns at work, either because the perpetrator works with you or knows where you work, has appeared at your work, is making harassing phone calls to you at work, or has made other threats.

If domestic violence, sexual assault, or stalking is impacting your ability to get or keep a job, you may qualify for certain legal protections or be able to negotiate with your employer to secure changes at work to better protect your health and safety while staying employed.

## What Qualifies as Domestic Violence, Sexual Assault, or Stalking?

Note: These are not legal definitions, which vary based on federal, state, and local laws; depend on the context; and are often tied to specific criminal laws.

**DOMESTIC VIOLENCE:** Typically involves acts or threats of violence or a pattern of threats or abuse committed by a person such as a spouse, intimate partner, a person with whom the victim shares a child in common, or family or household member.<sup>121</sup>

**SEXUAL ASSAULT:** Typically covers specific nonconsensual sexual acts that are prohibited under criminal laws.<sup>122</sup>

**STALKING:** Typically covers specific acts prohibited under criminal laws. You may be a victim of stalking if you have been the target of a pattern of behavior that causes you to fear for your safety or the safety of others or to suffer substantial emotional distress.<sup>123</sup>

## Who is Protected by the Law?

In New York, you are entitled to protections if you work for (or are applying for a job with) an employer in the state with **4 or more employees** and you are a victim of domestic violence.<sup>124</sup> Note that the abuse can occur anywhere and does not have to occur in the workplace in order for you to qualify for protections.

**NYC & WESTCHESTER:** If you work for any employer in New York City, regardless of the number of employees,<sup>125</sup> or an employer in Westchester County who employs **4 or more employees**,<sup>126</sup> you are entitled to additional protections if you are a victim of domestic violence, sexual assault, or stalking.

## What are My Legal Rights?

**PROTECTIONS AGAINST DISCRIMINATION:** In New York State, your employer is prohibited from treating you negatively because you are a victim of domestic violence.<sup>127</sup>

This protection means you cannot be: denied a job; fired; or be treated differently with respect to salary, or terms, conditions, or privileges of employment based on your gender



or status as a Victim of Domestic Violence.

This means that it is unlawful for your employer to change your schedule, reduce your hours, deny you a promotion, change your job responsibilities, or reduce your pay because you are a victim, unless your employer takes any of those actions specifically at your request.

This also means that your employer is prohibited from firing you because you are being harassed at work by your abuser or based on gender-based stereotypes. For example, it's unlawful for your employer to fire or demote you because your boss does not want to deal with the "drama battered women bring to the workplace."

Even if you are not legally entitled to a reasonable accommodation (see below), your employer may be engaging in unlawful discrimination if it denies your request for an adjustment to address the abuse if your employer has provided similar adjustments to your co-workers on other grounds.

**NOTE:** In order to be covered by these protections, you will have to inform your employer about your status as a victim of domestic violence and may need to provide documentation of such. Keep in mind that domestic violence can have a significant impact on your attendance and performance, which are both grounds for discipline or termination. If you think that the abuse is impacting your work performance, it may help to notify your employer; otherwise, you will not be covered by these protections. It is a violation of the law if your employer retaliates against you for disclosing your status.

**REASONABLE ACCOMMODATIONS:** A "reasonable accommodation" is a change or adjustment to your working conditions, including your work duties or schedule. These adjustments can help a victim address the range of workplace impacts of the abuse or trauma.

**NOTE:** Examples include, but are not limited to, a request for time off, a change in your work location, a change in your hours or shifts, a new phone number, a reassignment or a transfer to another location, implementation of certain security protocols such as an escort, or a temporary reduction in hours.

Under federal and state law, you are not generally entitled to a reasonable accommodation for domestic violence, sexual assault, or stalking. However, if, as a result of the abuse, you suffer from a mental or physical condition that qualifies as a disability, you may be able to request a reasonable accommodation under federal law (if you work for an employer with **15 or more employees**) or under state law (if you work for an **employer with 4 or more employees**).<sup>128</sup> Your employer must work with you to accommodate your disability, unless your request would create an undue hardship for your employer or would prevent you from fulfilling your essential work functions.

**NOTE:** Under federal law, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.<sup>129</sup> Under NYS law, a disability is defined as a physical, mental, or medical impairment resulting from anatomical, physiological, genetic, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.<sup>130</sup>

Even if a reasonable accommodation is not legally required, remember that your employer is prohibited from denying your request for an accommodation simply because of your status as a victim. As noted above, if it has granted requests for similar circumstances or conditions. This type of denial may constitute unlawful discrimination.

You may have an order of protection from the court. Note that this is an order from the court directing an individual to do or not do something, e.g., to stay away from you. However, your employer is not a party to that order and so may not be required to enforce it (meaning your employer may not be required to take action to ensure the perpetrator is abiding by the order or take action if it is violated).

**As of November 18, 2019**, employers in NYS must allow reasonable time off as an accommodation in order to:<sup>131</sup>

- Seek medical attention for injuries caused by domestic violence.
- Obtain services from a domestic violence shelter, program or rape crisis center.
- Obtain psychological counseling related to an incident of domestic violence.
- Participate in safety planning or to take other actions to increase safety from future incidents of domestic violence.

**NYC & WESTCHESTER:** If you are a survivor of domestic violence, sexual offense/sexual assault or stalking and you work for an employer in New York City (**regardless of the number of employees**),<sup>132</sup> or an employer in Westchester County (**with 4 or more employees**),<sup>133</sup> you have greater protections and are entitled to a reasonable accommodation based on your status as a victim.

In New York City, your employer must engage in a "cooperative dialogue" or an "interactive process"<sup>134</sup> when considering a reasonable accommodation request. Your employer is not required to make adjustments that would create a significant hardship for them or would mean that you could no longer fulfill the essential functions of your job. This means that you and your employer should be able to work together to find a solution that helps you and still works for them.

**CAN I TAKE TIME OFF?** You may be able to take time off in certain circumstances.

- **FOR COURT:** In New York State, it is unlawful for your employer to terminate or penalize "a victim of a crime" for

taking time off to appear in court, appear as a witness, consult with the district attorney's office, or obtain an order of protection.<sup>135</sup> This law covers victims of a charged criminal offense, anyone who has been subpoenaed to attend a criminal proceeding as a witness, or anyone exercising rights as a victim under applicable sections of the criminal procedure law, the family court act, or the executive law. If you seek protection under this provision, you must notify your employer prior to the day of your attendance.

- **VACATION/SICK/PERSONAL TIME:** Under your employer policy or handbook, you may be able to use available vacation, sick, or personal time off to address the abuse. Note, that your employer may be engaging in unlawful discrimination if it denies your request but has approved request from your coworkers on other comparable grounds such as for personal needs and family emergencies. Be sure to inform your employer as early in advance as possible and comply with your workplace policy for requesting and taking personal time off.
- **DISABILITY:** As discussed above, if you suffered a disability as a result of the abuse, you may be entitled to request time off as a reasonable accommodation for your disability and you may qualify to receive short term disability benefits.
- **MEDICAL LEAVE:** If you have suffered a serious health condition as the result of the abuse, you may qualify to take up to 12 weeks of unpaid job-protected leave under the Family and Medical Leave Act (FMLA) if you are eligible and have worked sufficient days and hours (at least 1 year and at least 1,250 hours in the past year for an employee with **50 or more employees**).
- **SAFE TIME (NYC):** If you work in New York City for an employer with **5 or more employees**, or you are a domestic worker, your employer must provide paid safe time to eligible employees.<sup>136</sup> Paid safe time is time off to allow you to obtain services for abuse, to relocate, take measures to secure your safety, meet with an attorney or service provider, file a complaint, meet with a district attorney, enroll your kids in a new school, or take other necessary measures to protect your mental and physical health.

To be eligible, you must work 80 hours in a calendar year. If you meet this requirement, you are eligible to earn 1 hour of safe or sick time for every 30 hours worked up to 40 hours a year.<sup>137</sup> Certain limitations apply. For example, you can only use the time you earned after you have worked 120 calendar days in the year. Note that you must provide adequate notice for foreseeable events.<sup>138</sup>

**DOCUMENTATION & CONFIDENTIALITY:** In order to receive these protections, you do have to reveal to your employer that you are a victim of domestic violence and provide documentation to verify your status as a victim of domestic violence, if your employer requests it. You can satisfy this requirement by providing documentation from a victim services organization, an attorney, a member of your religious institution, or a medical or other professional service provider who you went to for assistance for the abuse; a police or court

record; or some other form of evidence. Once you tell your employer about your situation, your employer must keep all of your information confidential.

**RETALIATION:** Your employer is legally prohibited from retaliating against you for exercising your rights under these laws. Unfortunately, many employers will still engage in unlawful discrimination. If your employer does penalize you for invoking these protections, remember that retaliation is a separate violation of the law, meaning that in some cases, even if an employer is found not to have discriminated against you, it may still be liable for retaliating against you and may have to pay damages. Note, however, that you must still comply with workplace rules, and you can still be subject to discipline or penalized for poor performance or for breaking workplace rules, so long as your employer's conduct is not based on your sex or gender.

**UNEMPLOYMENT BENEFITS:** If you feel that you need to quit your job because of domestic violence, you may qualify for unemployment benefits. To obtain benefits, you will need to explain that you left your job because of the domestic violence and because you believed that staying at your job would jeopardize your safety or the safety of your family. You may be required to submit documentation to verify that you are a victim of domestic violence. For more information, visit: <https://www.labor.ny.gov/unemploymentassistance.shtm>.

**CRIME VICTIM'S COMPENSATION:** If you are a victim of a crime in New York State, including domestic violence or sexual assault, you may be eligible to receive compensation to cover specific expenses such as medical and counseling costs, lost wages, shelter costs, and transportation. You can file a claim with the NYS Office of Victim Services. For more information, visit: <https://ovs.ny.gov>.

**HOUSING:** It is unlawful for a landlord to discriminate against you because you are a victim of domestic violence.<sup>139</sup> This means that a landlord is prohibited from evicting or refusing to rent to you because of your status as a victim of domestic violence. If you have an order of protection and you no longer feel safe in your rental apartment, you can request that your landlord terminate your lease early and you can obtain a court order from the judge who issued your order of protection if your landlord refuses to let you out of your lease.<sup>140</sup> **As of May 13, 2022**, New York State Human Rights Law specifically protects against discrimination in public accommodation and housing on the basis of status as a victim of domestic violence.<sup>141</sup>

**PUBLIC ASSISTANCE:** If you are a victim of domestic violence, sexual assault, or stalking, you may be facing various types of instability and you may need assistance to make ends meet. For more information on the types of public assistance, including cash, food, healthcare, and housing assistance, see Section 12 of this Toolkit on Public Benefits. If you would like to apply for public assistance but are concerned that meeting certain requirements may place you or your children at greater risk of harm or make it difficult to escape the abuse, you can request a waiver to temporarily delay those requirements. Requesting a waiver does initiate screening for domestic violence. For more information, visit: <https://opdv.ny.gov/help/tainfo.html>.

**WORKPLACE SAFETY:** Although there are no specific federal standards for workplace violence, under the federal Occupational Safety and Health Act, workers have the right to working conditions that do not pose a risk of serious harm. Workers can file a confidential complaint with the U.S. Occupational Safety and Health Administration if they believe someone is creating a safety risk that the employer has failed to address: [https://www.osha.gov/workers/file\\_complaint.html](https://www.osha.gov/workers/file_complaint.html) or call 1-800-321-OSHA.

**WORKERS' COMPENSATION:** Workers injured while working, regardless of immigration status and including domestic workers who work at least 40 hours a week for a single employer, can qualify for workers' compensation, which is a form of insurance that covers your wages and medical benefits to assist employees recover. You must meet eligibility requirements. Claims are filed with the NYS Workers' Compensation Board: <http://www.wcb.ny.gov/content/main/Workers/Workers.jsp>.

 **IMMIGRATION STATUS:** The protections above apply regardless of your immigration status.

Note also that if you are an immigrant victim of certain crimes, you may qualify for a special visa to stay in the country and obtain a green card. You may qualify for a U Visa if you are an immigrant victim of certain crimes, including violent and sexual crimes, and you are willing to

assist law enforcement in a criminal investigation or

prosecution. You may qualify to petition for lawful status, receive employment authorization, and be eligible for public benefits under the Violence Against Women Act (VAWA) if you are an abused spouse, child, or parent of a U.S. Citizen or permanent resident. Additionally, you may qualify for a T Visa to obtain lawful status and employment authorization if you are a survivor of sex or labor trafficking and if you are willing to assist law enforcement in a criminal investigation and/or prosecution. The National Immigrant Women's Advocacy Project provides a directory of service providers, including advocates and attorneys who may be able to assist you: <http://directory.niwap.org>.

Note also, that you may be suffering from unlawful discrimination if you are denied employment because an employer does not want to "deal with the hassle" of hiring someone with your type of work authorization, requires that you provide verification documents before making you an offer, or demands more paperwork than is legally required.<sup>142</sup> For more information, including the list of acceptable verification documents, visit: <https://www.uscis.gov/i-9-central/employee-rights-resources/preventing-discrimination>. If you think your rights have been violated, contact a legal advocate or attorney. See the Additional Resources section at the end of this Toolkit.



## 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:

### **CONSIDER WORKPLACE IMPACT OF THE ABUSE:**

As a victim of domestic or sexual violence, you may not be contemplating how the abuse is impacting your workplace. As a starting point, consider how the abuse is affecting your work and whether you need to take steps to assist you if the abuse is impacting your performance, attendance, timeliness, or other aspects of your work.

### **REVIEW WORKPLACE POLICIES/UNION**

**CONTRACTS:** It is always beneficial to check your employment policy, if one exists, in case your employer provides broader protections than the legally required minimum or has a procedure in place for reporting. Places to look for relevant information include: leave policy; sexual harassment policy; disciplinary and termination procedures; collective bargaining agreement; workplace violence policy; or any specific policy on gender-based violence.

