

Wage and Hour Information

Definitions

Waived: To waive is to voluntarily relinquish or give up a right, claim, or privilege

Credit: the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment.

Deductions: A deduction is an expense that can be subtracted from a taxpayer's gross income in order to reduce the amount of income that is subject to taxation. This lowers the taxpayer's taxable income for the year.

Employees: Any individual employed by an employer.

Employ: To suffer or permit to work.

Brief Overview

- Employee rights are found throughout federal, state, and local laws. This fact sheet will only cover basic New York State Wage and Hour Violations. For more information on employee rights feel free to visit the U.S. Department of Labor Wage and Hour¹ section.
- These rights are covered by many different government agencies at many different levels. This fact sheet will discuss how to specifically request the help of the New York State Department of Labor.

Who qualifies for these rights?

- These rights specifically cover employees, not independent contractors. While some of these rights may be open to independent contractors, many will not be applicable.

1. <https://www.dol.gov/agencies/whd/workers>



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Minimum Wage Violations

- New York State's general minimum wage is \$15.50 effective as of January 1, 2025, through December 31, 2025.²
- However, the minimum wage can vary from industry to industry and county to county. For more information, please visit the site linked above.
- Minimum wage violations occur when an employee is being paid less than the legal minimum wage.
- All employers, including small business owners, are mandated to pay their employees a state minimum wage.

What Is An Example Of A Minimum Wage Violation, And How Do I Avoid It?

- Example: Pete's Pizza pays \$10, less than the local minimum wage of \$15. Buddy worked for 15 hours this week and has earned \$150. To ensure that Pete's Pizza does not raise suspicion if their books get checked, Pete logs in their payroll software that Buddy worked for 10 hours for \$15 an hour.
- Even if an employee accepts a lower minimum wage, that does not mean they no longer have the right to minimum wage. The right to minimum wage cannot be waived.
- Often, employers ask their employees to sign a document waiving certain rights. These are often not enforceable, but an employee should always check with an attorney.

Tip Credit Violations

- Tip credit is when employers pay their employees below minimum wage and attempt to supplement the employees' income using tips.
- This often happens in the service industry
- Functionally, these employees still need to be guaranteed a minimum wage, but an employer may "credit" part of that minimum wage against tips an employee receives from customers of the business.
- The tip credit is not available to employers if weekly average tips are less than the tip credit for their industry or size.

² <https://www.ny.gov/new-york-states-minimum-wage/new-york-states-minimum-wage>



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Tip Credit Violations Continued

- The tip credit is not available to employers if weekly average tips are less than the tip credit for their industry or size.
- Tip credits are incredibly fact-dependent. For more information, visit [Minimum Wage for Tipped workers](https://dol.ny.gov/minimum-wage-tipped-workers)³ and [the Department of Labor Minimum Wage for Tipped Workers PDF](https://dol.ny.gov/system/files/documents/2024/12/p717_11-24.pdf#:~:text=New%20York%20State%20law%20allows,the%20employee%20receives%20from%20customers).⁴

What Is An Example Of A Tip Credit Violation, And How Do I Avoid It?

- Example: Brenda works at a restaurant as a server. The manager makes her spend her four hours of her shift preparing rolls of silverware instead of waiting tables. As a result, she does not get tips during those four hours. The employer can not use a tip credit for Brenda that day.
- If you are doing “non-tipped” work for 2 hours or more of your shift in the service industry, your employer will not be able to apply the tip credit.
- If you are consistently being paid below the minimum wage WITH tips, your employer is likely not following tip credit limits.

Overtime Payments Violations

- With some exceptions, when an employee works over 40 hours in a week, they will be entitled to overtime pay. For the 41st hour onward, the employee will be entitled to overtime pay, 1.5x their normal rate.
- Overtime payments need to be calculated WEEKLY, no matter how often you normally get paid.
- Example: Billy gets paid every other week. Billy usually works 35 hours a week. On Week 1, his job is understaffed, so he works 45 hours, and he works his usual 35 on Week 2. To avoid paying overtime, Billy’s employer inputs in their payroll system that Billy worked 40 hours in week 1 and week 2, resulting in Billy’s overtime not being paid out.

3. <https://dol.ny.gov/minimum-wage-tipped-workers>

4. [https://dol.ny.gov/system/files/documents/2024/12/p717_11-](https://dol.ny.gov/system/files/documents/2024/12/p717_11-24.pdf#:~:text=New%20York%20State%20law%20allows,the%20employee%20receives%20from%20customers)

[24.pdf#:~:text=New%20York%20State%20law%20allows,the%20employee%20receives%20from%20customers](https://dol.ny.gov/system/files/documents/2024/12/p717_11-24.pdf#:~:text=New%20York%20State%20law%20allows,the%20employee%20receives%20from%20customers)



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What Else Should Employees Look Out For?

Illegal Deductions

- An employee should be on the lookout for illegal deductions. Certain deductions are permissible, and others are not.
- Illegal deductions occur most often in small businesses. Except when a deduction is for the benefit of the employee and notice is given in writing, an employer cannot deduct money from an employee's wages.
- Permissible: Payment is deducted as part of a company health insurance plan.
- Impermissible: Payment is deducted because the employee failed to convince customers to purchase a product that was about to spoil, resulting in a loss of profit.

Frequency of Payment

- While it varies from industry to industry, in general, an employee must be paid at least twice a month.
- Again, this will happen more often with small businesses because most larger organizations use an automated payroll system.
- Example: Employer says that things are tough, and if an employee wants to keep their job, they'll need to wait longer than usual to get paid.

What Should An Employee Do If They Suspect A Violation?

- If you are a member of a union, the union likely has a process in place to assist you in these issues, and it may preclude you from other remedies; ask your union representative.
- Contact a private attorney. You may be eligible to bring claims in a private lawsuit, but this option will cost money.
- Submit a complaint with the New York State Department of Labor – The DoL will investigate your claim and bring an administrative proceeding on your behalf if they find cause. Legal Services of Long Island is able to help those in Nassau County who wish to take this route by helping to gather and organize initial documentation to ensure the investigation goes as smoothly and as quickly as possible.

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The Department Of Labor Investigative Process

- File a claim with the NY Department of Labor (DOL) via its website.
- DoL will determine if you are eligible for their investigative process.
- If you are, you will be assigned a case number, then you must wait for an investigator to be assigned to your case.
- From there, the process will depend on what kind of investigation needs to be done, the information the Department of Labor needs, and how cooperative the employer is with the department.
- If, after the investigation, the DoL believes there was a violation, an “order to comply” will be issued to the employer, and the DoL will attempt to get the employer to pay up.
- An employer can attempt to contest the order to comply by requesting a formal hearing, where an administrative law judge will review evidence, hear testimony, and issue a decision.
- If no hearing is requested by the employer, but they do not reply to an order to comply, the DoL will issue a money judgment and attempt to enforce the judgment.
- If the DoL decided there was not a violation, but you believe there was one, you can still file a suit with a private attorney.

www.legalservicesli.org
www.instagram.com/legalsvcsl
www.x.com/LegalServicesLI
www.facebook.com/legalsvcsl



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