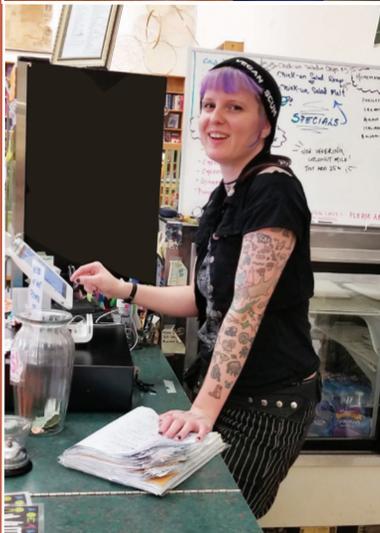


# Upstate New York Restaurant Owner's Manual

An Introduction to Hospitality Industry Labor Laws



2nd Edition, April 2019

Cover photographs by Pete Meyers. Left to right, Ashley Cake and Dave Thomas of The Watershed, Adil Gruihi of Casablanca Pizzeria, Tammie Olisheski of Ten Forward Cafe, Subworkers, Pam Gueldner and Kathleen Pasetty of Fork & Gavel and Mandible Restaurants

[DISCLAIMER]

This booklet is distributed with the understanding that neither the Tompkins County Workers' Center nor the authors of the booklet are rendering legal advice on the subjects discussed here. If you require legal advice, you should seek the services of a competent professional. All regulations are current as of March 2019.



**ROBERTA REARDON**

Commissioner

As New Yorkers, we are privileged to live in a state brimming with culture. We celebrate our diversity and differences, and restaurants are an example of how we express our love for our culture and share it with others. Through the experience of dining together, we strengthen our bond as a community. Restaurants add vibrant flavor to the places we live, and are often the catalyst that encourages visitors and locals alike to explore and patronize our downtowns. The New York State Department of Labor and the Tompkins County Workers Center deeply value the significant contribution restaurants make to the economic vitality of the region, and consider restaurants esteemed cornerstones of the business community.

For generations, families, friends, neighbors and colleagues have gathered at their favorite local restaurants to share meals. These establishments are home to memories made, milestones celebrated and conversations had. They are keepers of countless smiles, laughs and unforgettable moments. The proprietors and staff are far more to their patrons than simply those serving food and performing a service; for many, they feel like family.

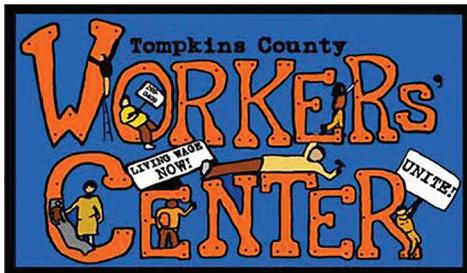
Operating a restaurant comes with tremendous responsibility. As a restaurant owner, it is your duty to protect those who work for you. It is a privilege to employ treasured neighbors and friends, and place your trust in them to act as ambassadors for your business, your passion and your culture. As times evolve, so do workplace standards. It is imperative that you remain vigilant in knowing the law. The prosperity of your business and workforce depend on your keen understanding of and commitment to compliance. Paying your staff the mandated wage, ensuring they are paid the wages they are owed, and maintaining a safe work environment free from occupational hazards, discrimination, and harassment make the tangible promise that you value them and take pride in your business. By complying with state and federal laws, you set a positive example within your community, and become the gold standard for doing business.

The New York State Department of Labor is your ally. The success of your business is our priority. We commend your investment in your community, and reaffirm our investment in you. This manual is a phenomenal resource, and we extend our gratitude to the Tompkins County Worker Center for their tireless work toward ensuring a safe and dignified workplace for all.

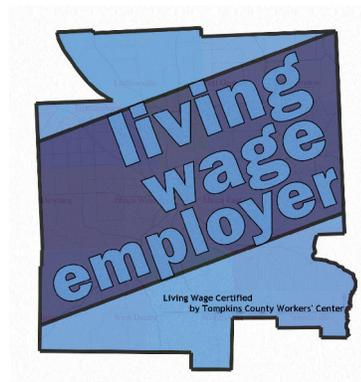
Sincerely,

Roberta Reardon

W. A. HARRIMAN STATE OFFICE CAMPUS, BUILDING 12, ALBANY, NY 12240



**Upstate New York  
Restaurant Owner's Manual  
An Introduction to Hospitality  
Industry Labor Laws**



2nd Edition, Mar. 2019

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## Introduction

Ashley D. C. Cake

President and CEO, The Watershed (GDAM Industries, Inc.)

Growing up in Ithaca, from my first job as a cashier at the Hancock Street P&C in 1994 to owning the Watershed today, working in food service and hospitality has not only put me in touch with the growing market of affluent consumers, but also allowed me to develop complex relationships of solidarity with my fellow workers. As the cost of living increases amidst stagnating wages, the service of luxury commodities exacerbates a two tier system with laborers below the line supporting the consumers up top. Bartending at high end establishments, my job is in large part to “make it look easy.” Good service means obscuring the supply chain as well as my own and others’ labor in making luxury commodities available to our predominantly wealthy clientele, all without their having to think about where it’s all coming from and at what cost. I joke sometimes that bartenders and servers wear black because like stage hands we are not to be seen, our interests are not the priority in the show of service.

This is the over-arching reality that motivated us at the Watershed to certify ourselves as a living wage employer, guaranteeing our bartenders at least \$16 an hour regardless of service volume. A 2017 economic analysis put together by Tompkins County Area Development reveals that around 8% of Tompkins County’s jobs are in accommodation and food service, with average annual earnings of around \$21,000 per year, far below the \$31,000 annual living wage without health benefits set by the Alternatives Federal Credit Union Living Wage Study released in 2017. Ithaca itself is one of the metro areas with the highest income inequality in the nation. In 2016 Mayor Svante Myrick brought home the salient point that while Ithaca itself is a booming economy that has enjoyed a 37% growth in average wealth, there has only been a 15% increase in median wealth. The rising tide of prosperity is not lifting those boats with holes in them.

The reality is that many hospitality workers are just scraping by in Tompkins County. Many have to choose between unaffordable housing in the

City of Ithaca, and shifting unaffordability to their transportation costs and the expense of owning and maintaining a car amidst the congested traffic and scarce parking in the rapidly developing Central Business District. Single parents working in the service industry have to weather all of these challenges while affording childcare at hours when schools and subsidized child care programs are not typically available and single parent families suffer disproportionately from the seasonal, irregular scheduling that is endemic to the service and hospitality industries.

