

# EMPLOYMENT LAW SUMMARY

## New York Minimum Wage Laws



Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is **\$7.25** per hour for nonexempt employees. The New York Minimum Wage Act (NYMWA) complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. The [New York Department of Labor](#) (NYDOL) enforces NYMWA standards and investigates minimum wage violation claims.

### Minimum Wage Rate

State law requires employers in New York to pay wages that are at least equal to the state's minimum wage. Employee wages are generally defined as the entire amount of compensation the employee receives for his or her labor or services. Typically, this includes bonuses, commissions and vacation pay but **excludes** severance pay. Wages can be fixed or based on time, task, piece, commission or another method. Additional local, city, prevailing wage and living wage orders may apply. The table below shows scheduled minimum wage rate increases.

Location	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026
<b>New York City, Long Island &amp; Westchester</b>	<b>\$16</b>	<b>\$16.50</b>	<b>\$17</b>
Tipped Service Employees	<ul style="list-style-type: none"><li>• \$13.35 cash wage</li><li>• \$2.65 tip credit</li></ul>	<ul style="list-style-type: none"><li>• \$13.75 cash wage</li><li>• \$2.75 tip credit</li></ul>	<ul style="list-style-type: none"><li>• \$14.15 cash wage</li><li>• \$2.85 tip credit</li></ul>
Tipped Food Service Workers	<ul style="list-style-type: none"><li>• \$10.65 cash wage</li><li>• \$5.35 tip credit</li></ul>	<ul style="list-style-type: none"><li>• \$11 cash wage</li><li>• \$5.50 tip credit</li></ul>	<ul style="list-style-type: none"><li>• \$11.35 cash wage</li><li>• \$5.65 tip credit</li></ul>
Home care aids	\$18	\$18.50	\$19
<b>Remainder of New York State</b>	<b>\$15</b>	<b>\$15.50</b>	<b>\$16</b>
Tipped Service Employees	<ul style="list-style-type: none"><li>• \$12.50 cash wage</li><li>• \$2.50 tip credit</li></ul>	<ul style="list-style-type: none"><li>• \$12.90 cash wage</li><li>• \$2.60 tip credit</li></ul>	<ul style="list-style-type: none"><li>• \$13.30 cash wage</li><li>• \$2.70 tip credit</li></ul>

Location	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026
Tipped Food Service Workers	<ul style="list-style-type: none"> <li>• \$10 cash wage</li> <li>• \$5 tip credit</li> </ul>	<ul style="list-style-type: none"> <li>• \$10.35 cash wage</li> <li>• \$5.15 tip credit</li> </ul>	<ul style="list-style-type: none"> <li>• \$10.70 cash wage</li> <li>• \$5.30 tip credit</li> </ul>
Home care aids	\$17	\$17.50	\$18

## Tipped Employees

State law allows private sector employers to use the tip credit and pay their tipped employees the cash wage because it assumes that the tips employees receive, when combined with the cash wage, will be sufficient to allow employees to earn wages at or above the minimum wage rate.

Employers must, at or before the time of hiring, give employees written notice that the employer will apply a tip credit or allowance toward their minimum wage.

Employers cannot use the tip credit when their employees' tips are insufficient to offset the difference between the cash and minimum wage rates. In addition, no tip credit is allowed for fast food employees or those in the building service industry.

### Hospitality Industry Wage Order

The NYDOL has issued a [Hospitality Industry Wage Order](#) (HWO) to regulate minimum wage rates for restaurant and hotel employees. The HWO requires employers to use an hourly wage rate and prohibits the practice of salary, week-, day- or piece-rate payments to deter excessive long hours of work for hospitality industry employees. An exception to this payment prohibition exists for commissioned sales personnel within the hospitality industry.

Employers in the hospitality industry may not take tip credits for:

- Days when tipped workers spend more than two hours, or 20% of a shift, doing nontipped work; or
- Weeks when service employee average tips fall below their tip threshold, as shown in the table below.

