

**Info sheet >>>**

**WAGE & HOUR LAW BASICS FOR SMALL BUSINESSES**

*What you need to know if you have employees*

**MINIMUM WAGE AND OVERTIME**

New York has a number of minimum wage rules that vary depending on the location and size of the business and the type of work performed. The minimum wage is set to increase annually. Do you know how much you have to pay your employees for their work? This info sheet will review the various minimum wage rates and overtime rules, common mistakes employers make, and the consequences that can arise from underpaying your workers.

**MINIMUM WAGE**

The minimum wage rates in New York State vary depending on the location and size of the business and the type of work performed. The rates are scheduled to increase each year on December 31 until they reach \$15.00 per hour.

**OVERTIME**

A standard work week is 40 hours. If an employee works more than 40 hours in a week, the employer must pay them 1 ½ times their regular wage for those hours.

**General Minimum Wage Rate Schedule**

Location	12/31/17	12/31/18	12/31/19	12/31/20	2021*
NYC - Large Employers (of 11 or more)	\$13.00	\$15.00			
NYC - Small Employers (10 or less)	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State	\$10.40	\$11.10	\$11.80	\$12.50	*

\* Annual increases for the rest of the state will continue until the rate reaches \$15 minimum wage (and \$10 tipped wage). Starting 2021, the annual increases will be published by the Commissioner of Labor on or before October 1. They will be based on percentage increases determined by the Director of the Division of Budget, based on economic indices, including the Consumer Price Index.



**The general rate schedule above may be different for different industries.**

**For example, a different wage order exists for:**

- the hospitality industry (restaurants and hotels);
- building service industry workers;
- farmworkers; and
- tipped employees.

**For a complete list of all the wage orders in NY, see:**

<https://labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>

**An Important Note on Overtime >>>**

The law does not require premium pay for work performed on the weekend, holidays, or at night. Long days are also not necessarily eligible for overtime pay. Overtime is calculated based on the number of hours worked on a weekly basis. Only after an employee logs 40 hours in a work week are you obligated to pay time and a half.

**An important note on liability >>>**

*Even after a business closes, business owners, founders, and equity stakeholders may be held personally liable for wage violations under state and federal law.*

*See, e.g., [Irizarry v. Catsimatidis](#), 722 F. 3d 99 (2d Cir. 2013).*

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**Failure to pay an employee the wages you owe is a serious issue that could cost your company money:**

If you are found in violation of minimum wage or overtime laws, you could be ordered to pay:

- Back wages and interest;
- Damages; and
- Fines of up to 200% of the missing wages.

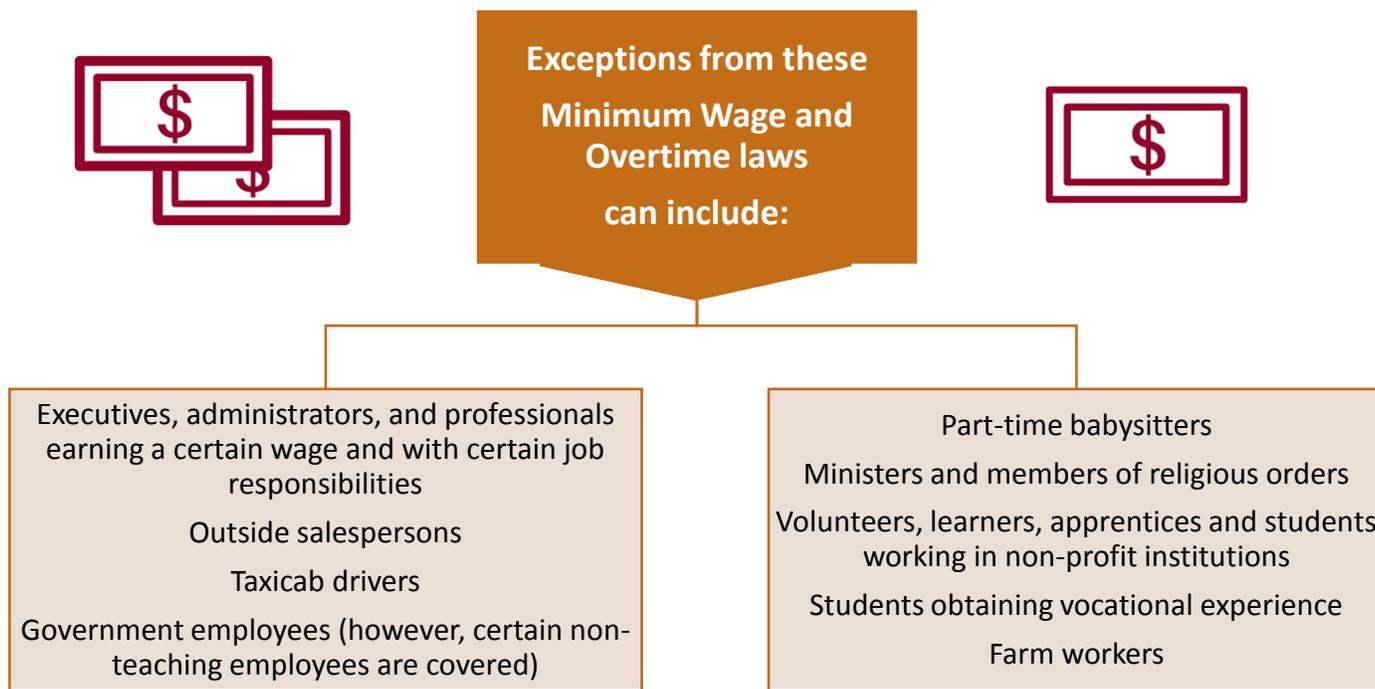
**HOW DO FEDERAL AND STATE LAW INTERACT?**