**DOCUMENT PROBLEMS:** If you feel like your employer is not responding appropriately to your disclosure or requests, be sure to document everything that happens in detail as early as possible (including names, dates, places, times, witnesses, and nature of the incident). Keep a paper trail of relevant evidence, including threats of retaliation. Save copies of any and all evidence, including copies of emails, text messages, written letters or notes, voicemails, and photos.

**SPEAK TO YOUR EMPLOYER:** If you are being harassed by your abuser at work or if you are having difficulty at work as a result of abuse, speak to your employer about ways in which you can enhance your safety or make changes at work to help you better address the abuse or obtain necessary assistance. If you believe that your work performance may be suffering as a result of the abuse, consider whether it would be helpful to speak to your employer to explain your situation and see if there are solutions that may help improve your performance.

If you are concerned that your employer is treating you negatively because of your status as a victim of domestic

violence, consider notifying your employer that you are protected under New York law. It may be helpful to consult an attorney about the best way to have this conversation with your employer to protect yourself. For assistance, contact Legal Momentum or see the Additional Resources section at the end of this Toolkit.

**FILE A COMPLAINT:** If you were discriminated against based on your status as a victim of domestic violence, you can file a claim with the NYS Division of Human Rights: <https://dhr.ny.gov/contact-us>.

If you were denied a reasonable accommodation for domestic violence, sexual assault, or stalking and you work in New York City or Westchester County, you can file a complaint with the New York City Commission on Human Rights (<https://www1.nyc.gov/site/cchr/about/contact-us.page>) or the Westchester County Human Rights Commission (<https://humanrights.westchestergov.com/file-a-complaint/filing-a-complaint>).

If you were improperly denied earned safe time in New York City, you can file a complaint with the NYC Department of Consumer Affairs: <https://www1.nyc.gov/site/dca/workers/workersrights/file-workplace-complaint.page>.

**FILE A LAWSUIT:** You also have the option of filing a lawsuit in state court instead of the New York State Division of Human Rights or the New York City Commission on Human Rights.

**SEEK ASSISTANCE FOR THE ABUSE:** If you are a victim of domestic violence, you can receive various types of assistance, including crisis intervention, safety planning, assistance identifying emergency shelter or temporary housing, counseling, advocacy, referrals, and other types of supportive services for yourself and your children.

If you live in New York State, you can seek assistance by contacting the NYS Office for the Prevention of Domestic Violence (<https://opdv.ny.gov>), which has a Domestic and Sexual Violence Hotline: 1-800-942-6906

(English and Spanish). If you reside in NYC, you can contact the NYC 24-Hour Domestic Violence Hotline: 1-800-621-HOPE or 1-800-621-4673.

Resources, including a program directory of domestic violence service programs across the state, are also available at the New York State Coalition Against Domestic Violence: <https://www.nyscadv.org/find-help/>.

**NYC:** If you live in New York City, you can visit a Family Justice Center in your borough, which can assist you to develop a safety plan, apply for benefits, get mental health counseling, obtain referrals for job training, obtain legal assistance, and connect to law enforcement or the district attorney's office. For a list of Family Justice Centers, visit: <https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>. Sanctuary for Families also provides counseling and crisis services, legal representation for individuals seeking to escape abuse, career readiness and technology training, and crisis shelters. To get help, visit: <https://sanctuaryforfamilies.org/get-help/>.

**FIND A SHELTER OR HOUSING:** Survivors of domestic violence residing in New York City may receive temporary housing, emergency shelter, and supportive services for themselves and their children through the Human Resources Administration and Safe Horizon. Programs provide counseling, advocacy, and referral services. Safe Horizon offers 8 confidential domestic violence shelters located throughout New York City. To reach their hotline: 1-800-621-4673. Based on your status as a victim of domestic violence, sexual assault, or stalking, you may be eligible to receive certain preferences or priorities when applying for federal housing assistance. Contact your local housing provider for more information.

**OBTAIN INFORMATION IN YOUR LANGUAGE:** You can obtain information about paid safe time in over 25 languages on the City's website: <https://www1.nyc.gov/site/dca/about/paid-sick-leave-law.page>.

# 8



## Reproductive & Maternal Health

You have the right to a safe and confidential abortion until your 24th week of pregnancy or at any point medically necessary to protect your life or health. If you receive Medicaid or have health insurance, your provider must cover critical family planning services, including contraception and abortion services at no additional cost.



The decision whether or not to bear a child is central to a woman's life, to her wellbeing and dignity. It is a decision she must make for herself."

— Justice Ruth Bader Ginsburg,  
Associate Justice of the Supreme Court  
of the United States

# How Does Reproductive and Maternal Health Relate to My Economic Security?

Your reproductive freedom—your ability to determine if and when to have a child—and your right to affordable reproductive and maternal health services—contraception, abortion, and medical care during and after pregnancy—can be critical to your economic security and wellbeing.

Raising children can be expensive, and without adequate support women have traditionally suffered additional financial penalties—having to go on unpaid leave before and after childbirth, having to return to work while recovering from childbirth, and getting fired or being forced to leave a job. In fact, women who are denied access to reproductive health

services are more likely to fall into poverty, face unemployment, or be forced to rely on public assistance.<sup>143</sup> Even when reproductive health services are available, the high cost can serve as a major barrier, forcing women to choose between contraception and other basic necessities.<sup>144</sup>

All women should have the freedom and ability to make their own decisions about their reproduction and to pursue their educational and career goals on their own time and on an equal footing with men. In New York State, there are laws and requirements in place to help you do so.

## What are My Legal Rights?

In this Toolkit, the terms “reproductive rights” and “maternal health” refer mainly to contraception, including birth control; abortion services; preventive care; healthcare during and after pregnancy; and healthcare coverage for these various services. When making decisions about your future, it is important that you are aware of the rights and/or healthcare coverage you may or may not have with respect to contraception, abortion, and reproductive and maternal healthcare services.

### Birth Control

It is your choice whether or not you choose to use birth control. If you receive health insurance from your employer in New York State, your employer and insurance provider must cover at least one of 18 different kinds of birth control.<sup>145</sup> Many of the 18 specified methods are provided at no cost to you, even if you have not met your deductible. If requested, your insurer must also cover the entire prescribed supply at your first purchase, for up to 12 months of the prescription, which means that if you were prescribed a 12-month supply, you should be able to get your entire 12-month supply up front.<sup>146</sup> Note that not every brand of birth control on the market is covered. If you are using a contraceptive that would typically have an additional fee, but it is a medical necessity to you as prescribed, then the insurer must provide it at no cost.<sup>147</sup> Other forms of birth control that you may be able to get at no cost include emergency contraception (e.g., “Plan B”) as well as in-network voluntary sterilization (e.g., “x procedure”).<sup>148</sup> Lastly, if you have not paid for the form of birth control you are using, then all follow-up services and management of side effects, counseling, and device removal should also be at no additional cost.<sup>149</sup>

Religious employers can also opt-out of providing coverage for birth control in their health insurance plan. In this case, your

employer must provide you with written notice regarding their refusal, including information about how you can purchase coverage directly from your health insurance provider.<sup>150</sup>

### Abortion

In New York State, you have the right to a safe and confidential abortion before your 24th week of pregnancy or at any point medically necessary to protect your life or health or at any point if it is medically determined that the fetus would not survive birth.<sup>151</sup>

While the full legal ramifications of the U.S. Supreme Court decision eliminating the constitutional right to an abortion and the resulting legislation in various states are still unknown, New York has taken steps to protect abortion access by passing laws that:

- Prohibit law enforcement in New York from cooperating with an out-of-state investigation into an abortion legally procured under New York law.<sup>152</sup>
- Allow you to bring a lawsuit for “unlawful interference with protected rights” against someone who sues you in another state for obtaining a legal abortion in New York.<sup>153</sup>
- Protect providers who perform abortion on patients from outside of New York.<sup>154</sup>

For the most up to date information on abortion law in New York State, visit: <https://www.ny.gov/programs/abortion-new-york-state-know-your-rights>.

If you receive health insurance through your employer in New York State, you should be able to get an abortion at no additional cost. Health insurance providers that cover general

medical services are required to cover in-network medically necessary abortions, and there should be no copayment, coinsurance, or annual deductible.<sup>155</sup> In addition, your insurance provider is required to provide coverage for non-surgical abortions that are not medically necessary.<sup>156</sup>

Your employer is prohibited from discriminating against you for choosing to have or not to have an abortion or contemplating having an abortion.<sup>157</sup> The law prohibits an employer from:<sup>158</sup>

- Accessing an employee's personal information regarding the employee's (or the employee's dependent's) reproductive health decisions, without the employee's prior informed affirmative written consent;
- Discriminating or taking any retaliatory personnel action against an employee with respect to compensation, terms, conditions or privileges of employment because of or based on the employee's (or the employee's dependent's) reproductive health decisions; or
- Requiring an employee to sign a waiver or other document that purports to deny employees the right to make their own reproductive health care decisions.

Religious employers can choose not to provide health care coverage for abortions. However, your health insurance provider is required to provide notice to you ahead of time that they can provide coverage for medically necessary abortions directly.<sup>159</sup>

You also have the right to freely access an abortion clinic without physical interference from entering the clinic or threats of harm.<sup>160</sup>

New York law strictly protects the confidentiality of all records related to an abortion, and your provider cannot disclose records related to abortion to anyone without your permission—including to a parent or guardian if you are a minor.<sup>161</sup>

If you need help paying for your abortion or with travel or lodging costs related to your appointment, there are organizations dedicated to helping with those costs. For a list, visit: <https://abortionfunds.org>.

**REASONABLE ACCOMMODATIONS IN NYC:** Under New York City's Human Rights Law, employees (working for an employer with **4 or more employees**) who are undergoing fertility treatment or who have had abortions or miscarriages are entitled to reasonable accommodations at work, including leave to recover from a procedure.<sup>162</sup>

## Preventive, Pregnancy, and Maternal Healthcare

Insurers are required to provide coverage for obstetric and gynecological services, for up to two preventive care visits a year or unlimited care related to a pregnancy.<sup>163</sup> All insurers must also provide coverage for maternity care, including

parent education assistance, training in breast or bottle-feeding, and any necessary maternal and newborn clinical testing.<sup>164</sup>

Note that whether you have healthcare coverage through Medicaid, your employer, or an individual plan, your insurance cannot charge you out-of-pocket expenses for certain preventive services for women such as wellness visits, contraception, pregnancy related services, breastfeeding help, and breast and cervical cancer screenings.<sup>165</sup>

## What if I Do Not Have Health Insurance?

Various factors, such as lack of employment or immigration status, can serve as a barrier to obtaining health insurance. However, if you are not employed or your employer does not provide health insurance, New York State offers other options for healthcare.

Through the Affordable Care Act, if you are a lawfully present New York resident, you can purchase private health insurance through the New York State of Health Marketplace. To apply, visit <https://nystateofhealth.ny.gov> or call 1-855-355-5777.

Medicaid pays for all family planning services, including birth control and abortion services, as long as you use a health provider that accepts Medicaid. Emergency birth control is also covered without a prescription.<sup>166</sup> The Family Planning Extension Program to Medicaid also provides 24 months of family planning services after your pregnancy ends.<sup>167</sup>

If you do not qualify for Medicaid, New York State's Family Planning Benefit Program also provides free and confidential family planning services, for adults and teenagers. The Family Planning Benefit Program offers most birth control methods, emergency contraceptives, family planning and pregnancy counseling. Pregnancy, pre-natal services, abortions, and fertility treatments are not covered.<sup>168</sup> For more information, visit: [https://www.health.ny.gov/health\\_care/medicaid/program/longterm/familyplanbenprog.htm](https://www.health.ny.gov/health_care/medicaid/program/longterm/familyplanbenprog.htm). New York State's Essential Plan is another free or very low cost insurance for adults with low incomes who do not qualify for Medicaid.



**IMMIGRATION STATUS:** Individuals with eligible immigration status can receive public benefits, like Medicaid or the Children's Health Insurance Program, if they meet program requirements. Regardless of your immigration status, if you are pregnant, you have the right to Medicaid during your pregnancy. While there are waiting periods for coverage by Medicaid for some immigrants, Essential Plan is an option for those who have just moved to New York and have a valid visa or deferred action status. For more information, visit: <https://info.nystateofhealth.ny.gov/essentialplan>.



## 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:

**REVIEW YOUR HEALTH INSURANCE POLICY:**

Review your plan to develop an understanding of the kind of coverage you have and be sure that all required services are covered. Look to see if there are any out-of-pocket costs for the care you are seeking and for how much. If you think something should be covered but it is not, be sure to contact your insurance provider and find out why. Be sure to review your billing statements to verify that you are not being charged for items that should be covered.

**FILE A GRIEVANCE:** If you want to contest something about your coverage, you can file a grievance or appeal.

Under the law, your insurance provider must have a grievance procedure, but act quickly because there are time limits on when you can file your grievance. Be sure to review your policy and your billing statements to see how long you have to file the complaint so that you do not miss any deadlines. In addition, you have the right to an appeal process when your insurer denies health care services. For more information, visit: [https://www.dfs.ny.gov/complaints/file\\_a\\_complaint](https://www.dfs.ny.gov/complaints/file_a_complaint).

**FILE AN ADMINISTRATIVE COMPLAINT:** You have the right to file a federal complaint with the U.S. Department of Health and Human Services' Office for Civil Rights (OCR) (<https://www.hhs.gov/ocr/complaints/index.html>) or the EEOC (<https://www.eeoc.gov/field/newyork/charge.cfm>) against your employer or health insurance company if you feel discriminated against because of the family planning choices you have made.



# 9



## Pregnancy, Childbirth & Breastfeeding

It is unlawful for an employer to treat you less favorably in the workplace on the basis of pregnancy, childbirth, or a related medical condition. This type of treatment is a form of sex discrimination. An employer is also prohibited from discriminating against workers for pumping breast milk at work and you have the right to take breaks to do so. Depending on your situation, you may have the right to additional workplace protections to adjust your working conditions or to take paid or unpaid leave if needed.



