

EMPLOYMENT LAW SUMMARY

New York Wage Payment Requirements



Several federal laws regulate wage payments, including the Fair Labor Standards Act (FLSA), the Davis-Bacon Act and the Service Contract Act. New York law also imposes state wage payment requirements. When federal and state laws are different, the law that is more favorable to the employee will apply. The [New York Department of Labor](#) (NYDOL) enforces wage payment standards throughout the state.

Method of Payment

New York law requires employers to pay wages in lawful United States currency. Employers may satisfy this obligation by paying wages with cash, check or through direct deposit or payroll debit card.

However, state law requires employers to obtain advance, written consent before directly paying or depositing employee net wages or salary in a bank or other financial institution. Beginning March 13, 2024, EAP employees are exempt from the advance, written consent request if they make at least \$1,300 per week.

Frequency of Payment

In New York, the frequency of wage payment depends on the employee's occupation. Different payment requirements exist for manual workers, railroad workers, commissioned salespersons and clerical personnel.

However, most employers must pay employee wages at least **twice per month**, on pre-established regular paydays. New York laws do not restrict employers from paying wages to their employees at earlier days or at more frequent intervals. The information below summarizes New York frequency of payment requirements.

COMMISSION SALES PERSONS

Minimum Payment Frequency: Monthly

Covered Pay Period: By the last day of the month following the month when commission is earned.

Conditions and Regulations:

- Additional compensation (extra incentives, bonuses and special payment) may be paid less frequently than once per month but no later than what is provided in an employee's written employment agreement.
- Wage payment agreements must be in writing, signed by the employer and the commission sales person, kept on file for at least three years and made available to the NYDOL upon request. The agreement must describe how wages, commissions and other monies are calculated and paid. The agreement must also provide details on how to process an employee's last payment of wages.

RAILROAD WORKERS

Minimum Payment Frequency: Weekly (on Thursdays)

Covered Pay Period: The seven-day period ending on Tuesday of the preceding week.

Conditions and Regulations:

- At a worker's written request and address notification, employers have an obligation to send the paycheck through first-class mail via the U.S. Postal Service.
- An exception exists for workers in commuter railroads under the jurisdiction of the metropolitan transportation authority.

MANUAL WORKERS

Minimum Payment Frequency: Weekly

Covered Pay Period: Within seven calendar days after the end of the week where wages are earned.

Conditions and Regulations:

Employers can pay semi-monthly wages to manual workers if the employer:

- Is a nonprofit organization; or
- Has employed at least 1,000 workers in the state during the previous three years or 1,000 workers in the state and 3,000 workers out of the state during the previous year.

Employers must receive NYDOL approval for this exception. Approval is possible for employers that have:

- Sufficient solvency to meet payroll obligations;
- No outstanding tax or unemployment insurance contributions;
- Current and valid workers' compensation and employee disability coverage;
- A history of meeting payroll obligations; and
- A computerized payroll record system that specifies each employee's number of hours worked, rate of pay, gross wages, deductions and date of payment.

CLERICAL AND OTHER WORKERS

Minimum Payment Frequency: Semi-monthly

Covered Pay Period: On regular, predetermined paydays.

Under state law "clerical and other workers" includes bona fide executive, administrative and professional employees who earn at least \$900 per week.

However, on Sept. 15, 2023, New York [amended](#) its Labor Code to increase the salary threshold executive, administrative and professional (EAP) employees need to meet in order to qualify for the state's wage payment exemptions. Beginning March 13, 2024, EAP employees who earn less than \$1,300 per week will be subject to the same wage payment protections as other nonexempt employees.