Generally, federal wage and hour laws set a floor—a minimum level that every employer across the country has to meet. But, it’s not meant to create uniform laws. Instead, each state is free to set a higher standard. New York laws often provide greater protections for employees than the federal law. **NY’s minimum wage is higher than the federal minimum wage. Thus, employers in NY should follow the state minimum wage.**

**DO THE MINIMUM WAGE AND OVERTIME LAWS APPLY TO START-UPS AND SMALL BUSINESSES?**

Most employers are covered by state and federal law. Sometimes small employers think that they are not covered because they are too small, but it turns out that even small restaurants or family businesses are usually covered. NY wage and hour law covers all private employers and employees in New York, with some exceptions.

*For a complete list of exceptions, see NYS Labor Law, Article 19, § 651. Independent Contractors are not covered by the labor laws. For more info, see RLI Info sheet on Employees vs. Independent Contractors.*



**STARTUPS & OVERTIME**

Startups often have long, unpredictable hours. To guard against a wage and hour claim for unpaid overtime, be sure that none of your employees are working off-the-clock. A general policy against overtime is fine, but if an employee has a strict deadline and cannot complete the project in a 40-hour work-week, the employee may be tempted to work off-the-clock in order to finish. Remember that even if the employee does not have permission to work off-the-clock, they still must be paid for those hours, including overtime.

## SPECIAL RULES FOR CERTAIN KINDS OF EMPLOYEES

### FARM WORKERS



Federal and state law have special rules for farm labor.

Farm workers must be paid at least the **minimum wage**, whether they're paid hourly or by piece rate. If you pay your workers a piece rate, their weekly pay must average to at least the minimum wage per hour. In any week where an employee's wages do not average to at least the minimum wage, the employer has to make up the difference.

An employer is permitted to make deductions from a farm worker's wages for **meals and lodging** supplied by the employer, except for seasonal migrant workers. Any such deductions are subject to rules regarding the permitted amounts of such deductions, and the notice to the employee. For more information on meal and lodging allowances, see:

<https://labor.ny.gov/formsdocs/wp/Part190.pdf>

The minimum wage law does not apply to farm workers who are members of the employer's **immediate family**.

Farm workers are exempt from **overtime**; they do not have to be paid time and a half for working more than forty hours a week.

- Some **small farms** are exempt from the minimum wage laws. In NY, the minimum wage laws apply only to farms where the total cash remuneration paid all persons employed on the farm exceeded \$3,000 in the previous calendar year.
- Note: there is a different test for the federal exemption, but it is not likely that a NY farmer would be exempt from NY law and not from federal law. Thus, the state law is the most relevant for NY farmers. For more information on the federal exemption, see:

<https://www.dol.gov/whd/regs/compliance/whdfs12.htm>

Employers should pay the same rate to workers who perform the same duties. For example, if you have H2A workers and non-H2A workers doing the same job, you have to pay them the same.

- So, if your H2A workers are making \$12.83 per hour, your other farm workers doing the same job also must be paid \$12.83 per hour.

### TIPPED EMPLOYEES



In certain industries, employers can count all or part of an employee's tips towards its minimum wage obligations. This is called a "tip credit." New York law sets a minimum cash wage that employers have to pay their tipped employees and a corresponding maximum tip credit. The rates are set to rise annually until the minimum cash wage reaches \$10 and the corresponding tip credit reaches \$5.

In all cases, a tipped employee's weekly pay must average to at least the minimum wage per hour. In any week where an employee's wages and tips do not average to at least the minimum wage, the employer has to make up the difference.

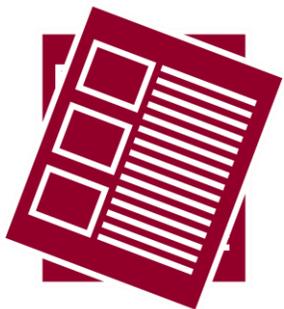
For more information on rates for tipped employees see below:

<https://labor.ny.gov/formsdocs/factsheets/pdfs/p717.pdf>



## POSTING REQUIREMENTS >>>

- State and federal law require employers post certain notices for their employees.
- For a complete list of state requirements for non-agricultural employers, see: <https://labor.ny.gov/workerprotection/laborstandards/employer/posters.shtm>
- For a complete list of state requirements for agricultural employers, see: <https://labor.ny.gov/formsdocs/dipa/aglp3.pdf>
- For a complete list of federal requirements, see: <https://www.dol.gov/general/topics/posters>



## PRACTICAL TIPS RECAP

- Keep up to date with the minimum wage. Remember that it is set to increase every year until it reaches \$15/ hour, and that there are different rates depending on the kind of work and the location.
- Remember that most employees must be paid overtime at a rate of time and a half of their regular rate for hours worked over 40 in a workweek. Make sure your employees do not work off the clock and always pay overtime if you owe it.
- If you fall into an exception to these laws—tipped employees, farm laborers, for example—look into the more detailed description of what exactly your obligations are.



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