Under the HWO, a **food service worker** is any employee who is primarily engaged in the serving of food or beverages and also regularly receives tips. This definition includes wait staff, bartenders, captains, and bussing personnel but excludes delivery persons. A **service employee** is an employee, other than a food service worker, who customarily receives tips. A non-service employee is any employee other than a service employee or a food service worker.

### Cash Tips

When customers pay tips in cash, employers may, as a service to their employees, allow employees to leave cash tips earned over the course of a pay period with the employer. Employee requests for this employer service must be voluntary. An agreement for this service cannot be a pre-condition of initial or continued employment.

When providing this service, employers must still keep a daily record of the tips earned by each employee using this service. Employers must have these records available for employee and NYDOL inspection. The wage statement provided with the tip payment must contain a breakdown of tips and wages. It must also meet all other requirements for wage statements.

### Credit Card Tips

When tips are given by customers via credit card, employers must pay the tips due to their employees no later than the next regularly scheduled payday.

State law allows employers to subtract from the employee's tips the prorated share of the charge levied by the credit card company. In addition to complying with all applicable wage statement requirements, employers remitting tips to their employees must include a breakdown between the tips and the wages on their employees' wage statements.

### Service Charges and Delivery Fees

Under the HWO, employers should assume that any charge that is not for food and drink is considered a tip. To overcome this presumption, employers should inform their customers about service charges for banquets, special functions and package deals.

A valid customer notice must clearly identify the service charge and inform the customer that the charge is not considered a gratuity. Specifically, the notice must be provided in writing in a readily understandable type of at least a 12-point font size and indicate that the charge:

- Is for the administration of the banquet, special function or package deal not purported to be a gratuity; and
- Will not be distributed as gratuities to the employees who provided service to the guests.

Similarly, employers that charge a delivery fee (and have no intention of giving the fee to the delivering employee) must inform their customers receiving deliveries that a delivery fee applies and will be kept by the employer as a delivery charge and is not a tip for the delivering employee.

### **Tip Sharing and Pooling**

Directly tipped employees may share their tips on a voluntary basis with other service employees or food service workers who participated in providing service to customers. Employers may require directly tipped food service workers to share their tips with other food service workers who participated in providing service to customers and may set the percentage to be given to each occupation. However, employees must handle the transactions themselves.

Similarly, directly tipped employees may mutually agree to pool their tips on a voluntary basis and to redistribute the tips among directly tipped employees and indirectly tipped employees who participated in providing the service. Employers may require food service workers to participate in a tip pool and may set the percentage to be distributed to each occupation from the tip pool. Only food service workers may receive distributions from the tip pool.

Tip sharing is the practice by which directly tipped employees give a portion of their tips to other service employees or food service workers who participate in providing service to customers. Tip pooling is the practice by which the tip earnings of directly tipped employees are intermingled in a common pool and then redistributed among directly and indirectly tipped employees.

Directly tipped employees are those who receive tips from patrons or customers without any intermediary between the patron or customer and the employee. Indirectly tipped employees are those who, without receiving direct tips, are eligible to receive shared tips or receive distributions from a tip pool.

Employee eligibility to receive shared tips or to receive distributions from a tip pool is based upon duties, not titles. Eligible employees must perform, or assist in performing, personal service to patrons at a level that is a principal and regular part of their duties and is not merely occasional or incidental. Some examples of eligible employee occupations include:

- Wait staff;
- Counter personnel who serve food or beverages to customers;
- Bus persons;
- Bartenders;
- Service bartenders;
- Barbacks;
- Food runners;
- Captains who provide direct food service to customers; and
- Hosts who greet and seat guests.

Under the HWO, employers may not require directly tipped employees to contribute a greater percentage of their tips to indirectly tipped employees through tip sharing or tip pooling than is customary and reasonable.

Employers that operate a tip sharing or tip pooling system must establish, maintain and preserve for at least six years records which include:

- A daily log of the tips collected by each employee on each shift, whether in cash or by credit card;
- A list of occupations that the employer deems eligible to receive tips through a tip-sharing or tip-pool system;
- The shares of tips that each occupation is scheduled to receive from tip sharing or tip pooling; and
- The amount in tips that each employee receives from the tip share or tip pool by date.

