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**¶17,168**

**New York - Wage Payment**

***When to pay.*** All employers (except a government agency) must pay wages to their workers as follows:

* manual workers— weekly but not later than seven calendar days after the end of the pay period; however, manual workers employed by a nonprofit organization must be paid as agreed, but at least semimonthly;
* railroad workers— on or before Thursday of each week for wages earned during the seven-day period ending on Tuesday of the preceding week;
* commission salespeople— at least monthly and not later than the last day of the month following the month in which wages, drawing accounts, commissions, and all other monies as agreed were earned or were payable. However, if monthly or more frequent payments of wages, drawing accounts, or commissions are substantial, then additional compensation earned (e.g., incentives, bonuses, special payments) may be paid less frequently than once a month, but not later than the time agreed on; and
* clerical and other workers— must be paid as agreed but not less frequently than semimonthly on regular paydays designated in advance by employer.*Exception:* Persons employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of $900 a week are not subject to these rules.

No employee can be required, as a condition of employment, to accept wages at periods other than as provided by law. "Wages" means earnings for services rendered, including benefits or wage supplements; but for purposes of how and when to pay, benefits or wage supplements are not included. "Benefits or wage supplements" are reimbursements for expenses; health, welfare, and retirement benefits; and vacation, separation, or holiday pay [[**N.Y. Lab. Law § 190**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny190_lab&permaId=i85853d0a7cd511dcadfec7f8ee2eaa77&tagName=SEC&endParm=y); [**N.Y. Lab. Law § 191**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny191_lab&permaId=i858dd5d27cd511dcadfec7f8ee2eaa77&tagName=SEC&endParm=y); [**N.Y. Lab. Law § 198-c**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny198-c_lab&permaId=i8307ef1e7cd511dcafe2c7f8ee2eaa77&tagName=SEC&endParm=y)].

*Special rules.* Upon application, the commissioner of labor may authorize an employer to pay its manual workers less frequently than weekly but not less frequently than semimonthly if the employer has furnished satisfactory proof of its continuing ability to meet its payroll responsibilities and has either (1) in the three years preceding its application employed an average of 1,000 or more persons in the state or (2) in the year preceding employed an average of 1,000 or more persons in the state and for the three years preceding employed an average of 3,000 or more persons outside the state. If the manual workers are represented by a labor organization, no authorization will be granted without the labor organization's consent. The commissioner may revoke the authorization if the employer is no longer able to meet its payroll responsibilities [[**N.Y. Lab. Law § 191(1)**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny191%281%29_lab&permaId=i858dd5d27cd511dcadfec7f8ee2eaa77&tagName=SBSEC&endParm=y)].

*Terminated employees.* Wages must be paid not later than the regular payday for the pay period during which the termination occurred. Wages must be paid by mail if employee requests [[**N.Y. Lab. Law § 191(3)**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny191%283%29_lab&permaId=i858dd5d27cd511dcadfec7f8ee2eaa77&tagName=SBSEC&endParm=y)].

***How to pay.*** Upon written request and notification of address by any employee, railroads (except MTA commuter railroads) must mail wage checks by first class to the employee.

*Direct deposit.* Direct deposit of net wages in a bank or financial institution is permissible, but only with the employee's advance written consent. *Effective March 7, 2017,* employees must give their written, voluntary consent to be paid by direct deposit *at least seven business days* prior to the first payment. An employer may not make payment of wages by direct deposit a condition of hire or of continued employment. This law does not apply to bona fide executives, administrators, or professionals whose earnings are in excess of $900 a week nor to an employee working on a farm not connected with a factory. NY Division of Labor Standards guidelines stipulate that employee consent is revocable at will and that the employee cannot be obligated to incur any expense [[**N.Y. Lab. Law § 192**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny192_lab&permaId=i823034667cd511dc8652c7f8ee2eaa77&tagName=SEC&endParm=y)].

*Payroll****debit******cards****.* The New York State Department of Labor has adopted a final rule on payroll **debit** **cards**, *effective March 7, 2017* (*see below*). In 2009, the New York Department of Labor (DOL) issued an opinion letter which said that wages may be paid using payroll **debit** **cards** under certain circumstances. Employees may not be charged fees for services that are essential for them to obtain access to their funds. Examples of essential services include providing a method of withdrawal of wages from the bank account or financial institution, providing employees with a **debit** **card** and a replacement **card** at reasonable intervals, and the maintenance of the account. Nonexempt employees must voluntarily provide written consent to the agreement. Participation in the program may not be a condition of employment. Employees must be able to access the entirety of their wages. A delay in obtaining access to the funds in full within the time required by [**N.Y. Lab. Law § 191**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny191_lab&permaId=i858dd5d27cd511dcadfec7f8ee2eaa77&tagName=SEC&endParm=y)is prohibited. Employees must be provided full notice of the terms and conditions relating to the payroll **debit** **card** option including a full disclosure of fees associated with the use of the **card** [DOL Letter, Request for Opinion on Paycards/**Debit** **Cards**, 10/29/09].