The regulations and guidelines contained in this manual are an important rubric for strengthening the position of hospitality workers, particularly those making near the minimum wage. Given the high cost of doing business in Ithaca, many business owners are inclined to cut and suppress their labor costs before other measures, and workers are left with growing job insecurity and are increasingly vulnerable to wage theft and exploitation. That inequity is not only economically unsustainable but morally unconscionable. In order to address this problem and sustain the economic growth in Tompkins County, business owners must be held accountable for compensating and protecting their workers according to county, state, and federal law, and the interests of labor must be prioritized, advocated for, and ultimately elevated.

This manual, as well as the excellent work done by the Tompkins County Workers Center, is an important step in that direction. As a career service worker and now an employer, the Workers Center has given me ample resources and support to do the best I can for my employees, and I hope that many other businesses in Tompkins County take up these resources and work in solidarity with their employees to foster a more equitable economy and a mutually sustainable future for our shared communities.



## 1. Hiring

*Employers may not discriminate on the basis of sex, gender identity, age, race, national origin, religion or disability in hiring.*

### Interviews

*What questions cannot be asked in an interview or on an application?*

Questions that are not related to the job or concerning age, race, religion, marital status, familial status, national origin, disability and other personal characteristics are illegal. For example, employers cannot ask:

- Are you a US citizen? (Acceptable question: Are you authorized to work in the US?)
- Where were you born? Where were your parents born?
- What is your native language? (Acceptable question: What languages do you read, speak or write?)
- How old are you? (Acceptable question: Are you over 18?)
- What is your general state of health? When was your last physical examination?
- Have you ever been arrested or accused of breaking the law? (Acceptable question: do you currently have a pending arrest or criminal accusation, or have you ever been convicted of a crime?)
- When did you graduate from college?
- What is your marital status? Is your spouse employed?
- Who lives with you? Do you plan to have a family?
- How many children do you have or plan to have? What do you do for child care?
- What social organizations do you belong to? (Acceptable question: Do you belong to any groups that are relevant to your ability to perform this job?)

### Can an employer ask about disability during a job interview?

You cannot ask an applicant if they are disabled, or ask about the nature or the severity of the disability. If you are aware of the disability, you may ask how the applicant can perform the duties of the job and whether an accommodation would be needed. Once a job is offered, a medical exam can be required. Employers have a duty to provide a reasonable accommodation to persons with disabilities. This extends to job applicants.

*For more information, please see [Disability and Accommodation](#).*

## Laws Regarding Applicants

### Teen applicants:

All applicants under age 18 must have an employment certificate (“working papers”) from their school. Employees under 18 are subject to certain restrictions on their hours of work, particularly during the school year, as shown below. Employers must post a schedule of when employees under 18 are working.

## Teen Workers

When school is in session				
	Maximum Daily Hours	Maximum Weekly Hours	Maximum Days Per Week	Permitted Hours
Ages 14 & 15	3 hours on school days 8 hours on other days and holidays	18	6	7:00AM to 7:00PM
Ages 16 & 17	4 hours on school days (Monday-Thursday) 8 hours on other days and holidays	28	6	6:00AM to 10:00PM

*Note: 16 and 17 year olds may work between 10 p.m. and midnight on a day before a school day if they have written permission from a parent or guardian and consent from their school.*

When school is not in session				
	Maximum Daily Hours	Maximum Weekly Hours	Maximum Days Per Week	Permitted Hours
Ages 14 & 15	8	40	6	7:00AM-9:00PM June 21st to Labor Day
Ages 16 & 17	8	48	6	6:00AM to Midnight

Like all workers, youth workers must earn at least the Upstate New York minimum wage which \$11.10 in 2019, \$11.80 in 2020 and \$12.50 in 2021 (outside of New York City, Long Island and Westchester). Teen workers must be paid for all hours and parts of hours that they work. They are also entitled to over-time pay (1.5 times normal wage) for all hours worked over 40 in one week.

Applicants with a criminal record:

Employers may not ask applicants to reveal or discuss any arrest that did not lead to a conviction, or ask about convictions that were resolved by a youthful offender adjudication, or resulted in a sealed conviction. It is legal to ask job applicants about past convictions for criminal offenses. A guilty plea is the same as a conviction. An ex-offender can be denied a job if their convictions are 'directly related' to the job in question where hiring the person would create 'unreasonable risk' to the safety of people or property.

An example of 'directly related' would be a person who has a conviction for wage theft applying for a job in management. It would be permissible for the business to deny them a position in which there is a reasonable risk that they could falsify time sheets or try to force employees to work unpaid hours, but not permissible to discriminate against them with respect to other duties without such powers.

It is illegal for an employer to have a policy of not hiring any persons with prior convictions. You can consider a number of factors such as seriousness of the offense, the time that has passed since the offense, rehabilitation and other relevant information.

## **Pre-employment tests:**

### ***Credit bureaus and detective agencies***

Applicants must be notified in writing if the employer intends to use an outside company do a credit check or other investigation, and must consent to provide the required information for the investigation.

### ***Mandatory drug testing***

Mandatory drug testing for applicants is legal. If the employees are represented by a union, drug testing for employees is a subject for negotiations.

### ***Lie detector or genetic tests***

The Employee Polygraph Protection Act (EPPA) makes it illegal for an employer to ask or require an employee to take any kind of lie detector test or to take adverse action against an employee for refusing to submit to a lie detector test.

In New York, the use of a 'Psychological Stress Evaluator' (PSE) is strictly prohibited. PSEs are devices that are marketed to measure of truthfulness based on voice fluctuations. An employer who violates this law is subject to a misdemeanor charge and can be sued.

Under NY Human Rights Law, an employer cannot request, require or administer a genetic test to a person as a condition of employment nor can an employer obtain results of an employee's genetic test results. If an occupational environment would create an increased risk for people with a particular genetic abnormality, a specific genetic test can be required.

## **Pay Notice and Employer Policies**

### ***Pay notice at time of hire***

At the time of hiring, newly-hired employees must be given a written notice including all of the following information:

- Rate or rates of pay, including overtime rate of pay (if it applies)
- How the employee is paid: by the hour, shift, day, week, commission, etc.
- Regular payday
- Official name of the employer and any other names used for business (DBA)
- Address and phone number of the employer's main office or principal location
- Allowances taken as part of the minimum wage (tips, meal and lodging deductions)  
This notice must be provided in English AND the employee's primary language.
- The employee must also be notified seven days in advance if the employer changes pay or other terms contained in the notice.
- You must have each employee sign and date the completed notice, and provide a copy to each employee.
- Appendix A contains a sample form that must be completed and provided to the employee.

### **Form I- 9:**

All employees must complete a Form I-9 within 3 days of hire. This form is proof of the employee's identity and authorization to work in the United States. You can download Form I-9 at <<http://www.uscis.gov/files/form/i-9.pdf>>. This form must be completed and kept by the employer.

### **Employer policies**

You are not required to have an employee handbook, but are required to provide employees with information about policies on sick days, vacation days, pay day and other rules. You can post these policies on an employee bulletin board. Required posters can be found here: <<https://labor.ny.gov/workerprotection/laborstandards/employer/posters.shtm>>.