These records must be regularly made available to participants in the tip-sharing or tip-pooling systems for review. This requirement does not authorize any employee the right to review the payroll records of any other employee.

### **Mixed work**

Employers cannot take a tip credit for any day in which that employee works more than 20% or two hours, whichever is less, of the workday in a nontipped occupation. Any work that is customarily and regularly performed in the industry by tipped employees will not be counted as nontipped work. However, work that is customarily and regularly performed by a nontipped employee, either in the industry or for that particular employer, will be counted as nontipped work.

The NYDOL has published the following examples:

- If a tipped server washes dishes because the nontip-credit-eligible dishwasher is absent, then that is not work within the server's tipped occupation.
- An employee has a daily schedule as follows:
  - 8 a.m. to 9:45 a.m.—food preparation;
  - 9:45 a.m. to 1:30 p.m.—serving food in the restaurant;
  - 1:30 p.m. to 2:00 p.m.—meal period; and
  - 2:00 p.m. to 4:30 p.m.—serving food in the restaurant.

That employee has worked eight hours total, consisting of six hours and 15 minutes as a food service worker and one hour and 45 minutes in a nontipped occupation preparing food. Twenty percent of an eight-hour shift is one hour, 36 minutes. Although the employee worked for less than two hours at the nontipped occupation, he/she has worked for more than 20% of his/her shift at the nontipped occupation. Therefore, the employer may not take a tip credit/allowance for that employee on this day.

### **Minimum Wage Rate Exemptions**

New York minimum wage rate requirements do not apply to:

- Federal, state and municipal employees;
- Bona fide executive, administrative and professional employees;
- Outside sales personnel;
- Students employed by religious, educational or charitable institutions;
- Students working for sororities, fraternities, college clubs and dormitories;
- Farm laborers;
- Physically or mentally impaired individuals working for religious, educational or charitable institutions;
- Casual babysitters and companions;
- Taxicab drivers;
- Bona fide volunteers;
- Apprentices and learners;
- Member of religious orders (such as duly ordained, commissioned or licensed ministers, priests, rabbis, sextons or Christian science readers);
- Summer camp employees working for religious, educational or charitable institutions; or
- Youth camp staff counselors.

### **Fast Food Workers**

New York has [separate minimum wage rates](#) for fast food workers. After a series of annual increases, which began on Dec. 31, 2015, the minimum wage for all fast food workers is \$15 per hour. Fast food workers are employees working for a fast food establishment if their duties include customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance.

A "fast food establishment" is any establishment:

- That primarily serves food or drink items;
- That exists for patrons to order or select items and pay before eating (items may be consumed on the premises, taken out or delivered to the customer's location);
- That offers limited service; and
- That is part of a chain that has more than 30 or more national establishments (may include integrated enterprises and franchises).

Fast food establishments include establishments located within non-fast food establishments. The minimum wage rate increase tables above incorporate the timeline for implementing a higher minimum wage rate for fast food workers across the state.

### Additional Minimum Wage Orders

The NYDOL has also issued minimum wage orders for the building service, farming, nonprofit industries and miscellaneous industries.

### Meal and Lodging Allowance

A meal and lodging allowance is a credit that employers can use when calculating an employee’s wage rate. This credit is offered to offset the cost of meals and lodging employers provide for their workers.

The amount of credit available for each meal or day of lodging depends on each employee’s occupation. Check with the NYDOL, a certified accountant or a licensed attorney for the rates that specifically apply to your situation. Allowances for meals or lodging cannot be used to calculate an employee’s call-in pay.

The table below provides an overview of meal credits.