Employers routinely fire pregnant workers, refuse to hire them, strip them of seniority rights, and deny them sick leave and medical benefits given other workers. Such policies have a lifetime impact on women's careers... discrimination against women workers cannot be eradicated unless the root discrimination, based on pregnancy and childbirth, is also eliminated."

— Susan Deller Ross,  
Lawyer and Professor of Law, on behalf of the  
Coalition to End Discrimination Against Pregnant  
Workers in her 1977 hearing testimony advocating in  
favor of enacting the Pregnancy Discrimination Act.

# The Workplace and Pregnancy, Childbirth, and Breastfeeding

Women who are working while pregnant, recovering from childbirth, or breastfeeding, may encounter various obstacles in the workplace, including discrimination or the unlawful denial of critical legal protections. Discriminatory or unlawful conduct by an employer is often subtle, but can have a profound impact on a woman's job, career, or financial stability.

Many employers are unaware of their legal obligations and still operate under old-fashioned ideas about pregnant or parenting women in the workplace. Thus, it is critical that you know how to identify discrimination on these grounds and are aware that you have rights you can assert to protect yourself.

Some examples of discriminatory or unlawful conduct include:

- Your employer fires you shortly after learning you are pregnant or starts issuing you negative employment evaluations.
- Your employer forces you to go on leave or work fewer hours

because you are pregnant, even though you are still able to fulfill your regular duties.

- You are pregnant and your employer denies you a promotion and tells you to try again after you have your baby.
- Your employer allows people to take paid leave for various injuries that occur outside the workplace but refuses to allow you to take paid leave to recover from complications from childbirth.
- You apply for a job and the employer asks you if you are pregnant or planning to have a child during the interview.
- You ask for a private location to pump milk at work and you are told to pump in the bathroom.
- You ask for breaks to pump milk at work and you are told that is not an option given the nature of your work. You are then disciplined every time you take a break to pump.

## What are My Legal Rights?

**NON-DISCRIMINATION:** Under federal law, which applies to employers with **15 or more employees**, or under New York State law, which applies to employers with **4 or more employees**, an employer is prohibited from treating you less favorably on the basis of pregnancy, childbirth, or a related medical condition.<sup>169</sup> Discrimination on these grounds is a form of sex discrimination. In New York, it may also constitute familial status discrimination.

This means that it is unlawful for an employer to pass you over for a job or promotion, fire you, pay you less, or deny you workplace opportunities or benefits because you are pregnant. Your employer cannot force you to take a leave of absence upon learning of your pregnancy or related medical condition, unless you are prevented from performing your duties in a reasonable manner.

If you are temporarily unable to perform your job functions due to a medical condition related to pregnancy or childbirth, your employer must treat you the same way it treats other employees who need changes on the job because of injury or illness, who may be temporarily disabled employees. You should be eligible for the same benefits or accommodations as other temporarily disabled workers, and you cannot be forced to comply with stricter procedures to verify eligibility.

**REASONABLE ACCOMMODATIONS:** If you are pregnant and working, you may need to request certain adjustments to your work conditions in order to fulfill your duties while pregnant. This is called a reasonable accommodation.

Examples of Reasonable Accommodation Requests:

- A request for additional bathroom breaks.
- A request to use of a chair or to take periodic rest if you stand for long periods of time.
- A request to be transferred to a job with lighter duty if you have to do lifting above the limit specified by your doctor.
- A request to take leave for a condition arising from pregnancy or childbirth.
- A request to work from home or to change your work schedule.
- A request for a fan based on workplace conditions and impact on your pregnancy.
- A request to work at an alternative site if you work in a very hot location.

Under the federal Pregnancy Discrimination Act (PDA), your employer must treat pregnant workers the same way it treats workers with an illness, injury, or a disability who need a workplace adjustment. That means that if your employer provides a reasonable accommodation to one of your colleagues who was suffering from a medical condition based on a car accident, your employer is responsible for also providing you a reasonable accommodation if you are suffering from a medical condition based on your pregnancy or due to childbirth.

Pregnancy itself is not a disability, however, you may also be entitled to a reasonable accommodation under federal and

state disability laws, if you have medical condition as a result of pregnancy or childbirth that qualifies as a disability,<sup>170</sup> such as hypertension, severe nausea, sciatica, or gestational diabetes. Your employer must work with you to find a reasonable accommodation that works for you so long as it does not create an undue hardship for the employer or prevent you from completing your essential work functions.

**NOTE:** Under federal law, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. Under New York State law, a disability is defined as a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.<sup>171</sup>

Under New York State law, if you work for an employer with **4 or more employees**, you are entitled to a reasonable accommodation if you have a pregnancy-related medical condition, unless the employer can show that it would be very difficult or costly for your employer to comply.<sup>172</sup> Your employer's refusal to do so may constitute unlawful discrimination. You are required to provide medical documentation to verify the condition if your employer requests it.


**NOTE:** If you are able to perform your work functions, it is unlawful for your employer to force you to take unpaid leave and must let you keep working. If you can no longer perform your essential work functions and your employer legitimately cannot provide a workable accommodation or refuses to provide one because it is not legally required to do so, your employer may give you the option to go on unpaid leave. This can create a host of problems. If you are placed in this position, speak with your employer and your doctor to see if there are any workable solutions that would allow you to keep your job.

**NYC:** Protections are stronger if you work in New York City (NYC), where any employer with **4 or more employees** must provide a reasonable accommodation for pregnancy, childbirth, and related medical conditions (e.g., post-partum depression, miscarriage, and abortion) to help you perform the essential functions of your job.<sup>173</sup> You do not need to have a pregnancy-related condition. Your employer can still deny the request if it would be too difficult or costly to comply or if the request prevents you from performing the basic requirements of your job. Employers in NYC also have an obligation to provide notice to new and existing employees about their rights under this provision.

**TIME OFF:** Under your employer policy or handbook, you may be able to use available vacation, sick, or personal time off to address your needs. Note, that your employer may be engaging in unlawful discrimination if it denies your request but has approved requests from your coworkers on other comparable grounds such as for personal needs, doctor's appointments, and family emergencies. Be sure to inform your employer in advance and as early as possible and comply with your workplace policy for requesting and taking personal time off. As discussed above, you may also be able to request time off as a reasonable accommodation.

Under the federal Family and Medical Leave Act (FMLA) you may be eligible for 12 weeks of unpaid, job-protected leave to recover from a serious health condition, which can include health conditions that arise from pregnancy or childbirth. To be eligible, you must work for a private employer with more than 50 employees or a public employer, regardless of the number of employees. You must also have worked for your employer for at least 12 months for at least 1,250 hours over the past 12 months.

**SHORT-TERM DISABILITY BENEFITS:** Under New York State Law, employers must provide temporary disability benefits for pregnancy and child-birth related disabilities.<sup>174</sup> The typical period of pregnancy-related disability is four to six weeks prior to a woman's due date and four to six weeks after delivery. Eligible workers can receive 50% of the employee's average weekly wage capped at the maximum benefit allowed.

 **FARMWORKERS:** Farmworkers who meet program requirements are now eligible to receive disability benefits in New York State.<sup>175</sup>

**HARASSMENT:** It is unlawful for an employer, supervisor, co-worker, or client to harass a woman at work due to pregnancy, childbirth, or a related medical condition. For example, it is unlawful for your boss or co-workers to make negative comments about your pregnancy and then question your ability to do your job. However, to be legally actionable, the harassment has to result in a negative employment action, such as termination, demotion, reduction in hours, or be so severe or frequent that it creates a hostile or offensive work environment.

**BREASTFEEDING/LACTATION:** Your employer, regardless of size, is prohibited from discriminating against you or penalizing you for pumping breast milk at work.<sup>176</sup> Additionally, New York State law now makes clear that lactation is a pregnancy-related condition, which means that covered employers must provide reasonable accommodations for lactation needs. All employers must provide a reasonable unpaid break or allow you to use paid break time or meal time to pump breast milk for up to 3 years after your child's birth.<sup>177</sup> Your employer must provide a room or location close to your work area to pump in private (shielded from view and intrusion).<sup>178</sup> This should not be a bathroom. In NYC, additional

protections and requirements apply regarding lactation rooms and your employer must have a written lactation accommodation policy in place.<sup>179</sup> If you know that you plan to pump, you should notify your employer in advance so that necessary arrangements can be made.

**RETALIATION:** It is unlawful for your employer to engage in “retaliation” (punish you) if you address or challenge discrimination on the basis of pregnancy, childbirth, or a related medical condition or for requesting a reasonable accommodation on these grounds. This means that your employer is violating the law if it fires you, demotes you,

suspends you, cuts your pay or work hours, assigns you more difficult work duties, or starts issuing poor performance evaluations to punish you for asserting your rights.

Note that while retaliation is illegal, there are always risks to reporting and your employer may still penalize you for taking action. If that happens, remember that retaliation is a separate violation of the law. This means that, in some cases, even if an employer is found not to have discriminated against you, they may still be held accountable for retaliating against you and may be required to pay damages.



## 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:

### **NOTIFY YOUR EMPLOYER ABOUT THE LAW:**

Many employers are not well-informed about their legal obligations, especially since there have been recent changes to the law. If you think that your employer is not complying with the legal requirements above or is improperly denying you a benefit to which you are entitled, consider speaking with your employer and notifying them about the legal requirements. You can speak with a legal services organization or advocate like Legal Momentum, to get more guidance on whether you are covered and how to speak with your employer.

### **REVIEW YOUR WORKPLACE POLICY, EMPLOYMENT CONTRACT, AND/OR UNION CONTRACT:**

Your workplace policy or union contract may include stronger protections, so you should review them to see if you are entitled to more than what the law requires.

**FILE AN ADMINISTRATIVE COMPLAINT:** If your employer did not appropriately address your discrimination complaint, you can contact or file a formal administrative complaint. Depending on the type of benefit you are seeking, the agency may vary. To file a discrimination complaint or to challenge the denial of a reasonable accommodation request, you can file with your local equal employment agency, the New York State Division of Human Rights (<https://dhr.ny.gov/contact-us>), or the EEOC (<https://www.eeoc.gov/field/newyork/charge.cfm>).

# 10



## Paid Family Leave

If you have worked enough days and hours, you have the right to paid, job-protected leave to care for a newborn, a newly adopted child, or a sick family member, or to address certain family needs that result from military deployment. You may also have the right to other forms of leave to assist you with caring for yourself and your family.



Whatever the case is, no working American should ever have to choose between their family members and a paycheck....But if you don't have paid leave, that's exactly the choice you have to make and this is especially true if you are working in a low-wage job."

— Kirsten Gillibrand,  
U.S. Senator, N.Y.

# Why is Paid Family Leave Important for Women?

Women have historically been expected to take on family care responsibilities and many women willingly choose to do this critical, difficult, and undervalued task. Whether by necessity or choice, it is essential that women no longer incur a financial penalty or sacrifice their economic security to care for their

families. Getting paid to take leave to care for your family is essential to your economic equality, and in New York State, you are now likely covered and have access to some degree of paid family leave.

## What is Paid Family Leave and When Can You Take It?

If you work for a private employer in New York State, you may be eligible under New York State law<sup>180</sup> to receive Paid Family Leave to:

**Bond with a new child**, including adopted and foster children within 12 months of a child's birth or placement for adoption or foster care.

**Care for a family member who has a serious health condition**, including a child, parent, parent-in-law, spouse, domestic

partner, grandchild, or grandparent. A serious health condition includes illness, injury, impairment, or a physical or mental condition that involves inpatient care or continuing treatment by a health care provider.


**Address certain military family needs** when a family member (spouse, domestic partner, child, or parent) has been called to active military duty (note: only "qualifying exigencies" are covered).


## Who is Protected by the Law?

You are eligible to take leave if you work for a private employer in New York State and you are employed full-time for 20 or more hours per week for 26 consecutive weeks (about 6 months); OR part-time for less than 20 hours per week once you have worked a total of 175 days. If you work for a government agency, you may not be covered. However, individual agencies can opt-in to the plan, so check with your employer.

Note that you may not be eligible if your employer is party to a collective bargaining agreement that provides benefits that are as favorable as, or better than, benefits provided under this program. If you are a member of a union, check with your union representative.

 **FARMWORKERS:** Farmworkers who meet program requirements are now eligible to receive paid family leave and disability benefits in New York State.<sup>181</sup>

 **IMMIGRATION STATUS:** You can claim benefits regardless of your immigration status and regardless of the number of workers employed by your employer.

 **DOMESTIC WORKERS:** If you meet the eligibility requirements, you are covered regardless of the size of your employer, which means you are covered even if you are a domestic worker who is the only person working for your employer. **As of January 1, 2022**, paid leave benefits have been extended to domestic workers hired directly by a private homeowner who work **20 or more hours a week** for the private homeowner.<sup>182</sup> These workers are eligible to take Paid Family Leave once they have been in employment for 26 consecutive weeks.<sup>183</sup>

# How Much Paid Leave Can You Take & How Much Will You Be Reimbursed?

Your employer may provide more comprehensive paid family leave. However, if it does not, it must provide paid family leave to eligible workers in compliance with New York State law.

The number of weeks of paid leave that an eligible employee can take will increase over a 4-year period (see below). Leave can be taken all at once or intermittently in smaller units such as in weekly or daily increments. Eligible employees are entitled to partial income replacement that is phased in over the course of four years, as per below. Payments are capped at the state's average weekly wage, which is currently \$652.96 and will be determined annually. Benefits are payable from the first day of paid leave.

- In **2018**, eligible employees can take up to **8 weeks** of paid leave and are entitled to receive **50% of their salary**, subject to the state cap (\$652.96/week).
- In **2019**, eligible employees can take up to **10 weeks** of paid leave and are entitled to receive **55% of their salary**, subject to the state cap (\$746.41/week).
- In **2020**, eligible employees can take up to **10 weeks** of paid leave and are entitled to receive **60% of their salary**, subject to the state cap (to be determined).
- As of **2021** onwards, eligible employees can take up to 12 weeks of paid leave and are entitled to receive 67% of their salary, subject to the state cap (to be determined).
- As of **2022**, the wage replacement benefit cap increases to \$1,068.36/week.<sup>184</sup>

Benefits are funded by employee contributions made by all employees (unless exempt) through a small payroll deduction. Your paystub will show if these contributions are being withheld from your paycheck. Employers cannot deduct more than what the law allows.