### **Is establishing an English-only workplace legal?**

Establishing English-only rules in the workplace and forbidding other languages can only be done for non-discriminatory reasons, such as to promote the safe or efficient operation of the business. If you establish such a rule, you must inform employees about when they are required to speak English and what the consequences are for violating the English only rule. Employees are free to speak whatever language they want during breaks and non-working times in an English-only workplace.

## **2. Wages and Payroll**

### **Minimum Wage**

Workers must be paid at least the New York State minimum wage which increases by the year. The Wage Theft Prevention Act imposes criminal penalties against employers that fail to pay minimum wage. The first violation is a misdemeanor and, if convicted, the employer may be imprisoned for up to three months and fined \$500 per week of underpayment. Also, the offender may be required to pay a restitution. A second violation within six years of the first conviction is considered a felony with a maximum fine of \$20,000.

*Please see the chart below for the minimum wage by year in Upstate New York:*

<b>New York State Minimum Wage Rate Schedule</b>			
<b>Date new wage begins</b>	<b>12/31/18</b>	<b>12/31/2019</b>	<b>12/31/2020</b>
<b>Hourly wage</b>	<b>\$11.10</b>	<b>\$11.80</b>	<b>\$12.50</b>

*Note: different wages apply to residents of New York City, Long Island and Westchester*

## There are a few exceptions to the minimum wage regulation:

### Tipped employees

Food service workers\* who earn tips may be paid a lower “tipped” minimum wage, however the employee’s tips added to this base wage must equal at least minimum wage. If the employee does not earn enough tips to raise their weekly wage to the state minimum wage, the restaurant must pay the difference.

*Tip Credit is defined as the difference between the minimum wage for tipped workers and the standard state minimum wage.*

### New York State Minimum Wage for Tipped Workers

Date new wage begins	12/31/18	12/31/19	12/31/20
Food service workers tipped wage	\$7.50 (Tip credit: \$3.60)	\$7.85 (Tip credit: \$3.95)	\$8.35 (Tip credit: \$4.15)
Other service employees tipped wage (food delivery, valet parkers, etc)	\$9.25 (Tip credit: \$1.85)	\$9.85 (Tip credit: \$1.95)	\$10.40 (Tip credit: \$2.10)

*Note: different wages apply to residents of New York City, Long Island and Westchester*

\* Food service workers include wait staff, counter workers who serve customers, bartenders, bar backs, service bartenders, bus persons, hosts and captains who serve customers.

### To pay a reduced minimum wage to tipped employees, you must:

1. keep records of employees’ tips
2. inform employees that their wage is being decreased under the tip credit provision
3. pay the difference if the employees’ reduced minimum wage plus tips do not equal at least the legal minimum wage

**Fast food employees:** Employees of fast food chains are entitled to a higher minimum wage. Fast food chains are defined as establishments that:

1. Primarily serve food or drinks, including coffee shops, juice bars, donut shops, and ice cream parlors,
2. Offer limited service, where customers order and pay before eating, including restaurants with tables but without full table service, and places that only provide take-out service,
3. Have a chain of 30 or more locations, including individually owned establishments associated with a brand that has 30 or more locations nationally.

## Fast food employees are entitled to the following wages which increase each year:

New York State Minimum Wage for Fast Food Employees				
Date new wage begins	12/31/2018	12/31/2019	12/31/2020	07/01/2021
Fast food employee wage	\$12.75	\$13.75	\$14.50	\$15.00

Fast food employees are still entitled to overtime pay, which is 1.5 times the normal pay for each overtime hour worked. For example, if a fast food employee makes \$14.50/hour, overtime pay would be \$21.75/hour.

### Other laws regarding wages:

**Split shifts:** Split shifts (or “Spread of Hours”) is the length of time between the beginning and end of an employee’s workday.

**Example:** 7am – 10am, 7pm – 10pm = 6 hrs. worked, 15 hour spread  
11:30am – 3pm, 4pm – 10pm = 9 1/2 hrs. worked, 10 1/2 hour spread

On one day on which the spread of hours exceeds 10, an employee shall receive one additional hour of pay at the basic minimum wage hourly rate. This is not included when calculating overtime pay, and can’t be offset by any credits for meals or lodging provided to the employee.

**Call-in pay:** An employee who reports for a scheduled shift but is unneeded and sent home must be paid for at least three hours or the number of hours in the regularly scheduled shift, whichever is less. Employees who leave voluntarily are not eligible for call-in pay.

### Laws Regarding Tips

Management may not withhold tips from employees or require employees to share their tips with managers or owners.

### Tip sharing and tip pooling:

Tipped employees can voluntarily share or pool their tips. They may also be required by their employer to share or pool their tips, as long as the employees share the tips themselves. The employer may set the percentage to be distributed to each type of occupation (waiter, bartender, host, etc.) from the tip pool. Only food service workers may receive distributions from the tip pool.

When you establish a tip share or tip pool, you must 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 (example: waiters, cooks, hosts, etc.) that you deem eligible to receive tips from the pool or share system
- The shares of tips that each occupation is scheduled to receive from tip sharing/pooling
- The *amount* of tips that each employee receives by date

The records must be regularly made available to participants in the tip pool or share systems to review. A business owner or a manager who works in a customarily tipped role, for example an owner who waits tables during some shifts, may receive tips that are paid directly to them if the workplace does not practice tip pool/share. An owner or manager may not receive a share of tips from a tip pool/share unless only owners and managers worked during the shift covered by the tip pool.

**Consolidated Appropriations Act (2018):** A tip pool cannot include non-tipped employees (for example dishwashers, cooks, etc.) unless the a tip credit is not used by the business. In other words, as long as everyone in the tip pool is paid at least minimum wage without tip credit, the tip pool may be shared between tipped and non-tipped employees. This rule excludes owners, managers or supervisors -- all of whom may not receive tips unless only owners and managers are on shift.

**Tips left on credit cards:** When tips are charged on credit cards, you may subtract from the employee's tip the employee's pro-rated share of the transaction percentage charged by the credit card company.

**Working as a tipped employee and performing non-tipped jobs:** When a tipped employee spends part of their time per week doing non-tipped jobs (for example a waiter being assigned to wash dishes) it is known as a "Dual Job." If the tipped employee spends more than 20% of their time per workweek doing non-tipped jobs, they must be paid the standard minimum wage for the time performing these jobs instead of the tipped minimum wage. If an employee spends more than 20% of their time per work week doing non-tipped jobs, you cannot take a tip credit for that employee.

*Non-managerial employees must be paid an hourly rate of pay. Employers may not pay employees on a daily, weekly, salary, piece rate or other non-hourly rate of pay. If you choose to pay managers as overtime-exempt employees, they must be paid the minimum salary for overtime-exempt employees (Please see Overtime exempt employees below).*

**Overtime Pay:** This law applies to all wage workers, including tipped employees, employees under 18, and fast food workers.