Withholdings and Deductions

Employers may not withhold all or a portion of an employee's wages unless the withholding or deduction is authorized by law or the employee for his or her convenience or benefit. Common deductions authorized by law include taxes, union dues, FICA contributions, garnishments and court-ordered deductions such as child support. Common deductions authorized by employees include funds for employee participation in:

- Hospitalization and medical insurance plans;
- Savings plans and deposits to financial institutions;
- Pharmacy purchases made at the employer's place of business;
- Stock and bond purchases;
- Charitable donations

- Retirement plans;
- Discounted parking, fare cards or other entitlements to use mass transit;
- Fitness center, health club and gym membership dues;
- Cafeteria and vending machine purchases made at the employer's place of business; or property;
- Purchases made at employer gift shops (employer must be a hospital, college or university);
- Supplemental retirement plans;
- Loan payments;
- Tuition, room, board and fees for educational institutions;
- Day care and before- and after-school care expenses;
- Union dues;
- Housing;
- Employer goods or services; and
- Employer equipment

In addition, certain deductions are authorized only in limited circumstances. These include deductions necessary to correct an overpayment of wages caused by an employer's mathematical or clerical error and deductions used to repay a wage advance or employer loan. New York law requires employers to follow specific procedures and strict guidelines when making these types of deductions.

Finally, New York law prohibits employers from making deductions from their employees' wages to replace the cost of spoilage or breakage, correct cash shortages (or losses), or cover fines and penalties employees incur for lateness, misconduct or quitting without notice.

Employers should record each withholding with accuracy. Wage deductions and withholdings cannot reduce an employee's gross wages below the minimum wage rate, unless a wage allowance or credit applies. Employers may not derive any financial gain from wage deductions.

Benefits and Wage Supplements

Under state law "benefits or wage supplements" include expense reimbursements, health, welfare and retirement benefits and vacation, separation or holiday pay. Employees must receive these benefits within 30 days of when they accrue unless they qualify for an exemption, such as the EAP exemption mentioned above.

Statements

Employers must provide each employee with an itemized statement at the time that the employee's wages are paid. The itemized statement must show:

- Gross wages earned;
- Number of hours worked;
- Wage rate;
- Wage allowances (if any are claimed);
- All withholdings and deductions for that pay period; and
- Net wages earned.

Last Payment of Wages

In the event of employment separation, employers are required to pay all of an employee's outstanding wages by the following regular payday. Employees may request that their last payment be sent by mail.

Joint Liability for Wage Claims

The state of New York has adopted a [new law](#) (AB 3350) that holds construction contractors and subcontractors jointly and severally liable for wage claims brought against their subcontractors. The new law becomes effective on **Jan. 4, 2022**, and will apply to all new, renewed, modified and amended contracts.

The new law allows employees and the NYDOL to file wage claims against contractors and subcontractors for unpaid wages. Contractors that cover a wage claim on behalf of their subcontractors can bring legal actions of their own to recover any amount paid to satisfy wage claims.

A contractor's joint and several liability for unpaid wages is limited to wage claims that take place within the **three years prior** to the initiation of the claim. Under AB 3550, a contractor's liability for wage claims cannot be waived by agreement or release, except through a valid collective bargaining agreement with a bona fide building and construction trade labor organization.

Finally, AB 3550 also creates a right for contractors to request and inspect subcontractor records to ensure that subcontractors are complying with wage payment requirements. The law allows contractors to withhold payments owed to subcontractors that fail to provide this information on a timely basis.

Enforcement and Penalties

The NYDOL can issue an order of compliance to employers that fail to make wage payments as prescribed by state law. The administrative order may also direct an employer to pay interest on noncomplying wage payments, administrative costs and liquidated damages **up to 100 percent** of the amount of noncomplying wage payments.

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

Employers should note that on Aug. 20, 2021, New York state [amended](#) its labor laws to explicitly indicate that "there is no exception to liability [...] for the unauthorized failure to pay wages, benefits or wage supplements.

Wage Theft and Larceny

On Sept. 9, 2023, New York amended its penal code to include compensation for labor or services in its definition of "property." This means that failure to compensate employees for their work is not only considered wage theft but is also subject to the state's larceny laws. The amendment became effective on the day it was adopted.

The Amendment specifically states that an employer obtains property by wage theft when:

- The employer hires a person to perform services;
- The hired person performs the services they were hired to perform; and
- The employer does not pay the wages promised to the hired person for the work performed.

In this context, wages promised must, at a minimum, satisfy the applicable minimum wage and over time pay requirements.

More Information

Please contact Heffernan Insurance Brokers for more information on wage payment and work hour laws in New York. Also, please note that NYDOL wage orders may impose additional or more specific requirements for certain industries. This information is available on the NYDOL's [website](#).

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