**HOW DO I REQUEST LEAVE?** If you think you are eligible and want to take paid family leave, you should try and request leave in writing as early as possible and you must provide 30 days notice for events that you are aware of in advance, such as childbirth.

If your employer requests documentation, you will need to submit it to verify your need to take leave.

When requesting leave, you must **1** make your employer aware of the qualifying event, **2** explain the anticipated timing and duration of the leave, and **3** identify the type of family leave you are requesting. After you provide this information, it is your employer's responsibility to seek any additional information they need.

Your employer should provide you with a written application, which will be submitted to your employer's paid family leave insurance carrier.

**JOB PROTECTION & RETALIATION:** It is unlawful for your employer to discriminate or retaliate against you for taking the leave for which you qualify. You are entitled to job protection, which means that your employer is prohibited from firing you for taking paid family leave and you must be reinstated to the same or an equivalent position when you return.

## Eligibility for Other Related Benefits or Protections

**HEALTH BENEFITS:** If you were receiving health insurance benefits from your employer, you are entitled to the same health benefits under the same premiums.

**FAMILY & MEDICAL LEAVE:** If you work for a private employer with **50 or more employees**, a public employer, or a public or private elementary or secondary school, you are likely covered under the federal Family and Medical Leave Act (FMLA).<sup>185</sup> 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 past 12 months. 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; (Effective as of **January 1, 2023**, the definition of family member will expand to include siblings.) **4** to recover from the employee's own serious health condition; or **5** to address certain military family needs.

**DISABILITY:** Under New York State Law, employers must provide disability benefits to eligible workers for off-the-job injury or illness, which includes pregnancy and child-birth related disabilities.<sup>186</sup> The typical period of pregnancy-related disability is four to six weeks prior to a woman's due date and four to six weeks after delivery. Eligible employees can receive 50% of their average weekly wage capped at the maximum benefit allowed. While Paid Family Leave and FMLA both provide job protection, leave for disability does not guarantee job protection unless you are also covered by FMLA. That means that if you take disability leave, your employer is not required to bring you back once your leave has ended.

**SICK LEAVE - NYC:** Employers in New York City with **5 or more employees** employed for more than 80 hours a calendar year are required under the city's Earned Sick Time Act to provide paid sick leave to employees.<sup>187</sup> To be eligible you must have worked more than 80 hours during the calendar year. Employers must provide a minimum of 1 hour sick time for every 30 hours worked and the employee

can use time as of the 120th calendar day after commencing employment. Eligible employees can also take sick leave to care for a close family member.

**SICK LEAVE - WESTCHESTER:** If you are an employee in Westchester County and you work for an employer with **5 or more employees**, as of April 10, 2019, you are entitled to 1 hour of paid sick time for every 30 hours worked. If you are a domestic worker, you are entitled to 1 hour for every 7 days worked.<sup>188</sup>

**VACCINATION LEAVE:** Effective from **March 12, 2021 through December 31, 2022**, employers must provide their employees with up to four hours (per injection) of paid leave to receive the COVID-19 vaccine.<sup>189</sup>

**NYC:** Effective from **November 2, 2021 through December 31, 2022** parents are granted sick leave to accompany their child to receive a COVID-19 vaccine injection or to care for the child if experiencing side effects from the injection.<sup>190</sup> Parents are entitled to four hours of paid leave per child, per vaccine injection, including booster shots.<sup>191</sup>

**COMBINING BENEFITS:** Employees can receive disability benefits to recover from childbirth and also take paid family leave for bonding with the child, but they cannot receive both benefits at the same time. Based on needs, an employee can make arrangements to receive benefits consecutively. If you are covered by New York State's Paid Family Leave and federal FMLA, you can take leave under both laws; however, an employer can require you to take time off for the same event at the same time, provided they notify you of this requirement prior to the start of your leave.



## 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:

**REQUEST LEAVE IF YOU NEED TO TAKE IT:** Set up a meeting with your employer to discuss your need to take leave. Make sure that you are giving your employer sufficient notice and be prepared to submit documentation to verify your need to take leave.

**CHALLENGE IMPROPER DENIALS:** You may wish to challenge your employer's determination if you believe you were improperly denied leave benefits, your employer retaliated against you for requesting leave, you were not restored to the same or comparable position after taking leave, or you were denied health benefits while on leave.

You may be entitled to certain remedies such as

reinstatement, lost compensation, and repayment of certain fees. Your employer may also have to pay fines or penalties to the state.

To seek reinstatement, you must first file a request with your employer and the New York State Workers' Compensation Board (WCB) and give your employer 30 days to reinstate you or respond to your request, before filing a complaint with the WCB. To initiate other actions, you must file a complaint with the WCB, which will hold a hearing.

Additional information on how to file a complaint with the WCB is available at <http://www.wcb.ny.gov>. You can contact the WCB at: 877-632-4996. Language assistance services are available. If you need further assistance, you can contact Legal Momentum's Helpline: 212-925-6635, ext. 650, <https://www.legalmomentum.org/get-help>.





# Child Care Assistance & Protections for Caregivers

It is unlawful for an employer to discriminate against you because you have children. Based on your income, you may be eligible for child care assistance to help you get or keep a job.



The closing of child care centers throughout the country certainly is bringing to light the fact that these centers were a real need . . . a need which was constantly with us, but one that we had neglected to face in the past. Now mothers have had the opportunity of going to work and leaving their children in a center where they felt secure . . . . They were able to work better and they were less exhausted physically . . . . These children are future citizens, and if they are neglected in these early years it will hurt not only the children themselves, but the community as a whole.”

— Eleanor Roosevelt,  
First Lady and U.S. Delegate to the  
United Nations on the closing of child  
care centers following World War II

# Overcoming Childcare Obstacles

If you are a woman who has recently had a child and you are seeking to return to work, you may face obstacles trying to find high quality affordable child care options. You may also have difficulty receiving assistance from your employer to get

workplace changes that would help you return to work while still giving you the opportunity to care for your child. If you are facing these obstacles, you have certain rights and may be able to access certain benefits to assist with child care.

## What are My Legal Rights if I Care for a Young Child?

In New York State, if you work for an employer with **4 or more employees**, your employer is prohibited from discriminating against you based on your familial status.<sup>192</sup> This means that it is unlawful for an employer to discriminate against you because you have children under the age of 18.

Examples of discrimination include:

- An employer decides not to hire you after expressing concerns about your child care responsibilities.
- Your boss promotes another employee over you even though you have more experience because he was concerned about your child care responsibilities.

Since it can sometimes be difficult to prove your employer's motivation, it is important that you pay close attention to cues and statements they make regarding your child care responsibilities and keep track of your job performance.

**NYC:** If you work in New York City, it is unlawful for an employer to discriminate against you because you are a caregiver.<sup>193</sup> This means, you cannot be discriminated against because you care for **1** a child under 18 (including adopted or foster children), **2** other individuals such as parents, siblings, spouses, domestic partners, grandparents, or grandchildren who are sick or have a disability, or **3** anyone with a disability who lives with you and depends on you for medical or daily care.

## Can I Request a Reasonable Accommodation to Help Address Child Care Responsibilities?

While the law does not specifically grant you a right to a reasonable accommodation when child care issues arise, keep in mind that it is unlawful for your employer to treat you less favorably than others who need workplace flexibility. So, your employer may be discriminating against you if they refuse to grant you more flexibility in your schedule to attend to child care responsibilities whereas they grant others flexibility on grounds that are also not guaranteed under the law.

## Are There Programs or Benefits Available to Assist with Child Care?

In New York, if your family meets the state's low-income guidelines, you may be able to receive financial assistance from the Office of Children and Family Services to help you pay for child care while you **1** work, **2** look for work, or **3** attend employee trainings. Individuals on Temporary Assistance are generally guaranteed childcare if they need it to meet work participation requirements and for up to one year after leaving temporary assistance if they left for a job and need child care to work. Families receiving assistance can typically choose any legal child care provider.

Your county Department of Social Services (Human Resources Administration (HRA), in New York City) determines eligibility based on income, need, and your child's age. You must contact your county Social Services office to find out if you are eligible or to apply.

For a listing, visit: <https://ocfs.ny.gov/main/localdss.asp>.

For more information, visit: <https://ocfs.ny.gov/main/childcare/paying.asp>.

Additional child care subsidy programs may exist in your locality. For example, the Workforce Development Institute offers a child care subsidy program that covers Albany, Erie, Monroe, Oneida, Onondaga, Rensselaer, Saratoga, and Schenectady Counties. For more information, visit: <https://wdiny.org/Services/Workforce-Support/Child-Care-Subsidy-Program>.

## Are There Programs or Benefits Available to Help Send My Child to Preschool?

Free preschool is not available throughout the state. Free Pre-Kindergarten is available to all NYC kids, and based on the year your child was born, your 3- or 4-year-old is guaranteed a seat in a public school, although the school may not necessarily be close to where you live.

Free Pre-kindergarten in New York City runs 5 days a week from September to June with full-day (6 hours and 20 minutes) and

some half-day options. Applications for the next school year typically open in the winter. For more information, visit: <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/pre-k>.

Your child may also qualify for free 3-K for three year olds. Currently free 3-K is only available at schools in certain districts. Although anyone can apply, families in those districts are given priority. Current districts include East Harlem, Harlem, the South Bronx, Bedford-Stuyvesant, Brownsville, East New York, Ocean Hill, Broad Channel, Howard Beach, Ozone Park, and the Rockaways. These programs are likely to expand to other

parts of NYC, so be sure to check the Department of Education website for availability. For more information, visit: <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/3k>.

## Are There Programs or Benefits Available to Help with Afterschool Coverage?

New York City offers a variety of afterschool programs for school-age children. To find out more information about available programs, visit: <https://www1.nyc.gov/nyc-resources/service/1012/after-school-programs>.



## 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:

**IDENTIFY LOCAL RESOURCES:** In addition to consulting your local Department of Social Services, it is important to speak with and reach out to local community members and organizations when researching and identifying affordable child care options. Local communities often maintain list-serves or other useful resources that can provide useful information.

**NOTIFY YOUR EMPLOYER ABOUT THE LAW:** Since the adoption of protections based on familial or caregiver status are relatively new, many employers are not well-informed about their legal obligations. If you think that your employer is discriminating against you based on your familial or caregiver status and it is adversely impacting your employment, consider speaking with your employer and notifying them about applicable legal requirements and/or reporting the discrimination. Generally, you must report the discrimination internally if you seek to hold your employer

accountable in an administrative forum or in court. Speak with a legal services organization or advocate for further guidance.

**FILE AN ADMINISTRATIVE COMPLAINT:** If your employer did not appropriately address your discrimination complaint, you can contact or file a formal administrative complaint with the New York State Division of Human Rights (<https://dhr.ny.gov/contact-us>). If you work in a locality like New York City that prohibits discrimination based on you familial or caregiver status, you can file a complaint with your local fair employment agency. In New York City, you can file with the New York City Commission on Human Rights (<https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page>).

**FILE A LAWSUIT:** If you feel like your employer did not appropriately address your discrimination complaint, you can file a lawsuit against your employer under the New York State Human Rights Law and/or any applicable local laws, such as the New York City Human Rights Law. Consult an attorney or legal advocate for guidance.

# 12



## Public Benefits

Based on your income, you may be eligible for critical public benefits, including cash assistance, food assistance, free healthcare, and housing assistance. If your benefits are denied or terminated, you must be informed in advance and have an opportunity to contest the determination. If you do not speak English and need assistance, you can request language assistance (translation and interpretation).



Remember that no one succeeds alone. Never walk alone in your future paths.”

— Justice Sonia Sotomayor,  
Associate Justice of the  
Supreme Court of the United States

# Accessing Public Benefits

If you are a woman with a low income, you may face many challenges trying to make ends meet. If you are not already receiving public benefits, you should know that, whether you are employed or unemployed, you may qualify for various types of assistance, including cash or food assistance; free healthcare, including prenatal care; housing assistance; and/or unemployment benefits. If you already receive benefits,

you should know that the administering agency is typically prohibited from terminating your benefits or denying assistance unless you are informed in advance and have an opportunity to contest the determination. If you need benefits but don't know how to get them because you don't speak English, you are entitled to language assistance.


## What Kinds of Benefits are Available?

### Cash Assistance

If you are a person in need of assistance due to low or no income, you may qualify for cash assistance under New York's Temporary Assistance for Needy Family (TANF) programs<sup>194</sup>. Eligible families and individuals with low-income may receive up to 60 months of federally funded cash assistance to help if you are unable to work, cannot find a job, or if your job does not pay enough to allow you to support yourself or your family. You may also be able to receive specific assistance to cover the cost of home energy, shelter, and fuel, or to receive additional support during certain emergency situations.

To determine if you are eligible, you must file an application with your county Department of Social Services. To find your local Department of Social Services visit: <https://otda.ny.gov/workingfamilies/dss.asp>.

**NYC:** Note that if you live in New York City, you must apply for assistance through the Human Resources Administration (HRA) at a local job center. You may also be eligible to receive emergency financial assistance through a one-time emergency grant called a "One Shot Deal" to prevent eviction, address domestic violence, pay energy or utility bills, or buy health-related items. Assistance is available regardless of immigration status. For more information, visit: <https://www1.nyc.gov/site/immigrants/help/city-services/cash-assistance.page>.

 **IMMIGRATION STATUS:** Eligibility for cash assistance is limited to U.S. citizens or individuals with certain eligible immigration status, provided you meet program requirements.<sup>195</sup> To see if you are eligible, contact your local Department of Social Services.