If an employee works more than 40 hours in a week, they must be paid 1.5 times their regular rate for each overtime hour after the 40th hour.

*For example: If your normal hourly wage is \$12.00/hour, overtime pay would be \$18.00/hour.*

### **Overtime for tipped employees:**

Tipped employees must be paid 1.5 times the legal minimum wage (\$11.10/hour in 2019, see chart on PAGE 10) minus the tip credit for every overtime hour worked after the 40th hour. Tip credit is defined as the difference between the minimum wage for tipped workers and the standard state minimum wage. The tip credit must be subtracted after the minimum wage has been multiplied by 1.5 times.

For example, an employee makes a tipped minimum wage of \$7.50/hour and their tip credit is \$3.60, so their overtime pay is:

$$\$7.50 + \$3.60 = \$11.10$$

$$\$11.10 * 1.5 = \$16.65$$

$$\$16.65 - \$3.60 = \$13.05 \text{ for each hour of overtime pay.}$$

### Overtime exempt employees:

While most employees under state and federal law must be paid overtime, Executive Employees who meet certain criteria may be exempt from overtime pay. To qualify for the Executive Employee exemption, the job position must meet all the following tests:

- The Employee's primary duty consists of the management of the business
- The Employee regularly directs the work of two or more other employees
- The Employee has the power to hire or fire other employees
- The Employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees have particular weight
- The Employee regularly exercises power at their own discretion
- The Employee is paid on a salary basis. The minimum salary is shown in the table below, and the amounts must include board, lodging, other allowances and facilities.

### Minimum Salary for Executive Employees

Date New Wage Begins	12/31/2018	12/31/2019	12/31/2020
Minimum Weekly Salary for Executive Employees	\$832.00	\$885.00	\$937.50

It is not required to classify an employee as exempt from overtime if their responsibilities meet the duties test shown above. You may choose to pay employees in such positions on an hourly overtime-eligible or salaried overtime-eligible basis, subject to minimum wage and overtime rules.

### Payroll

#### When must employees be paid?

In New York State, restaurant workers must be paid their wages at least weekly, with no more than a 7 day lag time between the end of the pay week and the payday.

A "pay week" is the seven consecutive days that consistently make up a business' working week. For example, a business may have a pay week that is Monday through Sunday, or Wednesday through Tuesday. A worker must be paid for all time worked; employers may not require tasks to be performed 'off the clock,' including cashing out at the end of a shift, setting up machinery, job training or giving update reports to the next shift. Failure to pay overtime is now an offense punishable by fines or prison time.

### Payroll deductions

#### Legal Payroll deductions:

- Social security
- Taxes
- Wage garnishments or court-ordered payments (example: child support)

### **Deductions that are allowed IF you have the employee's authorization in writing:**

- Meals – Employers may deduct a meal allowance of \$2.90 For Food Service workers, \$3.10 for Service Workers, and \$3.80 for Others per meal. These rates will rise to \$3.00 Food Service, \$3.30 Service, and \$4.05 for Others on and after December 31, 2019, and \$3.15 Food Service, \$3.45 Service, and \$4.30 Other on and after December 31, 2020. A meal shall provide adequate portions of a variety of wholesome, nutritious foods and shall include at least one of the types of food from all four of the following groups: 1) fruits or vegetables, 2) grains or potatoes, 3) eggs, meat, fish, poultry, dairy or legumes and 4) tea, coffee, milk or juice.
- Housing – If housing is provided for employees, employers may deduct a lodging allowance of \$1.85 per day or a maximum of \$11.10 per week for food service workers, \$2.15 per day or a maximum of \$15.05 per week for service workers and \$2.70 per day or a maximum of \$18.65 per week for other workers.
- Daily housing maximums will rise to \$1.80 Food Service, \$2.30 Service, and \$2.90 Other on and after December 31, 2019, and \$1.90 Food Service, \$2.45 Service, and \$3.05 Other on and after December 31, 2020
- Weekly housing maximums will rise to \$11.60 Food Service, \$14.80 Service, and \$18.35 Other on and after December 31, 2019, and \$12.10 Food Service, \$15.70 Service, and \$19.45 Other on and after December 31, 2020.
- Health or disability insurance
- Pension
- Union dues

### **Illegal Payroll deductions:**

- Deductions for breakage, losses to the employer, employee mistakes
- Deductions for customers who walk out without paying
- Uniform costs or cleaning costs of uniforms
- Kickbacks or bribes
- Payments for lost/stolen property, unsatisfactory work or as other “punishment”

## **3. Employment**

### **Shifts & Breaks**

If the employee is over 18, there is generally no restriction on the number of hours or days they work in a week, although workers are entitled to at least one day (24 hours) off per week. An employee can be required to work weekend and night shifts.

There is no requirement in NY for breaks other than an uninterrupted unpaid meal period of at least 30 minutes if the employee is scheduled to work more than six (6) hours. Under federal law, employees must be allowed reasonable breaks to use the bathroom.

### **Uniforms**

If you require employees to wear a specific uniform, you must provide them with the uniforms, replace them when necessary, and either clean and maintain them yourself or pay the employee a weekly uniform maintenance allowance. This is based on how many hours the employee works per week, as shown on page 15:

Weekly Rate for Uniform Maintenance Allowance:			
Employee's hours worked per week:	30 hours or more	More than 20 and less than 30 hours	20 hours or less
After 12/31/2018	\$13.80	\$10.90	\$6.60
After 12/31/2019	\$14.70	\$11.60	\$7.00
After 12/31/2020	\$15.55	\$12.30	\$7.45

*Note: Different rates apply to New York City, Nassau, Suffolk, and Westchester Counties. The uniform maintenance pay is due to all workers who wear uniforms, although there are a few exceptions:*

“Wash and wear” uniforms are uniforms that can be easily washed with other clothes and do not require special care like dry cleaning or ironing. “Wash and wear” uniforms may be exempt from the uniform maintenance requirement. To qualify for this exemption, the number of uniforms provided to the employee must be consistent with the average number of days per week worked by the employee and the uniform must be able to be laundered routinely along with personal clothing.

If an employee chooses not to use an employer provided laundry service, the employer need not pay uniform maintenance to that employee if the employer:

- 1) launders required uniforms free of charge and with reasonable frequency;
- 2) ensures the availability of an adequate supply of clean, properly-fitting uniforms; and
- 3) informs employees individually in writing of such service.

Dress Codes can be established that require employees to wear a generic uniform (example: black pants and a white shirt) but not a specific uniform. This also does not require a payment for purchasing, maintenance or cleaning.