Location	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026
<b>New York City, Long Island and Westchester</b>			
Food service employees	\$3.85	\$3.95	\$4.05
Service employees	\$4.45	\$4.60	\$4.75
Nonservice employees	\$5.50	\$5.65	%5.80
<b>Remainder of the state</b>			
Food service employees	\$3.80	\$3.95	\$4.10
Service employees	\$4.10	\$4.50	\$4.40
Nonservice employees	\$5.20	\$5.35	\$5.50

### Uniform Pay and Maintenance

New York law also regulates an employer’s obligation to compensate its employees when uniforms are required for work. Employers must reimburse their employees for the total cost of required uniforms no later than the next regular payday.

The reimbursement must be for a number of uniforms commensurate to the average number of days the employee works during a workweek. Employees are solely responsible for the cost of any additional uniforms.

Employers that require their employees to wear uniforms at work must either maintain the uniforms or provide their employees with additional compensation—uniform pay—to maintain their uniforms. Under the Miscellaneous Wage Order, this allowance can be set off by monies paid in excess of the minimum wage. Maintaining a uniform includes washing, ironing, dry cleaning, altering, repairing and any other practice necessary to keep the uniform clean and in good condition.

The amount of uniform pay employers must provide depends on how many hours each employee works during a workweek. However, employers are not required to provide uniform pay for required uniforms when:

- Uniform maintenance does not go above and beyond regular apparel maintenance, and the employer provides or subsidizes an employee’s ability to have a number of uniforms commensurate with the average number of days the employee works per week to allow him or her to report to work with all necessary apparel on a regular basis; or
- The employee refuses to use the employer’s uniform maintenance service (the employer must provide service free of charge; maintain employee uniforms with reasonable frequency; ensure that adequate, clean and properly fitting uniforms are consistently available; and inform employees individually and in writing that this service is available).

The table below provides an overview of uniform pay rates.

Location	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026
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Location	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026
<b>New York City, Long Island and Westchester</b>			
More than 30 hours	\$19.90	\$20.50	\$21.10
Between 20 and 30 hours	\$15.75	\$16.25	\$16.75
Fewer than 20 hours	49.50	\$9.80	\$10.10
<b>Remainder of the state</b>			
More than 30 hours	\$18.65	\$19.25	\$19.85
Between 20 and 30 hours	\$14.80	\$15.30	\$15.80
Fewer than 20 hours	\$8.95	\$9.25	\$9.55

## Call-in Pay

Employers must pay their employees their regular wage rate for all hours they are required to report for work outside of their regular shift, regardless of whether they are actually assigned to work or just requested to stand by for additional instructions.

An employee's regular shift is the fixed, repeating shift the employee normally works on the same day of each week. An employee does not have a regular shift if his or her hours or scheduled work hours change from week to week. When calculating call-in pay, employers must compensate each employee with the lesser of:

- At least three hours (or four, depending on the employee's occupation) for one shift, or the number of hours in the regularly scheduled shift;
- At least six hours for two shifts totaling six hours or less, or the number of hours in the regularly scheduled shift; or
- At least eight hours for three shifts totaling eight hours or less, or the number of hours in the regularly scheduled shift.

## Notice

New York law requires employers to provide a wage notice to every employee at the time of hiring. The notice must be in English and, if applicable, in the employee's primary language and must indicate (among other things):

- The employee's wage rate;
- The employee's pay structure (whether the pay is based on a per hour, shift, day-, week-, piece-rate or salary);
- The type and amount of any allowances claimed as a credit when calculating the employee's wage rate;
- The regular payday designated by the employer;
- The employer's name, including any "doing business as" designations;
- The employer's main office address (and mailing address, if different); and
- The employer's telephone number.

Employers are required to retain proof that each employee received this notice for up to six years. Employers must also notify their employees of any changes to the information mentioned above at least seven calendar days before the changes take place, unless the changes are reflected on the employee's wage statement. Employers must also notify their employees of policies regarding sick leave, vacation, personal leave, holidays and hours of work.

Finally, employers must inform their employees, in writing, of their exact termination date, if applicable, as well as the exact date of cancellation of employment benefits connected with the termination. An exception is possible when circumstances allow only for a five-day notice of termination. Employers that do not notify their employees that an accident or health insurance policy will be canceled are subject to group policy penalties, including **a fine of up to \$5,000.**

## Postings

New York law requires that employers post and maintain updated information regarding the state's minimum wage rate. The NYDOL has provided a [model poster](#) that employers can use to satisfy this requirement. Employers in the hospitality industry must also post the Hospitality Industry Minimum Wage Order poster.