**NOTE:** Receiving cash assistance (and possibly other types of benefits) may affect your immigration case.<sup>196</sup> For guidance, contact a lawyer or legal advocate. Visit: <https://www.nyc.org/fight-changes-public-charge/public-charge-legal-resources/> or see the Additional Resources section at the end of this Toolkit.

**VICTIMS OF DOMESTIC VIOLENCE:** If you are a domestic violence victim and you are concerned that meeting certain requirements to obtain temporary assistance may place you or your children at greater risk of harm or make it difficult to escape, you may request a waiver to temporarily delay those requirements. If you request a waiver, you will be screened for domestic violence. For more information, visit: <https://opdv.ny.gov/help/tainfo.html>. In NYC, you may also be eligible for emergency assistance in the form of a "One Shot Deal" to address domestic violence issues, which you should ask about at your HRA office. You should also consider speaking with a domestic violence advocate about safety planning. Visit section 7 on Domestic Violence, Sexual Assault, and Stalking for more information.

### Food Assistance

If you are person in need of assistance due to low or no income, you may qualify to receive food assistance under New York's Supplemental Nutrition Assistance Program (SNAP). The program issues electronic benefits provided through an Electronic Benefit Transfer (EBT) card that provides money for you to purchase food at authorized stores. To be eligible, you must meet certain income requirements. If you are eligible, your allowance will depend on your household size.<sup>197</sup>

Benefits are administered by the NYS Office of Temporary and Disability Assistance (OTDA). For more information, you should contact your local Department of Social Services (<https://otda.ny.gov/workingfamilies/dss.asp>) or call the OTDA hotline: 1-800-342-3009.


You can obtain a copy of the SNAP application here: <https://otda.ny.gov/programs/apply/#snap>, or you can apply online at <https://mybenefits.ny.gov/mybenefits/begin>, in person at your local office or SNAP center, or in writing by mailing or faxing a completed application.

Once you file an application the office will review it, conduct an interview, and determine your eligibility. If you qualify, you must receive assistance no later than 30 days from the date the local district received your application.

**SCHOOL FOOD PROGRAMS:** If your child attends a public school, your child may qualify to receive free or reduced price breakfast and/or lunch at school depending on your income, family size, and the school that your child attends. For more information, ask your school about whether it offers breakfast and lunch programs.

**NYC:** Breakfast and lunch are free for all students in every NYC public school. For more information, visit: <http://www.schoolfoodnyc.org/freelunch/freelunch.htm>.

The Free Summer Meals program provides children and young adults (18 years old and younger) with free breakfast and lunch at select schools, parks, pools, libraries, and food trucks in all 5 boroughs. To find a location visit: [http://www.schoolfoodnyc.org/sch\\_search/summerNew.aspx](http://www.schoolfoodnyc.org/sch_search/summerNew.aspx).

 **IMMIGRATION STATUS:** Eligibility for food assistance through SNAP is limited to U.S. citizens or individuals with certain eligible immigration status, provided you meet program requirements. To see if you are eligible, contact your local Department of Social Services. Note that eligibility for a school food program does not depend on your immigration status. Additionally, food pantries typically provide assistance to individuals regardless of immigration status.

## Healthcare


If you and/or your children are in need of healthcare and you have low or no income, you may qualify for Medicaid, Medicare, the Children's Health Insurance Program (CHIP) or Child Health Plus in New York State. Medicaid and CHIP provide free or low-cost health coverage if you do not earn an income or earn a low income that falls within the eligibility requirements.

To qualify for Medicaid in New York State, you must be a resident of New York State, not have healthcare, and qualify as low or very low income. To qualify for Child Health Plus or Children's Medicaid, you must be under 19 or a primary caregiver with children under 19 or be pregnant, you must have a low or very low-income, and you cannot be covered by private health insurance.

Benefits may cover things like wellness visits and physical exams; immunizations; surgery; emergency care; hospital care; prescription and non-prescription drugs; pediatric dental, vision, speech, and hearing; and maternity and newborn care.

For more information, visit: [https://www.health.ny.gov/health\\_care/.%20To%20apply%20for%20coverage%20through%20the%20NYS%20Marketplace,%20visit:%20https://nystateofhealth.ny.gov/](https://www.health.ny.gov/health_care/.%20To%20apply%20for%20coverage%20through%20the%20NYS%20Marketplace,%20visit:%20https://nystateofhealth.ny.gov/).

Note that whether your healthcare coverage is through Medicaid, your employer, or an individual plan, your insurance should not be charging you out-of-pocket expenses for certain preventive services for women such as wellness visits, contraception, pregnancy-related services, breastfeeding help, and breast and cervical cancer screenings.<sup>198</sup> For more information, go to: [https://www.health.ny.gov/community/adults/women/comp\\_cov\\_womens\\_prevent\\_care.htm](https://www.health.ny.gov/community/adults/women/comp_cov_womens_prevent_care.htm).


 **IMMIGRATION STATUS:** Eligibility for public health insurance programs is limited to U.S. citizens or individuals with certain eligible immigration status, provided you meet program requirements. However, all children, regardless of immigration status, are eligible for health insurance under New York State's Child Health Plus program. If you are pregnant, you are eligible to receive prenatal care through Medicaid, regardless of your immigration status. Adults may also be eligible for Medicaid coverage for emergency medical conditions regardless of immigration status. For more information, visit <https://www1.nyc.gov/site/ochia/find-what-fits/immigrants.page>.

## Assistance for Mothers with Low Income

If you are a woman with a low-income who is pregnant, breastfeeding, or recently had a child, you and your children (up to the age of 5) may be eligible to receive nutrition education, breastfeeding support, referrals, and assistance to purchase a variety of nutritious foods under the Special Supplemental Nutrition Program for Infants and Children (WIC). The purpose of these benefits is to improve your family's health and nutrition. The program is administered by the NYS Department of Health, which issues checks to eligible recipients to purchase certain nutritious foods listed on the WIC Acceptable Foods Card at authorized WIC stores.

To apply, you will need to make an appointment with a local agency that provides WIC services: [https://www.health.ny.gov/prevention/nutrition/wic/local\\_agencies.htm](https://www.health.ny.gov/prevention/nutrition/wic/local_agencies.htm).

For more information on eligibility and how to apply, visit: [https://www.health.ny.gov/prevention/nutrition/wic/how\\_to\\_apply](https://www.health.ny.gov/prevention/nutrition/wic/how_to_apply).

 **IMMIGRATION STATUS:** Benefits under the WIC program are available regardless of immigration status.

## Housing Assistance

Various federal, state, and locally funded programs provide housing assistance to eligible low- and moderate-income families in New York State. Through these programs, you may be able to find a subsidized unit, which is typically referred to as public housing, or receive a voucher to supplement your monthly rent payments under what is typically referred to as the Section 8 or Housing Choice Voucher Program.

Eligibility for programs is typically based on your annual gross income and may also depend on other factors such as your age, disability status, or family size. Income limits vary by area.

For both public housing and Section 8, certain applicants may qualify for priority placement; for example, providers typically give priority to victims of domestic violence, dating violence, sexual assault, or stalking.

To apply for public housing, contact your local housing authority,

which can be found here: [https://www.hud.gov/topics/rental\\_assistance/phprog](https://www.hud.gov/topics/rental_assistance/phprog).

To find out more about applying for Section 8 assistance in New York State, visit: <http://www.nyshcr.org/Programs/Section8HCV/>.

**NYC:** In New York City, the Section 8 programs are administered by the NYC Housing Authority, NYC Housing Preservation and Development, and New York State Housing and Community Renewal. <https://www1.nyc.gov/site/nycha/section-8/applicants.page>.

**FREE HOUSING COURT ASSISTANCE IN NYC:** If you are a tenant with a low-income and you have a case in housing court in NYC, you may be eligible to receive free legal assistance. To find out more information, visit: <http://www.nycourts.gov/courts/nyc/housing/legalassistance.shtml>.

**SEXUAL HARASSMENT IN HOUSING:** It is not uncommon for landlords to abuse their positions of power to sexually harass or assault tenants and prospective tenants. It is illegal for a landlord or housing services provider to discriminate against you on the basis of your sex or to subject you to sexual harassment.<sup>199</sup> This means that your landlord or housing provider is prohibited from engaging in offensive conduct, such as making comments about your looks or your body, or requiring you to go on a date or engage in sexual conduct in order to obtain housing or, to avoid a rent increase.

If you experience discrimination or harassment, you can file a complaint with the U.S. Department of Housing and Urban Development (HUD). For more information on filing a complaint, visit: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint). You can also file a complaint with the New York State Division of Human Rights or your local equal opportunity agency.

**NYC:** In New York City, it is also illegal for your landlord to harass you to try to get you to leave your apartment. For more information or to report an issue, visit: <https://www1.nyc.gov/site/hpd/renters/harassment.page>. You can also file a complaint with the New York City Commission on Human Rights.

## SUPPORT SERVICES AND HOMELESSNESS PREVENTION:

If you are at risk of homelessness, there are a range of support services programs run by Housing and Support Services, such as the Solutions to End Homelessness Program (STEHP) and the New York State Supportive Housing Program (NYSSHP). These services are designed to provide essential services to help you stabilize your housing situation and to increase your self-sufficiency.

If you live in New York State and are at risk of becoming homeless, contact the Department of Social Services in your county, which can be located here: <https://otda.ny.gov/workingfamilies/dss.asp>.

To find a housing service provider by region or by program, visit: <https://otda.ny.gov/programs/housing/providers/>.

**NYC:** In New York City, homelessness prevention services can be obtained through Homebase, a program administered by community-based organizations in high-need neighborhoods that offer a range of services such as eviction prevention, assistance obtaining benefits, emergency rental assistance, education and job placement assistance, financial counseling, and short-term financial assistance. For more information or to find your local Homebase office, <https://www1.nyc.gov/site/hra/help/homebase.page>.

**SHELTERS:** There are a large number of shelters across New York State that provide emergency shelter and services if you are already homeless and need to find permanent housing. These shelters are operated by local social service districts or by local providers. There are also a range of support services programs run by the NYS Housing and Support Services, such as the Homeless Housing and Assistance Program (HHAP).

If you are homeless in New York State and need assistance finding a shelter and support services, contact the Department of Social Services in your county, which can be located here: <https://otda.ny.gov/workingfamilies/dss.asp>.

To find a housing service provider by region or by program, visit: <https://otda.ny.gov/programs/housing/providers/>.

**NYC:** In New York City, you are entitled to receive temporary emergency shelter when you have no other housing options. In fact, because New York City has a “right to shelter” mandate, you are guaranteed at least temporary emergency shelter, so long as you are eligible.<sup>200</sup> If you are homeless and you are a family, single pregnant woman, or a single adult, you can apply for a spot at a shelter. Shelters are also available to youth in crisis and pregnant youth in crisis who are under 21 and homeless. Special shelter options are available if you are a homeless veteran.

Once you apply, the NYC Department of Homeless Services (DHS) will do an assessment to see if you are eligible. If you qualify, you can remain in the shelter for a while, however, you will have to comply with certain requirements to keep your spot, such as actively searching for permanent housing and employment (if you are unemployed).

For more information, or to find a Shelter Intake Center in NYC: visit: <https://www1.nyc.gov/nyc-resources/service/1856/homeless-shelter-intake>.


Note that if you do not speak English, interpretation assistance is provided.

For additional Resources for families in shelters in New York City, visit: <https://www1.nyc.gov/assets/dhs/downloads/pdf/desk-guide-of-housing-resources-for-families-in-shelter.pdf>.

## SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE - NYC:

Survivors of domestic violence residing in New York City may receive temporary housing, emergency shelter, and supportive services for themselves and their children through the Human Resources

Administration and Safe Horizon. Programs provide counseling, advocacy, and referral services. Safe Horizon offers 8 confidential domestic violence shelters located throughout New York City. For more information, call 1-800-621-HOPE, or visit: <https://www.safehorizon.org/domestic-violence-shelters/>.


 **IMMIGRATION STATUS:** To be eligible for assistance for public housing or Section 8 assistance, at least one household member, which could include a minor child, must be a citizen or have eligible immigration status.<sup>201</sup> If you receive benefits, your family's rental subsidy will be "pro-rated" or adjusted based on each member of the household who does not have eligible status, which means you will likely receive less assistance on that basis.<sup>202</sup> In NYC, access to shelters is available to individuals and families who have no other safe place to stay regardless of immigration status.


## Unemployment Benefits

In New York State, unemployment insurance provides temporary income for eligible workers who lose their jobs through no fault of their own. To qualify, you must have worked and earned enough wages in covered employment and must be ready, willing, and able to work, and actively looking for work during each week in which you are claiming benefits. You can apply for benefits through the NYS Department of Labor. <https://www.labor.ny.gov/unemploymentassistance.shtm>.

Note that you may qualify even if you "voluntarily" left your job to escape or address domestic violence based on your determination that staying in your job would threaten your safety or the safety of an immediate family member. If this is the case, you must make

this clear in your application for unemployment benefits.

 **FARMWORKERS:** Farmworkers who meet program requirements are now eligible to receive unemployment insurance.<sup>203</sup>

 **IMMIGRATION STATUS:** Under federal law, if you are not a U.S. citizen, you must have valid employment authorization at the time you earned wages and at the time you are looking for work in order to be eligible for unemployment benefits.<sup>204</sup>

## Tax Credits

Working families and individuals with low or moderate incomes can benefit from certain tax credits if they are eligible. These tax credits include the Earned Income Tax Credit for low-and moderate-income working people, and the Child Tax Credit (CTC), which help working families offset the cost of raising children by providing credits for eligible children who are under 17 at the end of the tax year.

If you have a low-income and need help with your taxes, the IRS Volunteer Income Tax Assistance (VITA) program offers free tax assistance to people who generally make \$54,000 or less, persons with disabilities and those with limited English skills who need assistance in preparing their own tax returns. For more information, visit: <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers> or <https://www.tax.ny.gov/pit/file/vita.htm>.