### **Record Keeping Requirements**

You must provide your employees with a pay stub that shows the following information:

- Employee name and address
- Social security number or other employee identification number
- Occupational classification
- Number of hours worked daily and weekly, including the time of arrival and departure for each employee working a split shift or spread of hours exceeding 10;
- Regular and overtime hourly wage rates;
- Amount of gross wages
- Deductions from gross wages
- Amount of net wages
- Tip credits, if any, claimed as part of the minimum wage;

- Meal and lodging credits, if any, claimed as part of wages;
- Money paid in cash; and
- Student classification.
- For each student employee, a statement from the school which such individual attends indicating whether or not such individual: 1) is a student whose course of instruction is one leading to a degree, diploma or certificate; or 2) is completing residence requirements for a degree; and 3) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

The records should also indicate whether the employee has uniforms maintained by the employer. For individuals permitted or suffered to work in an executive or administrative capacity, total wages, and the value of meal and lodging credits, if any, for each payroll period.

### **What if an employee worked overtime?**

If the employee worked overtime and is required to be paid at a higher rate for overtime hours, the payroll records must also include the four items listed below, in addition to the items listed above:

- the number of regular hours worked;
- the regular hourly rate or rates of pay;
- the number of overtime hours worked; and
- the overtime rates of pay.

### **How long must you keep records?**

Payroll records for each employee must be kept for at least 6 years. The payroll records must show the following information for each employee:

- Name and address
- Social security number
- Occupational classification and wage rate
- Hours worked daily and weekly
- Amount of gross wages
- Deductions from gross wages
- Allowances claimed as part of minimum wage (tip credit, meals and lodging)
- Money paid in cash
- Student classification
- Whether employee uniforms are laundered, cleaned and maintained by the employer

## **4. Workers' Entitled Benefits**

### **Worker's Compensation**

Workers' Compensation (or Workers' Comp) is a form of insurance required by law for all employees. The insurance covers employees who are injured or become ill in the workplace as a direct result of working. The insurance is paid for by the employer, and it is illegal to require employees to contribute to the cost of the insurance. The penalties for not having workers' compensation insurance are extremely high, particularly when the employees are under 18.

An employee loses their right to workers' comp if the injury results from intoxication from alcohol or drugs, or if they injure themselves or others on purpose.

*You can learn more about workers' comp on the Workers' Compensation Board:  
<<http://www.wcb.ny.gov/>>*

## Disability Insurance

An employer that has employed one or more employees in New York State on each of 30 days in a calendar year must provide Disability coverage for employees. Most employers purchase this as an insurance policy, although an employer may apply to the Chair of the Workers' Compensation Board for approval as a self-insurer. You must post the disability coverage Notice of Compliance prominently in the place of work. Disability insurance is paid for through deductions from employees' wages, but your business can cover part or all of these premiums for employees instead. These costs are typically pretty low per employee compared to many insurances, so covering Disability for workers can be a nice benefit.

Disability insurance payments can replace some of the lost income for a worker if they are unable to work because of an off-the-job injury or illness for eight or more days. Benefits start on the eighth day. Women can also claim short term disability benefits after giving birth to a child. Your Disability insurance carrier will provide you with the forms necessary for an employee to file a claim, which you must provide upon request.

## Unemployment Insurance

In the event an employee becomes unemployed through no fault of their own, they are eligible for unemployment compensation. Employers pay for unemployment insurance. To collect benefits, a worker must be ready, willing, and able to work, and actively looking for work during each week that the worker is claiming benefits. In order to get benefits, the worker must claim them weekly. All decisions concerning the eligibility of an employee for unemployment insurance are made by the New York State Department of Labor.

If an employee files for unemployment, the employer will receive a Notice of Potential Charges. If you disagree with the finding that the employee is eligible, you must respond within ten calendar days of the date of the notice, or your account may not be credited even if the employee is found ineligible. If you contest a former employee's eligibility for unemployment benefits, the employee has a right to appeal. Such appeals are typically resolved in a hearing with an Administrative Law Judge.

## Family and Medical Leave

The Family and Medical Leave Act (FMLA) is a federal law which applies to public employers and private employers that have 50 or more employees, and gives eligible workers the right to take up to 12 work weeks of unpaid leave each year for illness, to care for family members, or for the birth or adoption of a child. Eligible employees cannot be prevented from using FMLA nor can they be penalized.

New York State Paid Family Leave (PFL) applies to nearly all employees who work for private businesses. To be eligible, full-time workers must work at least 20 hours per week regularly for 26 or more consecutive weeks of employment. Part-time workers who work less than 20 hours per week are eligible after 175 non-consecutive days of employment. Eligibility does not depend on citizenship or immigration status. Health insurance (if offered) and job protection will continue while on Paid Family Leave. PFL Coverage is a rider to your Disability insurance. Like Disability, premiums are paid through employee payroll deductions but you can choose to pay part or all of the premium.

### **There are 4 steps to apply for New York Paid Family Leave:**

1. The employer must be notified at least 30 days before the leave will start if the leave is foreseeable, or otherwise as soon as possible.
2. Fill out the corresponding "Request For Paid Family Leave (Form PFL-1)" form available from the employer or on the ny.gov website (<https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-information-employees#how-to-apply-for-benefits>).
3. The employer must fill out their section of the form and return it to the employee within 3 business days.

4. Submit Form PFL-1, the other request forms specific to the leave being taken, and supporting documentation directly to the employer's Paid Family Leave insurance carrier. The request can be submitted before or within 30 days after the start of your leave.

*The insurance carrier must pay or deny request within 18 business days of receiving it.*

## 5. Workers' Rights

### Privacy Issues

Access to employee's property or phone calls

A private sector employer can only search employees' personal belongings, including briefcases or handbags, for a business related reason. A sealed letter or private communication to an employee cannot be opened. An employer can only monitor phone conversations with the prior consent of at least one party of the conversation or through an extension phone that is used in the ordinary course of the employer's business. Employees can also record conversations that they are party to.

### Can an employee be fired for off-duty activities?

Under NY law, an employer generally cannot fire or otherwise discriminate against an employee because of the person's off-duty legal activities outside of working hours, off the employer's premises and when the activities do not involve the use of the employer's equipment or property. These activities include an employee's political activities and an employee's use of alcohol or tobacco. Private social media use can be another example, if the employee is not representing themselves as speaking for your company. Discriminatory harassment of other employees is covered as below.

### Employment Discrimination

It is illegal to discriminate against employees or potential employees.

### What is discriminatory behavior?

Discriminatory behavior includes a variety of acts, involving differential treatment of workers based on race, color, national origin, age, disability, sex, gender identity, sexual orientation, pregnancy, familial status, creed, religion or citizenship. The following behaviors, based on the protected categories, are some acts constituting discriminatory behavior:

- Refusing to hire
- Refusing to promote
- Firing
- Paying differently
- Providing lesser or different work conditions or benefits
- Treating differently in terms of job assignments
- Harassment
- Different training
- Layoffs
- Particularly harsh discipline
- Repeated jokes about age or race

Treating certain employees differently than others in any way may constitute discriminatory behavior if it is based on protected identities/characteristics. These laws protect all employees in the US and NY regardless of their citizenship status or work eligibility. If an undocumented worker is hired, the undocumented worker is equally protected under NY and US law from discrimination. Discrimination based on gender identity is sex-based discrimination.

## Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other physical and verbal conduct of a sexual nature when:

- 1) submission or rejection of this conduct may affect whether the employee keeps the job, gets a promotion, gets a good job assignment or will receive some other benefit
- 2) the behavior interferes with the employee's work performance or creates an intimidating, hostile or offensive work environment

### Examples of sexual harassment:

- Pressure for sexual favors
- Pornographic materials left on a desk or in work area
- Touching, 'goosing,' patting, hugging, leering
- Whistling, catcalls, howling
- Use of demeaning terms such as 'honey,' 'babe' or 'sweetheart'
- Sexual teasing or jokes
- Posting cartoons, posters or drawings of a sexual or insulting nature
- Asking personal questions
- Spreading lies or rumors about someone's social or sex life
- Making sexual remarks or gestures
- Actual or attempted sexual assault
- Harassment based on gender identity

The harasser may be the victim's supervisor, an agent of the employer, a supervisor in another division of the workplace, a co-worker or a non-employee (e.g. customer) and can be the same or different sex than the victim. A victim does not have to be the person harassed but could be anyone affected by the offensive conduct. Harassment that occurs outside the workplace between co-workers can still be workplace harassment.

### What must you do in cases of sexual harassment?

Sexual harassment is illegal and no worker should be forced to tolerate it. You must investigate sexual harassment complaints and take appropriate action to end the harassment.

If steps to a proper investigation and action are not taken, a victim may file charges with the Equal Employment Opportunity Commission (EEOC) or the NYS Division of Human Rights (DHR). A lawsuit can also be filed in State Court for a violation of New York's Human Rights Law.

### Policy and Training Requirements

Beginning in October, 2018, every employer in New York State is required to have a written Sexual Harassment policy that meets or exceeds minimum standards, and to provide interactive sexual harassment training to all employees that meets or exceeds minimum standards.

### Policy

#### At minimum, a workplace sexual harassment policy must:

- prohibit sexual harassment in the workplace
- provide examples of behavior that would be harassment
- include information about federal and state laws about sexual harassment, information on remedies people have a right to pursue if they face sexual harassment, and state if there are applicable local laws
- include a complaint form

- include a procedure for the workplace's timely and confidential investigation of sexual harassment complaints that ensures due process
- inform employees that they have the right to redress and all available administrative or judicial options people can use to seek it
- clearly state that sexual harassment is misconduct and that the employer will enforce sanctions against employees who engage in sexual harassment and against supervisors/managers who knowingly allow the behavior to continue
- clearly state that it is illegal to retaliate against someone who complains of harassment or who testifies in an investigation or proceeding

## Training

### At minimum, workplace sexual harassment training must:

- be interactive
- include an explanation of what sexual harassment is, consistent with New York State Department of Labor and Division of Human Rights guidance
- include examples of sexually harassing behavior
- include federal and state provisions about sexual harassment and what remedies someone can use if they face it
- include the fact that employees have a right to redress and all available forums they can use to seek it
- include information about conduct by supervisors and the responsibilities of supervisors

*For more information and sample policies, complaint forms, and training templates, see: <<https://www.ny.gov/combating-sexual-harassment-workplace/employers>>*

## Other Forms of Harassment

### Bullying:

Bullying is persistent, abusive behavior designed to make the target feel upset, humiliated or threatened. A workplace bully can be a boss, a supervisor, a co-worker or a customer. Bullying is psychological violence. Tactics include:

- Unfairly blaming others for errors
- Unjustified criticism and trivial fault-finding of work performance
- Making unreasonable demands or denying needed information and resources
- Yelling, screaming, put-downs or threats of job loss
- Inconsistent enforcement of arbitrary rules
- Social exclusion
- Stealing credit for another's work

### Is bullying illegal?

If bullying is based on race, gender, religion, ethnicity, sexual orientation, disability, or another protected characteristic it is illegal. Harassment affects worker productivity and workplace morale due to fear, anger, and stress. Harassment can increase absenteeism, staff turnover, worker's compensation and the potential for discrimination claims against the employer.

### Workplace violence:

Workplace violence is defined as any act or threat of physical violence, harassment, intimidation or other threatening disruptive behavior that occurs in a workplace. It ranges from threats and verbal abuse to physical assaults. It can involve employees, employers, customers and visitors. This is illegal, and while emergencies should be reported to the police, ongoing cases or risks of violence can be reported to the Department of Labor.

## **Disability and Accommodation:**

The Americans with Disabilities Act (ADA) is designed to help people with disabilities access the same employment opportunities and benefits available to people without disabilities.

### **What is a legally protected disability?**

Under the Americans with Disabilities Act (ADA) a disability is a physical or mental impairment that substantially limits one or more major life activities such as hearing, speaking, walking, breathing, performing manual tasks, lifting, working and caring for oneself. A person is also considered disabled if they have a record of a disability or are regarded by others as having a disability, even if they do not actually have one. Under the New York State Human Rights Law (HRL), a disability is essentially any medical condition, including temporary conditions.

### **Who is covered? What protections?**

New York State law protects the disabled who work in a business with 15 or more employees.

The state and federal laws prohibit discrimination against individuals with disabilities in terms of:

- Job application procedures
- Hiring
- Firing
- Advancement
- Compensation
- Training and other terms, conditions, or privileges of employment

In addition, both laws require that a 'reasonable accommodation' be provided to the employee so that they can perform the essential functions of the job (see below).

An employee who feels that they are discriminated against because of their disability has the right to file a claim with the EEOC or the NYS Division of Human Rights.

### **What is the reasonable accommodation requirement?**

If an employee is or becomes disabled, employers are required to make changes to the work environment or the way the job is done so that the employee can still work. The accommodation must be a reasonable solution and not impose undue hardship on the employer. The worker must take the initiative in suggesting changes or in getting the employer to help figure out the appropriate accommodation. You do not have to alter an essential function of the job.

### **Examples of reasonable accommodations:**

- Large print menus
- Extra time to memorize information, or permission not to memorize
- Modification of uniform, including shoes, to accommodate disability
- Allowing more frequent breaks
- Workstation adjustments or modification
- Providing modifying equipment
- Providing qualified readers or interpreters

## Safety and Health

The federal Occupational Safety and Health Act (OSHA) protects workers' right to a safe and healthful workplace. It is your duty to provide a workplace that is free of hazards, and one that follows safety standards and regulations. It is important to foster and maintain communication with your employees about workplace dangers. This will help to both illuminate new or unknown dangers and create a workplace culture that promotes safety. OSHA also protects workers from retaliation for raising safety concerns.