## Prohibited Practices

New York law prohibits employers from discriminating and retaliating against their employees.

### Wage Discrimination

Employers cannot pay a lower wage rate to an employee solely based on the employee's sex. Wage rate discrimination occurs when an employer pays different wages to employees of the opposite sex who work in the same establishment, under similar working conditions and who perform work that requires equal levels of skill, effort and responsibility.

However, employers can pay different wage rates to employees based on seniority, merit or any system that measures the quality or quantity of production.

Employers that violate wage discrimination laws are subject to a fine of \$500 for each violation and, if necessary, the costs of any legal or administrative action taken by the NYDOL to collect the fine.

### Retaliation

Employers cannot discharge, discipline, penalize or discriminate in any other manner against an employee who files a claim or is the cause of an investigation of his or her employer's wage payment practices. The same applies to individuals who testify, are about to testify, cooperate with the NYDOL in a wage investigation or exercise any other right under New York labor and employment laws.

Employers that retaliate against their employees commit a Class B misdemeanor and may be sued by the NYDOL or the injured employee in civil court. A Class B misdemeanor is punishable by a fine of between \$50 and \$500 (up to \$2,000 for corporations), imprisonment for up to three months or both..

Civil penalties may include a fine of between \$1,000 and \$10,000, liquidated damages of up to \$10,000, an order to reinstate or rehire the injured employee (with a restoration of the employee's seniority), an award of lost compensation for each aggrieved employee, and court costs and reasonable attorneys' fees.

## Criminal Penalties

Employers that pay wage rates below the minimum wage rate face criminal charges punishable by a fine, imprisonment or both. The amount of the fine and the length of imprisonment depend on the employer's record, size and its good faith efforts to comply with NYMWA requirements. Higher penalties are imposed on repeat violators. Each payment to any employee in any week that violates the NYMWA is a separate offense.

Violation	Charge	Fine	Imprisonment Term
<b>First violation</b>	Misdemeanor	\$500-\$20,000	Up to one year
<b>Second or subsequent violation (within six years of first violation)</b>	Felony	\$500-\$20,000	Up to one year and one day

## Civil Penalties

Employers that pay their employees a wage rate lower than the minimum rate may be the subject of civil lawsuits. An employee has six years from the time of the wage violation to file a complaint or ask the NYDOL to start an investigation. The NYDOL may initiate a civil lawsuit against the employer on the employee's behalf.

In civil court, employers that paid wages below the minimum wage rate may be ordered to pay an employee all unpaid wages, court costs, reasonable attorneys' fees, interest on unpaid wages and an additional amount of up to 100% of the unpaid wages as liquidated damages.

Employers can avoid paying liquidated damages if they can prove the subminimum wage payment was not willful or they had a good faith basis to believe that the subminimum wage payment complied with the law.

Any agreement between the employer and its employees for wages below the minimum wage rate is void and cannot be used as a defense to a civil action unless an NYMWA exception applies.

## **Administrative Penalties**

The NYDOL can issue an order to employers directing them to pay unpaid wages to any employees who receive pay below the minimum wage rate. The administrative order may also direct an employer to pay interest on unpaid wages, administrative costs and liquidated damages up to 100% of the amount of unpaid wages.

## **Enforcement**

Employees and the NYDOL have the right to enforce any judgment or order issued against an employer that pays employee wages below the minimum wage rate. Employers and the NYDOL can also collect from employers any attorneys' fees and collection costs they incur when enforcing a judgment or administrative order.

In addition, if any portion of a judgment remains unpaid after 90 days the judgement becomes final (and no appeal is pending), the total amount of the judgment increases by 15%.

## **More Information**

Please contact Heffernan Insurance Brokers for more information on wage and work-hour laws in New York.

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