## What Can I Do to Assert My Rights?

**APPLY FOR BENEFITS, COMPLY WITH PROGRAM REQUIREMENTS & SEEK ASSISTANCE:** Obtaining essential benefits that you qualify for can be the difference between falling into poverty and putting yourself on a path to support yourself and your family in a sustainable way. Application processes for benefits can be intimidating and to maintain eligibility, you often have to comply with complicated rules and submit complicated paperwork. While these rules and processes can be frustrating, it is important that you do your best to follow them. Maintaining your benefits is much easier than losing them and having to fight to get them back.

If you have questions about whether you are eligible or need more information, contact your local Department of Social Services: <https://otda.ny.gov/workingfamilies/dss.asp>. Also keep in mind that many non-profits provide free legal services and may be able to assist you based on your income. For help navigating the application process, you can also reach out to various service providers such as the New York Legal Assistance Group (NYLAG): <https://www.nylag.org/get-help>.

**NYC:** For assistance finding benefits and determining if you are eligible, visit ACCESS NYC: <https://access.nyc.gov>.

**CHALLENGE A DENIAL OR TERMINATION OF BENEFITS:** If you are already receiving public benefits, your benefits generally cannot be denied or terminated unless you are given proper and timely notice, including information regarding the reasons for the denial or termination. Generally, you must also be given an opportunity to challenge or appeal the denial or termination in a hearing. If you are denied benefits or your benefits are terminated, the agency where you applied should have an appeal process, which you should ask about. As per above, you may be able to obtain free legal assistance based on your income. Contact a legal service provider, such as the Legal Aid Society in your locality or the New York Legal Assistance Group (NYLAG), for guidance: <https://www.nylag.org/get-help>.

**GET LANGUAGE ASSISTANCE IF YOU NEED IT:** To ensure that people have meaningful access to benefits, New York State and City agencies must generally provide some language assistance services, including translation and interpretation to individuals of limited English proficiency.<sup>205</sup> If you are seeking services from the state or a city agency and you do not feel comfortable communicating in English, you should ask for language assistance.

# 13



## Protecting Our Rights Together

You may have certain rights and opportunities to organize, join a union, and take action with other workers to improve your pay and working conditions without being punished by your employer.



From New York to Florida, from Florida to Texas and California, in several states in many cities and towns I became a part of the struggle... – for better working conditions, for more pay, for improvements in the deplorable conditions of women workers, Negro workers, Mexican workers. Many times we tried and failed partially; but most of the time we were successful.”

– Luisa Moreno,  
Leader in the U.S. Labor movement and social activist who convened the 1939 Congreso de Pueblos de Habla Española, the First National Latino Civil Rights Assembly

# What is Collective Action?

Confronting your boss to challenge discrimination or advocate for better wages and benefits can be intimidating and risky, especially when you are doing it on your own. However, many people often find that when they are dealing with a problem at work, others are dealing with it as well.

As workers, there are ways in which you can work together with your co-workers to improve and change your working conditions, and there are federal and state laws that may protect your organizing activities.

Your ability to work together with your coworkers to seek improvements in your workplace is important because it levels the playing field. Unless you organize, employers hold all the cards when setting wages and working conditions. This power imbalance can make it difficult for a single employee acting alone to challenge discrimination, unfair wages, work schedules, and/or lack of employee benefits. When employees work together to try and make change in the workplace, this collective action can increase the chances that your employer will respond to your demands.

# Who is Protected by the Law?

The National Labor Relations Act (NLRA), a federal law, covers all private employees.<sup>206</sup> Public employees in New York State, who are not covered under the NLRA, are covered under New York State's Taylor Law.<sup>207</sup>



**IMMIGRATION STATUS:** The NLRA applies to covered employees regardless of their immigration status. However, depending on your immigration status, you may not be able to obtain the same remedies provided to other employees under the NLRA.



**FARMWORKERS:** Farmworkers now have the right to organize with co-workers or join unions to seek better working conditions. If employers attempt to punish workers for exercising these rights, workers may file complaints with the NYS Public Employment Relations

Board.<sup>208</sup> Employers may file complaints against workers however if they strike or engage in work stoppages or slow-downs.<sup>209</sup>

The law does **not** apply to independent contractors and **may not** apply to certain part-time employees or temporary employees.<sup>210</sup> However, just because an employer says you are an independent contractor, does not mean you actually are one under the law. Your employer may be “misclassifying” you as an independent contractor, which qualifies as an unfair labor practice that violates the National Labor Relations Act.<sup>211</sup> For example, you may be considered an employee if your employer “controls” how you do your work. This may be the case if your employer requires you to work 40 hours a week, requires you to work at 9 a.m. every weekday, or requires you to work from a certain location. Your employer could be found liable for misclassification and be ordered to cease the practice and to compensate employees for any losses in earnings or benefits.<sup>212</sup>

# What is a Union?

A union is an organization made up of workers who are able to bargain for better wages and working conditions. Unions advocate for all workers in the “bargaining unit” (a group of people within a workplace who qualify for union protection even if they aren’t members) by negotiating with the employer to improve wages, hours, working conditions, insurance, pensions, and other employee benefits.

Unions can provide job protection for workers. New York is

an “at-will” employment state, meaning that an employer can fire you for any reason or even **no** reason, unless they are discriminating against you based on your status in a protected class, such as your sex or gender. If you are part of a union, however, the union may require the employer to have a reason for firing you. If an employer fires you for no reason, then the union can help advocate on your behalf. The union can also help advocate for you if you believe you were fired for an illegal reason (like discrimination).

# What are My Legal Rights?

Under the NLRA, covered private employees have the right to join together to improve their wages and working conditions.<sup>213</sup> This means that you can form a union at work, join a union, or try to bargain collectively without a union.<sup>214</sup> The law also protects employee's rights to engage in collective bargaining and other concerted activities for that purpose.<sup>215</sup>

You have the right to discuss employment conditions with your co-workers without being punished, and it is unlawful for an employer to interfere with, restrain, or coerce employees in their exercise of these rights.<sup>216</sup>

For more information on the types of protected activity under the NLRA, visit: <https://www.nlrb.gov/rights-we-protect/whats-law/employers/interfering-employee-rights-section-7-8a1>.

Under New York's Taylor Law, public employees (those working for the government or governmental agencies in New York State) have the right to organize and bargain collectively, but they do not have the right to strike.<sup>217</sup>

**As of November 1, 2021**, Employers in New York with at least 10 employees are required to allow their employees to establish joint employer-employee workplace committees, even if the workplace is not unionized. This committee can serve as a forum for employees to collectively assert their shared health and safety concerns. The law also protects employees who establish or participate in a committee from retaliation.<sup>218</sup>

**NOTE:** You must still comply with any workplace rules, even when engaging in concerted activity. For example, so long as your employer applies the rule fairly and consistently to all employees, your employer may prohibit all employees from using work hours and resources (like printers) for personal or non-work related purposes, such as union activity.

**WAGES:** In New York State, workers have the right to ask about, discuss, or share their pay rates and wages with coworkers.<sup>219</sup> Therefore, if you discuss your hourly rate with another employee, your employer is prohibited from punishing you for sharing such information.

**RETALIATION:** If you and your co-workers engage in protected concerted activity, the law prohibits your employer from firing, suspending, disciplining, or punishing you or from taking any negative employment action against you as a result of that activity.<sup>220</sup> If your employer retaliates against you, this violates the law. You may be able to recover back pay and, if you were fired, the employer may be required to rehire you.



**IMMIGRATION STATUS:** You have the same rights under the NLRA regardless of your immigration status; however you may be exempt if you work in an industry, such as farm labor, that is not covered.<sup>221</sup> It is illegal for your employer to threaten to report you to immigration authorities or to other law enforcement officials for engaging in such activity.<sup>222</sup> This would constitute retaliation under the law. It is also illegal for your employer to impose more onerous requirements, such as to require new immigration papers, because you engaged in concerted activity.<sup>223</sup> Note, however, that your immigration status may limit the remedies that you can recover if you take administrative or legal action. Note also, that even though it is illegal, 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.



## What Can I Do to Assert My Rights?

**ADVOCATE FOR YOUR RIGHTS THROUGH A UNION:** If you are covered by the above protections, joining, forming, or participating in a union can be one way to protect your right to work together with other workers. There are hundreds of national unions, with thousands of local chapters. Unions are often organized by the type of work performed by the union members—for example, there are unions for home health care workers, teachers, nurses, construction workers, teamsters, electrical workers, and other types of work.

If your workplace is already unionized, you can ask about

joining the union as a member by contacting the union representative. If your workplace is not unionized, you could talk to your co-workers about wanting to form a union and research which union and local chapter would best represent you and your co-workers.

**JOIN THE FREELANCERS UNION:** Independent contractors, also called freelancers, have the option of joining the Freelancers Union. Although referred to as a union, it does not provide the same type of benefits and protections a union traditionally provides. Instead, the Freelancers

Union is more like an advocacy group that pushes for better working conditions for freelancers. It also provides its members with “portable” benefits, such as health, dental, life insurance, disability, and liability insurance. These benefits are “portable” in that a freelancer can “carry” these benefits with them, regardless of where or for whom they work. The Freelancers Union, although based in New York City, offers free membership to freelancers nationwide.

**NYC:** In New York City, freelancers may file a lawsuit if they are not paid for their work. They can also file a claim with the New York City Office of Labor and Policy Standards by email at [freelancer@dca.nyc.gov](mailto:freelancer@dca.nyc.gov) or by phone at (212) 436-0380. If you file a lawsuit because you were not paid for a freelance project and win, you can also recover double damages and attorneys’ fees.

**SEEK ASSISTANCE FROM A WORKER CENTER:** Worker Centers are community based organizations that provide various forms of support to low-wage workers, including workers who are not covered by a union. They typically provide a range of services, such as legal representation to recover unpaid wages, language and skills classes, worker rights education, training, and access to health clinics and other benefits. Worker Centers also engage in advocacy and organizing on behalf of workers, building coalitions of workers to take action to push for better wages and working conditions. For a non-exhaustive list of worker centers in New York State, visit the Additional Resources Section at the end of this Toolkit.

**JOIN A WORKER COOPERATIVE:** In contrast to traditional businesses that are hierarchically owned and managed, worker cooperatives are owned and controlled by the workers where the workers elect the board of directors, make business decisions democratically, invest collectively in the business, and typically distribute a portion of the profits annually to all of the worker-owners based on their own determination. Further, worker cooperatives are committed to creating a non-exploitative economy by creating socially just jobs and supporting the community. By starting a cooperative, you have a voice that counts, more control over setting work hours and wages, more leadership and career advancement opportunities, and the ability to establish healthier relationships with managers, co-workers, and the community.

There are successful worker cooperatives in all industries, including healthcare, manufacturing, education, food/restaurant, plumbing, publishing, childcare, commercial and residential cleaning, and other trades.

- In NYC, the City Council provides funds to organizations in the Worker Cooperative Business Development initiative. Find out about these resources and supports for worker cooperatives here: <https://www1.nyc.gov/nycbusiness/article/worker-cooperatives>.

- The New York City Network of Worker Cooperatives also provides leadership development, training programs, courses, and networking events, as well as a list of other organizations that provide similar services. You can access or review these resources here: <https://nycworker.coop/home/>.

**FORM AN EMPLOYEE RESOURCE GROUP:** You and your co-workers can form an employee resource group. An employee resource group is a group of workers who share a common trait. For example, you could form an employee resource group for women, a group for new mothers, for mothers returning to work, or a group based on age, disability, or LGBTQ status. Employee resource groups can be used as a space for women and minority workers to freely discuss the types of problems they face at work and strategize ways to improve their work environment.

**FILE AN ADMINISTRATIVE CHARGE:** If an employer disciplines you, threatens you, or takes any action against you or other workers for engaging in concerted activity, you can file a complaint with the National Labor Relations Board (NLRB). The NLRB is the government agency responsible for protecting an employee’s rights under federal law. Once you file a charge with them, they will investigate the complaint and your employer. If the NLRB determines that your employer violated the law, they can order the employer to pay damages, including back pay, and if you were fired, order the employer to reinstate you. Note that these remedies may be limited depending on your immigration status.

For public employees, you can file a charge with the Public Employee Relations Board: <http://www.perb.ny.gov>.

Employees can file an unfair labor practice charge against an employer individually, through a union, or through a worker representative. Contact information for the New York Regional Offices for the National Labor Relations Board are below. You can also visit <https://www.nlr.gov> to learn more.

- Buffalo Office: (716) 551-4931
- Albany Office: (518) 431-4155
- Manhattan Office: (212) 264-0300
- Brooklyn Office: (718) 330-7713

**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>.

# Additional Resources

---

If you need assistance finding out whether you have certain rights, determining if your rights have been violated, figuring out how to assert your rights, or require legal representation, below are some additional resources that you can contact:

**LEGAL MOMENTUM'S HELPLINE:** For additional information, referrals, and resources (in English and Spanish) regarding the issues covered in this Toolkit, contact Legal Momentum's Helpline:

(1-800-649-0297) or  
Help@LMHelpline.org.

**THE LEGAL NETWORK FOR GENDER EQUITY:** This network connects people who face sex discrimination—like sex harassment—at work, at school, or when getting health care, with legal assistance. The Legal Network can also connect you with help if you are retaliated against for complaining about sex discrimination. If your case involves sex harassment at work, the TIME'S UP Legal Defense Fund may be able to help pay for your legal case and for media and storytelling assistance. The Legal Network for Gender Equity and the TIME'S UP Legal Defense Fund are housed and administered by the National Women's Law Center Fund, LLC (NWLCF). For assistance, visit: <https://nwlc.org/legal-assistance/>, <https://nwlc.org/asistencialegal/>.

**EQUALITY WATCH:** Equality Watch, a project of the New York Civil Liberties Union, helps individuals report discrimination and identify organizations that can assist. For more information, visit: <https://www.equalitywatchny.com>.

**NYS OFFICE FOR NEW AMERICANS:** The NYS Office for New Americans provides various resources to assist immigrants participate in civic and economic life. For more information or for assistance, visit: <https://www.newamericans.ny.gov/about/about.html>, or call the New Americans Hotline: 1-800-566-7621.