### Under OSHA, employers must:

- Prominently display the official OSHA poster which describes rights and responsibilities
- Inform workers of workplace hazards and mark them using signs, labels, alarms or other clear, easy to understand methods
- Allow employees the opportunity to use the restroom
- Conduct trainings on workplace hazards using language they understand (for example: training on dangers of excessive heat in the kitchen)
- Keep accurate records of workplace injuries and illnesses
- Complete workplace tests or medical tests if required by OSHA (for example: hearing tests, air sampling, etc.)
- Inform OSHA within 8 hours if there is a workplace fatality, or within 24 hours if an employee is hospitalized due to a work-related incident, loses an eye or if there is an amputation.

There are also regulations pertaining to employees under age 16. For example, they may not perform any baking activities or work with power driven machines including food slicers, grinders, processors and mixers.

*More information can be found at <<https://www.osha.gov/>>*

## Right to Unionize or Concerted Action

The National Labor Relations Act (NLRA), a federal law, guarantees employees the right to discuss wages and benefits or other terms and conditions of employment. The NLRA also guarantees the right of employees to engage in Concerted Action and to join together with other employees for the purpose of collective bargaining.

The right to Concerted Action covers all employees, not just those represented by a union. A Concerted Action is when two or more co-workers act together to improve their working conditions by, among other means, raising work-related complaints directly with their employer or with a government agency, or seeking help from a union. An employee who takes such actions for the benefit of multiple co-workers can also qualify as engaging in a Concerted Action.

An employer cannot punish or discriminate against any worker because of union activity. It is illegal to fire, lay off, discipline, transfer or reassign employees because of their union support or threaten to do any of the above. A private sector employee who is discriminated against because of union activity may file charges with the National Labor Relations Board (NLRB).

## 6. Termination

New York State is an 'employment at will' state, meaning that a private sector employee can be discharged or fired for almost any reason. There are a few circumstances where this is NOT true. Circumstances that make termination illegal:

**Discrimination:** An employee may not be discharged because of their race, color, creed, religion, sex, sexual orientation, gender identity, national origin, age, marital status or disability.

**Whistle-blowing:** If an employee reports a work violation to a supervisor or public agency, they cannot

be fired in retaliation (see Retaliation below).

**Union organizing and concerted action:** Organizing between two or more employees, in good faith, to improve conditions of employment or to organize a union is protected by the National Labor Relations Act (NLRA). Employees cannot be terminated for such organizing activities.

**Employee's legal activities outside of work hours:** A person cannot be fired for participating in lawful political or recreational activities.

*Terminated employees must receive notice of the status or termination of any of their benefits, e.g., vacation, paid leave, insurance, within 5 days of the termination of employment.*

### **Retaliation:**

Retaliation is defined as any unfavorable action against an employee by an employer for complaining about labor law violations or reporting the employer to the authorities. It is illegal, and can take many forms. Some examples of actions that could be considered retaliatory under certain circumstances include:

- Dismissal from employment
- Cut in work hours
- Reschedule for less desired hours
- Reassign to less desired work location
- Cut in pay
- Failure to give promised or customary raise
- Disciplinary action
- More intensive or critical supervision
- Demotion or transfer
- Withdrawal of previously-allowed privileges
- Assignment to more difficult duties
- Demanding increased production

## **7. Recommended Best Practices**

It is in your business' best interest to protect those who work for you. Well treated employees create a good work environment and will provide better customer service, thus creating an environment that customers will want to return to. Employees are the face of your company and can be your most important business partners. There is much more than following the law that creates a successful relationship between employer, employee and customer. Here are some suggestions for fostering employee satisfaction.

### **1. Treat your employees as you would treat your customers.**

In all human relationships, respect generates respect. When a manager treats employees well, most employees will respond with respect for the manager and the customers. Yelling, raised voices, threats, insults and name-calling will create an unpleasant atmosphere for employees and customers. Racial slurs are illegal. Ill treatment can lead to decreased productivity and resentment.

Do not fire people publicly, especially in the heat of the moment. Do not argue in front of customers. Do not use threats of firing or demotion unless you are seriously considering taking such action. Have a policy to address bullying, verbal harassment and other forms of emotional or psychological abuse.

### **2. Provide opportunities for internal promotion and salary increases**

If you can, offering advancement to your current employees will increase loyalty and decrease turnover. A good manager is a leader and a team player who can motivate people, recognize their individual

strengths, and provide the support necessary to ensure they succeed at their jobs. Recognize employees who demonstrate this special talent and cultivate them for possible leadership roles. Restaurant managers actually save training costs by promoting employees who already are familiar with their routines and customers.

Provide financial incentives for workers. Provide opportunities for employees to increase their earnings through seniority. Employees who are hoping to increase their salaries are motivated to learn more about their jobs and take on more responsibilities. Sometimes, workers who do not want or are not well suited to management jobs only seek to become supervisors because that is their only opportunity to improve their financial circumstances. Pay incentives for people who do their jobs well recognize their contributions to the business.

### **3. Pay a living wage**

By paying a Living Wage, a business not only helps its employees achieve a stable, self-supporting life, it also ensures a loyal customer base. Many consumers will 'vote with their wallet' and happily patronize businesses that show their commitment to the Living Wage.

The Tompkins County Living Wage is calculated biannually by the Alternatives Federal Credit Union. Living Wage Certification is managed by the Tompkins County Workers' Center. Check [www.alternatives.org](http://www.alternatives.org) or [www.tcworkerscenter.org](http://www.tcworkerscenter.org) for updates. For resources about the Living Wage around the country, see [www.livingwageworkers.org](http://www.livingwageworkers.org)

### **4. Avoid segregated workplaces**

Be aware of who is hired for front-of-house and back-of-house positions. Were they hired because they fit a stereotype or subconscious assumption about a person's abilities or attractiveness? Many types of discrimination are against the law. Try to make hiring and promotion decisions based on actual skills and experience.

### **5. Provide adequate staff training**

Your business will benefit from proper training of both back of house and front of house workers. Workers operating any kind of equipment should be adequately trained but it is also beneficial to conduct regular training on procedures your restaurant follows as well as health and safety practices. Regular staff meetings provide time for questions, continuing education and increased communication between managers and employees.

### **6. Have an Open Door policy**

Let your employees know that management is open to concerns and suggestions. Post a notice on the employee bulletin board encouraging employees to speak to anyone in management if they have a suggestion or a specific concern. If an employee comes forward, deal with their concerns respectfully.

### **7. Maintain adequate staffing levels**

Understaffing often results in high turnover, poor morale, high stress levels in workers and management, accidents, illness and poor customer service. It should not be common practice to force employees to 'fill in' for positions which they are not trained to perform.