**WOMEN STEP FORWARD:** For resources, information, and services providers to help you understand your rights as an immigrant and to take action, visit: <https://www.womenstepforward.org/find-legal-help/>.

**NATIONAL DOMESTIC WORKERS ALLIANCE:** For a monthly membership fee, domestic workers can join the Alliance to receive resources, discounts, access to important benefits, trainings, information on protecting your rights, and opportunities to work with others to advocate for your rights. For more information, visit: <https://signup.domesticworkers.org>.

**WORKER CENTERS IN NEW YORK STATE:** Worker Centers are community based organizations that provide various forms of support to low-wage workers and immigrants. They typically provide a range of services, such as legal representation to recover unpaid wages, language and skills classes, worker rights education, training, and access to health clinics and other benefits. Worker Centers also engages in advocacy and organizing on behalf of workers, building coalitions of workers to take action to push for better wages and working conditions.

For a non-exhaustive list of worker centers in New York State, see below:

## **WORKER JUSTICE CENTER OF NEW YORK**

Covers all counties north of New York City  
Western New York office: 1187 Culver Road Rochester, NY 14609  
Hudson Valley office: 9 Main Street Kingston, NY 12401  
Lower Hudson Valley office: 245 Saw Mill River Road, Suite 106 Hawthorne, NY 10532  
1-800-724-7020  
<https://www.wjcny.org>

## **WORKER'S JUSTICE PROJECT**

New York City (Brooklyn)  
Williamsburg office: 365 Broadway, Brooklyn, NY 11211  
South Brooklyn office: 2111 Bath Ave, Brooklyn, NY 11214  
347-889-6347 (Williamsburg)  
1718-600-0425 (South Brooklyn)  
<http://www.workersjustice.org>

## **LAUNDRY WORKERS CENTER**

New York City and New Jersey  
80 Broad Street Ste 613A, New York, NY 10004  
347-829-6748  
info@laundryworkerscenter.org  
<http://laundryworkerscenter.org>

## **WESTERN NEW YORK COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH (WNYCOSH) WORKER CENTER**

Buffalo and Western New York  
2495 Main Street, Suite 438, Buffalo, NY 14214  
716-833-5416  
<https://wnycosh.org/workercenter/>

## **TOMPKINS COUNTY WORKERS' CENTER**

Ithaca and Tompkins County  
115 E. Martin Luther King Jr. St. / The Commons, Ithaca, NY 14850  
607-269-0409  
TCWRH@tcworkerscenter.org  
<http://www.tcworkerscenter.org>

## **WORKERS' CENTER OF CENTRAL NEW YORK**

Syracuse and Central New York  
2013 E. Genesee St., Syracuse, NY 13210  
315-218-5708  
<https://workerscny.org/en/home/>

# Endnotes

---

- 1 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*
- 2 N.Y. Exec. Law § 292, as amended by S6577
- 3 N.Y. Exec. Law § 296-d, as amended by S6577.
- 4 N.Y. Exec. Law § 296-b, as amended by S6577.
- 5 N.Y. Exec. Law § 296-b.
- 6 N.Y. Admin. Code § 8-107(1).
- 7 Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a.
- 8 42 U.S.C. § 2000e-3(a).
- 9 Immigration and Nationality Act, 8 U.S.C. § 1324b.
- 10 N.Y. Exec. Order No. 170 (Sep. 15, 2017), <https://www.governor.ny.gov/news/no-1701-amendment-executive-order-170-state-policy-concerning-immigrant-access-state-services>.
- 11 N.Y.C. Exec. Order No. 41 (Sep. 17, 2003), <https://www1.nyc.gov/site/immigrants/about/local-laws-executive-orders.page>.
- 12 See *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).
- 13 N.Y. Exec. Law § 296-b.
- 14 N.Y. Exec. Law § 296(h), as added by S6577.
- 15 N.Y. Exec. Law § 297, as amended by S6577.
- 16 N.Y. Exec. Law § 292(5); N.Y. Admin. Code § 8-102(2018).
- 17 N.Y. Exec. Law § 296(h), as added by S6577.
- 18 N.Y. Exec. Law § 296-b, as amended by S6577.
- 19 N.Y. Exec. Law § 296-b; N.Y. Exec. Law § 292(5); N.Y. Admin. Code § 8-102(2018).
- 20 N.Y. Exec. Law § 292(5); N.Y. Admin. Code § 8-102(2018).
- 21 42 U.S.C. § 2000e-2; *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (confirming that sexual harassment is a form of sex discrimination prohibited under Title VII); N.Y. Exec. Law § 296; N.Y. Admin. Code § 8-107.
- 22 N.Y. Exec. Law § 296(h), as added by S6577.
- 23 N.Y. Lab. Law § 201-g.
- 24 N.Y. Labor Law § 201-g, as amended by S6577.
- 25 N.Y. Exec. Law § 295(18), as amended by A2035-B.
- 26 N.Y. Exec. Law § 297(5), as amended by S6577.
- 27 9 U.S.C. § 402, as added by H.R. 4445.
- 28 The Equal Pay Act of 1963, 29 U.S.C. § 206(d); Title VII of the Civil Rights Act of 1964, 42 § 2000e *et seq.*
- 29 N.Y. Labor Law § 194, as amended by S5248-B.
- 30 N.Y. Admin. Code §§ 8-102-107.
- 31 N.Y. Labor Law § 194, as amended by S5248-B.
- 32 N.Y. Labor Law § 194(a)-(d).
- 33 N.Y. Labor Law § 194(d).
- 34 Salary Transparency in Job Advertisements, NYC COMM'N ON HUM. RTS. (May 12, 2022), <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Salary-Transparency-Factsheet.pdf>.
- 35 N.Y. Labor Law 194-a, as added by S6549.
- 36 N.Y. Lab. Law §§ 652, 673.
- 37 N.Y. Lab. Law § 191.
- 38 N.Y. Lab. Law § 191.
- 39 N.Y. Lab. Law § 191.
- 40 N.Y. Lab. Law § 191.
- 41 N.Y. Lab. Law § 191; New York State Domestic Workers Bill of Rights: <https://www.labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-domestic-workers.pdf>.
- 42 N.Y. Lab. Law § 195.
- 43 N.Y. Lab. Law § 195.
- 44 N.Y. Lab. Law § 195.
- 45 N.Y. Lab. Law § 195.
- 46 N.Y. Lab. Law § 195.
- 47 N.Y. Lab. Law § 195.
- 48 N.Y. Lab. Law § 195.
- 49 12 N.Y.C.R.R. § 146-2.2.
- 50 12 N.Y.C.R.R. § 146-2.2.
- 51 N.Y. Lab. Law § 861-g.
- 52 N.Y. Lab. Law § 652.
- 53 See N.Y. Dept. of Labor, N.Y. Labor Standards Fact Sheet, *Know Your Right as a Worker: How to Prevent labor Violations in the Workplace* (Dec. 2015), <https://www.labor.ny.gov/formsdocs/factsheets/pdfs/p711.pdf>.
- 54 N.Y. Lab. Law § 193.
- 55 Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; 12 NYCRR § 142-2.2.
- 56 N.Y. Labor Law § 163-a, as amended by S6578.
- 57 N.Y. Lab. Law § 167.
- 58 See Trafficking Victims Protection Act, 22 U.S.C. § 7101 *et seq.*; N.Y. Penal Law §§ 135.35, 230.34.
- 59 N.Y. Lab. Law § 215.
- 60 N.Y. Lab. Law §§ 652, 673; 12 NYCRR § 190-1.3(b).
- 61 N.Y. Lab. Law § 673-a; 12 NYCRR § 190-6.1.
- 62 N.Y. Correction Law Art. 23-A.
- 63 N.Y. Correction Law Art. 23-A.
- 64 N.Y. Exec. Law § 296(16).

- 65 N.Y. Admin. Code §§ 8-102(5), 8-107(10)-(11-a).
- 66 N.Y. Admin. Code §§ 8-102(5), 8-107(10)-(11-a).
- 67 The Immigration and Nationality Act, 8 U.S.C. § 1324b.
- 68 N.Y. Exec. Law § 296(1-a).
- 69 Studies have found that women entrepreneurs in New York City have a more difficult time accessing credit to start their businesses—in fact, men are twice as likely to launch their businesses with as much as double the capital. Women entrepreneurs find it harder to identify and assess potential mentors and business advisors. These challenges are more pronounced for women of color, many of whom must overcome language barriers when starting a business. Women with low-to-moderate income often highlighted lack of confidence and experience as a challenge. See Women Entrepreneurs NYC, *Unlocking the Power of Women Entrepreneurs in New York City*, (November 2015), [https://we.nyc/media/filer\\_public/97/a1/97a19bc2-261c-4168-b70d-4873f7bec894/wenyc\\_report\\_2015-11\\_2.pdf](https://we.nyc/media/filer_public/97/a1/97a19bc2-261c-4168-b70d-4873f7bec894/wenyc_report_2015-11_2.pdf).
- 70 Equal Credit Opportunity Act, 15 U.S.C. § 1691; N.Y. Exec. Law § 296-a.
- 71 N.Y. Exec. Law § 312. See also N.Y. Order 177 (covered state entities prohibited from entering into contracts with entities that have institutional policies or practices that fail to address harassment or discrimination based on sex and other protected classifications).
- 72 Stop Credit Discrimination in Employment Act, N.Y. Admin. Code §§ 8-102(29), 8-107(9)(d)(24).
- 73 See NYC Business Solutions, *NYC Sector Guide on Worker Cooperatives*, [http://www.nyc.gov/html/sbs/nycbiz/downloads/pdf/educational/sector\\_guides/worker\\_cooperative.pdf](http://www.nyc.gov/html/sbs/nycbiz/downloads/pdf/educational/sector_guides/worker_cooperative.pdf).
- 74 See NYC Department of Small Business Services, *Building Your Business in New York City: A Guide for Immigrant Entrepreneurs*, [https://www1.nyc.gov/assets/sbs/downloads/pdf/about/reports/ibi\\_toolkit.pdf](https://www1.nyc.gov/assets/sbs/downloads/pdf/about/reports/ibi_toolkit.pdf).
- 75 See National Institute for Occupational Safety and Health, Women's Safety and Health Issues at Work, Publication No. 2001-123, <https://www.cdc.gov/niosh/docs/2001-123/default.html>.
- 76 See U.S. Dep't of Labor, Bureau of Labor Statistics, *Women at Work* (March 2017), <https://www.bls.gov/spotlight/2017/women-at-work/pdf/women-at-work.pdf>.
- 77 Occupational Safety and Health Act, 29 U.S.C. § 652.
- 78 29 U.S.C. § 654; 29 C.F.R. § 1926 *et seq.*
- 79 29 U.S.C. § 654; 29 C.F.R. § 1926 *et seq.*; N.Y. Lab. Law § 200.
- 80 N.Y. Lab. Law § 200(1).
- 81 N.Y. Lab. Law §§ 200(1), 880.
- 82 29 U.S.C. § 657(c)(3); 29 C.F.R. § 1926 *et seq.*
- 83 29 U.S.C. § 657(c)(3); 29 C.F.R. § 1926 *et seq.*
- 84 N.Y. Lab. Law § 162.
- 85 N.Y. Lab. Law § 162(4).
- 86 N.Y. Lab. Law § 161.
- 87 N.Y. Lab. Law § 161.
- 88 N.Y. Lab. Law § 161.
- 89 N.Y. Labor Law § 161, as amended by S6578.
- 90 N.Y. Work. Comp. Law, Groups 14-a, 14-b as amended by S6578.
- 91 N.Y. Pub. Health Law § 225.
- 92 N.Y. Lab. Law § 724.
- 93 N.Y. Admin. Code Ch. 8.
- 94 N.Y. Admin. Code Ch. 8.
- 95 N.Y. Admin. Code Ch. 8.
- 96 N.Y. Admin. Code Ch. 8.
- 97 Westchester Co. Laws, Ch. 700.
- 98 Westchester Co. Laws, Ch. 700.
- 99 The Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*
- 100 29 U.S.C. § 2601 *et seq.*
- 101 New York Paid Family Leave Benefits Law, N.Y. Workers Comp. Law, Art. 9.
- 102 New York Paid Family Leave Benefits Law, N.Y. Workers Comp. Law, Art. 9.
- 103 See 29 U.S.C. § 654; 29 C.F.R. § 1926 *et seq.*; N.Y. Lab. Law § 740.
- 104 See N.Y. Admin. Code Ch. 8.
- 105 See Trafficking Victims Protection Act, 22 U.S.C. § 7101 *et seq.*; N.Y. Penal Law §§ 135.35, 230.34.
- 106 29 C.F.R. §§ 1904.35-36.
- 107 N.Y. Lab. Law § 740, as amended by S4394-A.
- 108 N.Y. Civ. Rights Law § 52-c, as added by A430.
- 109 N.Y. Admin. Code § 20-1251.
- 110 N.Y. Admin. Code § 20-1252.
- 111 N.Y. Admin. Code § 20-1221.
- 112 N.Y. Admin. Code § 20-1222.
- 113 N.Y. Admin. Code § 20-1231.
- 114 “Just cause” is defined as the fast food employee’s failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer’s legitimate business interests.
- 115 N.Y.C. Admin. Code § 20-1272 (2021), as amended by Int. No. 1396-A and Int. No. 1415-A.
- 116 N.Y. Workers Comp. Law § 3, Group 14-b.
- 117 N.Y. Labor Law §191.
- 118 See U.S. Dep’t of Labor, Agricultural Operations, <https://www.osha.gov/dsg/topics/agriculturaloperations/>.
- 119 Occupational Health and Safety Administration, OSHA Instruction CPL 02-00-051, *Enforcement Exceptions and Limitations under the Appropriations Act* (May 28, 1998), <https://www.osha.gov/enforcement/directives/cpl-02-00-051>.
- 120 See U.S. Dep’t of Labor, Agricultural Operations: Hazards and Controls, <https://www.osha.gov/dsg/topics/>



[agriculturaloperations/hazards\\_controls.html](#).

- 121 See Violence Against Women Reauthorization Act of 2013, 18 U.S.C. § 2261; N.Y. Exec. Law § 292(34); N.Y. Admin. Code § 8-107.1(a); New York State Dep't of Labor, Domestic Violence and UI Benefits, <https://www.labor.ny.gov/ui/claimantinfo/domesticviolenceanduibenefits.shtm#1>.
- 122 See Violence Against Women Reauthorization Act of 2013, 18 U.S.C. § 2261; N.Y. Admin. Code § 8-107.1(a). See also Office on Violence Against Women, U.S. Dep't of Justice, Sexual Assault, <https://www.justice.gov/ovw/sexual-assault>.
- 123 See Violence Against Women Reauthorization Act of 2013, 18 U.S.C. § 2261; N.Y. Admin. Code § 8-107.1(a).
- 124 N.Y. Exec. Law §§ 292, 296.
- 125 N.Y. Admin. Code § 8-107.1(b).
- 126 Westchester Co. Laws §§ 700.02, 700.03(a)(8).
- 127 N.Y. Exec. Law § 296(1)(a).
- 128 The Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; N.Y. Exec. Law §§ 292(21), 292(21-e), 295(5), 296(3); 9 NYCRR § 466.11.
- 129 42 U.S.C. § 12102.
- 130 N.Y. Exec. Law § 292(21).
- 131 N.Y. Exec. Law § 296(22)(c)(2) (2021), as amended by S1040.
- 132 N.Y. Admin. Code §§ 8-102(5); 8-107.1.
- 133 Westchester Co. Laws, §§ 700.02 (for definitions), 700.03.
- 134 N.Y. Admin. Code § 8-102; see also New York City Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Disability* (June 2018), [https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR\\_LegalGuide-DisabilityFinal.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.pdf).
- 135 N.Y. Penal Law § 215.14.
- 136 N.Y. Admin. Code §§ 20-912 (for definitions), 20-913, 20-914.
- 137 N.Y. Admin. Code § 20-913.
- 138 N.Y. Admin. Code § 20-913.
- 139 N.Y. Real Prop. Law § 227-d.
- 140 N.Y. Real Prop. Law § 227-c. See also N.Y. Crim. Proc. § 530.12-13 (establishing that a court may issue orders of protection for victims of family offenses); N.Y. Dom. Rel. § 240 (describing, among other things, the court's power to issue orders of protection); N.Y. Family Ct. Act §§ 446 (orders of protection), 656, 842, 1056.
- 141 N.Y. Exec. Law § 296, as amended by S8417-B.
- 142 Immigration and Nationality Act, 8 U.S.C. § 1324b.
- 143 See Center for Reproductive Rights, *Standing up for Reproductive Rights: A Look Back at the 114th Congress* (Mar. 20, 2017), <https://www.reproductiverights.org/114th-Congress-Wrap-Up>; Heather D. Boonstra, *Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters*, 19 Guttmacher Policy Rev., 2016, at 46, 50.
- 144 Heather D. Boonstra, *Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters*, 19 Guttmacher Policy Rev., 2016, at 46.
- 145 11 NYCRR § 52.1(r)(i); N.Y. Ins. Law § 3221(16).
- 146 11 NYCRR § 52.1(r)(ii).
- 147 11 NYCRR § 52.1(r)(v).
- 148 11 NYCRR § 52.1(r)(vi).
- 149 11 NYCRR § 52.1(r)(vi).
- 150 N.Y. Ins. Law §§ 3221(l)(16)(A); 3221 (5)(A)(1).
- 151 N.Y. Pub. Health Law § 2599-AA (2019).
- 152 N.Y. Exec. Law § 837-w, as added by S9077-A.
- 153 N.Y. Civ. Rights Law § 70-b, as added by S9039-A.
- 154 See Governor Hochul Signs Nation-Leading Legislative Package to Protect Abortion and Reproductive Rights for All, N.Y. STATE (June 13, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive>.
- 155 11 NYCRR § 52.1(p)(1-2).
- 156 11 NYCRR § 52.71.
- 157 42 U.S.C. § 2000e(k); see also Equal Employment Opportunity Center, *EEOC Enforcement guidance on Pregnancy Discrimination and Related Issues*, EEOC Notice No. 915.003 (June 25, 2015) (citing 42 U.S.C. § 2000e(k); Questions and Answers on the Pregnancy Discrimination Act, 29 C.F.R. pt. 1604 app., Question 34 (1979) ("An employer cannot discriminate in its employment practices against a woman who has had or is contemplating having an abortion."); H.R. Conf. Rep. No. 95-1786, at 4 (1978), as reprinted in 95th Cong., 2d Sess. 4, 1978 U.S.C.C.A.N. 4749, 4766 ("Thus, no employer may, for example, fire or refuse to hire a woman simply because she has exercised her right to have an abortion."); see also *Doe v. C.A.R.S. Protection Plus, Inc.*, 527 F.3d 358, 364 (3d Cir. 2008), *cert. denied*, 129 S. Ct. 576 (2008) (PDA prohibits employer from discriminating against female employee because she has exercised her right to have an abortion); *Turic v. Holland Hospitality, Inc.*, 85 F.3d 1211, 1214 (6th Cir. 1996) (discharge of pregnant employee because she contemplated having abortion violated PDA)), [https://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm#\\_ftn58](https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#_ftn58).
- 158 N.Y. Lab. Law § 203-e (2020), as amended by S660.
- 159 11 NYCRR § 52.16(o).
- 160 N.Y. Penal Law §§ 240.70-240.71.
- 161 N.Y. Pub. Health Law § 18(3)(i); N.Y. Pub. Health Law § 17.
- 162 N.Y. Admin. Code § 8-107(22), New York City Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78* (2013); [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy\\_InterpretiveGuide\\_2016.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpretiveGuide_2016.pdf).
- 163 N.Y. Ins. Law § 3217-c.
- 164 N.Y. Ins. Law § 3216(i)(8)(E) (10)(A)(i).
- 165 42 U.S.C. § 300gg-13; 29 C.F.R. §§ 2590.75-2713.
- 166 See New York Dep't of Health, Medicaid Family Planning

- Services, [https://www.health.ny.gov/health\\_care/managed\\_care/famplan10ques.htm](https://www.health.ny.gov/health_care/managed_care/famplan10ques.htm).
- 167 See New York Dep't of Health, Comprehensive Family Planning and Reproductive Health Care Services Program, [https://www.health.ny.gov/community/pregnancy/family\\_planning/](https://www.health.ny.gov/community/pregnancy/family_planning/).
- 168 See New York Dep't of Health, Family Planning Benefit Program, [https://www.health.ny.gov/health\\_care/medicaid/program/longterm/familyplanbenprog.htm](https://www.health.ny.gov/health_care/medicaid/program/longterm/familyplanbenprog.htm).
- 169 Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k); N.Y. Exec. Law §§ 292 (for definition of "employer"), 296.1; see also New York State Division of Human Rights, *Guidance on Pregnancy Discrimination and Reasonable Accommodation of Pregnancy-Related Conditions for Employers in New York State*, <https://dhr.ny.gov/sites/default/files/pdf/guidance-pregnancy-discrimination-employers.pdf>.
- 170 The Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; N.Y. Exec. Law §§ 292(21), 292(21-e), 295(5), 296(3); 9 NYCRR 466.11.
- 171 N.Y. Exec. Law § 292.
- 172 N.Y. Exec. Law § 296(3); see also New York State Division of Human Rights, *Guidance on Pregnancy Discrimination and Reasonable Accommodation of Pregnancy-Related Conditions for Employers in New York State*, <https://dhr.ny.gov/sites/default/files/pdf/guidance-pregnancy-discrimination-employers.pdf>.
- 173 N.Y. Admin. Code § 8-107(22); New York City Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78 (2013)*; <https://www1.nyc.gov/site/cchr/law/legal-guidances.page>.
- 174 N.Y. Work. Comp. Law Ch. 9, § 201(9)(B).
- 175 See N.Y. Work. Comp. Law Ch. 9, § 201(6)(A), as amended by S6578.
- 176 N.Y. Lab. Law § 206-c.
- 177 N.Y. Lab. Law § 206-c; N. Y. Dep't of labor, *Guidelines Regarding the Rights of Nursing Mothers to Express Breastmilk in the Workplace*, <https://www.labor.ny.gov/workerprotection/laborstandards/pdfs/guidelinesexpressionofbreastmilkfinal.pdf>. See also Fair Labor Standards Act, 29 U.S.C. § 207(r) (requires employers to provide reasonable unpaid break time for an employee to express breast milk for her nursing child for 1 year after the child's birth in a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public).
- 178 29 U.S.C. § 207(r); N.Y. Lab. Law § 206-c. See also N. Y. Dep't of labor, *Guidelines Regarding the Rights of Nursing Mothers to Express Breastmilk in the Workplace*, <https://www.labor.ny.gov/workerprotection/laborstandards/pdfs/guidelinesexpressionofbreastmilkfinal.pdf>.
- 179 N.Y. Admin. Code §§ 8-101-8-131.
- 180 New York Paid Family Leave Benefits Law, N.Y. Workers Comp. Law Art. 9; 12 NYCRR § 355, Part 380.
- 181 See N.Y. Work. Comp. Law Ch. 9, § 201(6)(A), as amended by S6578.
- 182 *Id.*
- 183 *Id.*
- 184 New York Paid Family Leave Updates for 2022, N.Y. STATE, <https://paidfamilyleave.ny.gov/2022> (last visited Jan. 31, 2022).
- 185 The Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*
- 186 N.Y. Work. Comp. Law Ch. 9, § 201(9)(B).
- 187 N.Y. Admin. Code §§ 20-912 (for definitions), 20-913, 20-914.
- 188 Westchester Co. Laws, Ch. 700.
- 189 N.Y. Lab. Law § 196-c (2021), as amended by S2588A.
- 190 CITY CONSUMER & WORKER PROT. (Dec. 23, 2021), <https://www1.nyc.gov/site/dca/media/pr122321-Additional-Paid-Leave-forChild-Vaccinations.page#:~:text=In%20an%20effort%20to%20keeping,of%2018%2C%20per%20vaccine%20injection.>
- 191 Additional Paid Leave for Child Vaccinations Goes Into Effect December 24, Available Retroactively to November 2, N.Y.
- 192 N.Y. Exec. § Law 296. See also New York State Division of Human Rights, *Guidance on Familial Status Discrimination for Employers in New York State*, <https://dhr.ny.gov/sites/default/files/pdf/guidance-familial-status-employers.pdf>.
- 193 N.Y. Admin. Code § 8-107.
- 194 Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the federal government provides block grant funding to states to provide Temporary Assistance to Needy Families (TANF), under which states must operate temporary assistance programs for needy families. See 42 U.S.C. Ch. 7, Subchapter IV; 45 C.F.R. Part 260.
- 195 See 8 U.S.C. § 1621 (for non-eligible categories).
- 196 Immigration and Nationality Act, 8 U.S.C. § 1182.
- 197 See Center on Budget and Policy Priorities, *A Quick Guide to SNAP Eligibility and Benefits* (Oct. 16, 2018), <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits>.
- 198 42 U.S.C. § 300gg-13; 29 C.F.R. §§ 2590.75-2713.
- 199 24 C.F.R. § 100.600.
- 200 See Consent Decree in *Callahan v. Carey* (1981), <http://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/the-callahan-legacy-callahan-v-carey-and-the-legal-right-to-shelter/>.
- 201 42 U.S.C. § 1436a.
- 202 24 C.F.R. §§ 5.512, 5.520.
- 203 See N.Y. Labor Law § 511, as amended by S6578.
- 204 See N.Y. Labor Law § 591; see also New York Dep't of Labor, Before you Apply for Unemployment: Frequently Asked Questions, <https://www.labor.ny.gov/ui/claimantinfo/beforeyouapplyfaq.shtm#22>.

- 205 N.Y. Exec. Order No. 26 (Oct. 6, 2011), <https://www.governor.ny.gov/news/no-26-statewide-language-access-policy>.
- 206 National Labor Relations Act, 29 U.S.C. §§ 151-169.
- 207 N.Y. Civ. Serv. Law § 200 et seq (also called the Public Employees Fair Employment Act, or the “Taylor Law”).
- 208 See N.Y. Labor Law § 701, as amended by S6578.
- 209 See N.Y. Labor Law § 703, as amended by S6578.
- 210 29 U.S.C. §152(3).
- 211 29 U.S.C. §158.
- 212 See Intermodal Bridge Transp., No. 21-CA-157647 (Nov. 28, 2017).
- 213 29 U.S.C. § 157.
- 214 29 U.S.C. § 157.
- 215 29 U.S.C. § 157.
- 216 29 U.S.C. § 158.
- 217 N.Y. Civ. Serv. Law §§ 202-03, 210.
- 218 See N.Y. Lab. Law § 511, as amended by S6578.
- 219 N.Y. Lab. Law § 194.
- 220 29 U.S.C. § 158; N.Y. Civ. Serv. Law § 209-a.
- 221 See National Labor Relations Board, Immigrant Employee Rights under the National Labor Relations Act, [https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant\\_employee\\_rights\\_one\\_pager\\_english\\_pdf\\_21860.pdf](https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant_employee_rights_one_pager_english_pdf_21860.pdf).
- 222 See National Labor Relations Board, Immigrant Employee Rights under the National Labor Relations Act, [https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant\\_employee\\_rights\\_one\\_pager\\_english\\_pdf\\_21860.pdf](https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant_employee_rights_one_pager_english_pdf_21860.pdf).
- 223 See National Labor Relations Board, Immigrant Employee Rights under the National Labor Relations Act, [https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant\\_employee\\_rights\\_one\\_pager\\_english\\_pdf\\_21860.pdf](https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant_employee_rights_one_pager_english_pdf_21860.pdf).