### **8. Provide paid sick days and vacation time**

Allowing employees to leave work without forfeiting pay when they are ill and providing a set number of paid sick days per year will ensure that workers do not 'hide' their illnesses, endangering both other workers and customers. This practice can limit infectious disease in the workplace. Also, when workers are provided with paid vacation time, they can rest and take care of personal affairs, and be more productive during their regular work time.

## **9. Provide Notices in writing, either on a bulletin board or in a handbook**

When an employer's policies are in writing, all policies are clear. This helps avoid arguments over the ambiguity of management decisions. The policies should contain vacation, sick days and other benefits and describe unacceptable activities and behavior. The bulletin board should also be used for the posters employers are required by law to have available in the workplace.

*If you have employees whose first language is not English, it is helpful to have a handbook available in their language. An oral translation should be provided if there is no written handbook.*

## **10. Maintain good records**

A personnel file should be maintained for each employee. The law requires maintaining a log of accidents and other health and safety incidents. You must also maintain complete and accurate wage and hour records. You can also document interactions over personnel matters.

## **11. Help employees access government and private benefits**

You can foster loyal, valuable relationships with workers by helping them access benefits that can enhance their wages and help them stay employed. Employers can consider providing health insurance for workers. Some resources for small business owners include:

- New York State of Health <<https://nystateofhealth.ny.gov/>>
- Healthy New York <<https://www.dfs.ny.gov/healthny/>>

Government benefits include food stamps, Child Health Plus insurance coverage and special subsidized utility payments for low-income workers. A good New York State resource is [https://www.mybenefits.ny.gov/selfservice/HomePage\\_input](https://www.mybenefits.ny.gov/selfservice/HomePage_input) which has links to the many programs available in our state.

An excellent resource for employees who have become ill or injured on the job is the Occupational Health Clinical Center in Syracuse, NY. OHCC provides accurate, independent diagnosis of work-related illness and offers treatment referrals by taking medical histories and conducting diagnostic tests and physical exams. An industrial hygienist on staff can offer assistance to employers by offering suggestions to modify your worksite or work habits in order to prevent future health problems. For more information, contact OHCC at 315-432-8899 or 800-432-9590. <[www.upstate.edu/cnyohcc](http://www.upstate.edu/cnyohcc)>

## **12. Perform regular employee evaluations**

Constructive and fair evaluations can improve both work performance and workplace relations. Evaluating employees and encouraging feedback means there is more mutual accountability, and is a healthy and efficient way to overcome any performance issues. It also provides opportunities to reward excellence in real time and encourage good behavior. Good evaluation is not just a formal review once a year, but an ongoing relationship between employee and manager to ensure the employee has the resources and feedback to do their job well.

## **13. Set work schedules in advance**

Employees who have ample advance notice of their work schedules are able to plan effectively for both their work and their personal lives. Consistency in work schedules, with two weeks advance notice of work shifts, makes sure that your business' staffing needs are taken care of while also providing stability for employees to take care of their own affairs. Have a clear policy and procedure that is known to all employees for what someone needs to do to cancel a shift so that you can arrange adequate coverage.

## 14. Respect workers' right to organize

Employees have the right to make their own democratic decisions as a group whether to form or not to form a union. Often, when workers disclose their interest in unionizing, managers and business owners can feel defensive. When management declares a position of “neutrality” or “non-interference” regarding workers’ union activity, it demonstrates respect for employees and creates an environment where people are free to vote for or against forming a union without hostility or ill will between workers and management. If employees do form a union, bargain and interact fairly and in good faith with the union and its members so that they are motivated to promote your business. Fair treatment of union activity can improve your reputation and inspire customers.

## 15. Give job applicants with criminal records a fair chance

Not asking questions about prior criminal history on job applications is a simple change your company can make that makes a big difference and gives job applicants a fair chance. This allows you to evaluate job applicants based on their qualifications and not because of any subconscious biases that anyone can bring into the hiring process. This does not mean that your business need not conduct background checks or other vetting of hires, but it moves it to later in the hiring process so that you can use any information about criminal history appropriately in judging whether any convictions are “directly related” to the new hire’s job duties and actually indicate that excluding an employee from certain duties may be required. This is often called “Ban the Box” in reference to removing a check-box about criminal history on job application forms.

## 8. Appendices

### Appendix A: Notice of Pay Rate and Payday forms

The form LS54 is an updated Notice of Pay Rate and Payday form from the NYS Department of Labor. This example is a notice for English-speaking workers receiving hourly wages: <<https://www.labor.ny.gov/formsdocs/wp/LS54.pdf>>

*More information and forms for non-English speakers can be found at:*  
<<https://labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm>>

### Appendix B: Summary of The Wage Theft Prevention Act

The following is a summary of the Act. Please contact the Department of Labor for the full text. The WTPA addresses issues such as record keeping; increases penalties for wage theft and record keeping violations, instituting criminal penalties including imprisonment for failure to pay minimum wage; increases the amount of wages to 100% that can be recovered as damages over and above the lost wages themselves; increases protection for employees who have been retaliated against when they ask for past due wages; and provides the Department of Labor with new powers for investigation and prosecution of wage theft. Wage theft includes underpayment as well as nonpayment of wages. Wage theft includes failure to pay minimum wage, failure to pay overtime, requiring off-the-clock work, stealing of tips and misclassification of workers.

Pay Notice. Employers must provide all employees with the following information: rate of pay, the regular payday, overtime rate of pay if applicable, basis of wage payment (hourly, weekly, shift, etc), intent to claim (tip and/or meal) allowances, the employer’s main address and phone number and the employer’s name including any doing business as titles. This notice must be furnished in English or in the primary language that an employee designates. All new workers must be provided with this information upon hiring. The employer must obtain and keep a signed and dated acknowledgement confirming receipt for six years.

The notice must be updated and provided again at least seven calendar days in advance if changes are to be made to their payday, rate of pay or other subjects of the above regulation.

These are additional requirements to NY Labor Law, Article 6, Section 195.

Pay Statements. Pay statements must specify the dates the wages cover, the regular and overtime pay rate and basis of pay rate (hourly, weekly, etc), the number of regular and overtime hours worked.

Recordkeeping Requirements. Payroll and pay notice records must now be kept for a period of six years. This has been extended from three years previous to the WTPA.

The Act expands the types of businesses subject to criminal penalties for nonpayment of wages to include partnerships, limited liability corporations and the officers and agents of those entities.

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### **For more information:**

NYS Department of Labor  
W. Averell Harriman State Office Campus  
Building 12  
Albany NY 12240  
518-457-9000  
888-4-NYSDOL  
[www.labor.ny.gov](http://www.labor.ny.gov)

### **Tompkins County Workers' Center**

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The Mission of the Tompkins County  
Workers' Center is to stand up with  
all people treated unfairly at work.

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