*Final rule on payroll****debit******cards****.* The New York State Department of Labor has adopted a final rule on payroll **debit** **cards**, *effective March 7, 2017,* that provides more protections to employees. Employees must be given written notice prior to being paid by payroll **debit** **card**, and must give their written, voluntary consent to be paid by payroll **debit** **card** *at least seven business days* prior to the first payment. Employers paying wages by payroll **debit** **card** must ensure that: (1) employees have local access to one or more automated teller machines (ATMs) that offer withdrawals at no cost to the employee; and (2) employees have at least one no cost method to withdraw up to the total amount of wages each pay period. The funds available on the **card** may not expire at any point. The employer is not allowed to impose any fees on the employee for using the payroll **debit** **card**, and the employer may not link the payroll **debit** **card** account to any form of credit, including a loan against future pay or a cash advance on future pay. This rule does not apply to any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of $900 per week, or an employee working on a farm not connected with a factory [NYCRR 12 § 192 ; NYCRR 12 § 192-1.1to NYCRR 12 § 192-1.4 ; NYCRR 12 § 192-2.1 to NYCRR 12 § 192-2.3 ].

[***Click here to view the New York final rule on payroll debit cards that is effective March 1, 2017.***](file:///C%3A%5Capp%5Cview%5CframeBlob?usid=bae86p132af3&BLOBID=/resource/TX/nyrule_paycards&DocID=i420ce56cef0e11dd9cd30a48867caa77&StyleSheetId=11&attach=%C2%B617%2C168+New+York+-+Wage+Payment&bccAddr=kelley%40completepayroll.com&collId=T0toc270a3&docTid=T0PAYROLL%3A12352.91-1&docViewProp=showAnnotations%3Dtrue%5E%5Eemail%3Dtrue%5E%5EshowHighlightAnnotations%3Dtrue&emailDisclaimer=&faction=create&feature=tcheckpoint&format=HTML&lastCpReqId=698140&searchHandle=i0ad6ada700000157c457654f84543fec&subject=Checkpoint+document+from+kelley%40completepayroll.com&toAddr=kelley%40completepayroll.com&tool=email&toolsContent=DOCUMENT&toolsData=&toolsFormClipDBName=&toolsFormClipText=&toolsFormClipTitle=%26%23182%3B17%2C168+New+York+-+Wage+Payment&toolsFormDocCite=&toolsFormDocList=i420ce56cef0e11dd9cd30a48867caa77&toolsFormOrigUrl=%2Fapp%2Fview%2FdocText%3Fusid%3Dbae86p132af3%26DocID%3Di420ce56cef0e11dd9cd30a48867caa77%26collId%3DT0toc270a3%26docTid%3DT0PAYROLL%253A12352.91-1%26feature%3Dtcheckpoint%26lastCpReqId%3D697554%26searchHandle%3Di0ad6ada700000157c457654f84543fec&toolsFormToolId=email&toolsTocGuid=&uMsg=)

***Final wages.*** If a salesperson who is on a commission-only basis receives a draw or advance against future commission earnings, that salesperson's final wage payment is an amount equal to the total outstanding commissions earned, less total advances received since the previous wage payment. This is not a "deduction from wages" because it is not made against the salesperson's actual earnings. Therefore, the employer can deduct the advances made from commissions earned without any limitation of amount. See also Deductions from pay.

Whether an employer must pay for unused time after employees resign or are discharged depends upon the terms of the vacation and/or resignation policy. New York courts have held that an agreement to give benefits or wage supplements, like vacation pay, can specify that employees lose accrued benefits under certain conditions [NYS Department of Labor FAQs, *When employees resign ... or are discharged ... from a job, must the employer pay them for any accrued, unused vacation time?;* *Glenville Gage Co. v. Industrial Board of Appeals of NY,* NY Ct. App., 52 NY 2d 777, 12/18/80].

***Pay statement.*** With each wage payment, employers must furnish each employee with a statement showing: name and address of the employer; name of employee; hours worked; piece rate calculation, if applicable; gross wages; allowances; deductions; net wages; and on request, an explanation of how wages were computed.

Employers must give commissioned salespeople a statement of earnings paid or due and unpaid, if so requested.

Railroads must furnish each employee with a statement with every wage payment listing accrued total earnings and taxes to date, plus a separate listing of the employee's daily wages and how they were computed.

Public works contractors and sub-contractors must include the prevailing wage rate (*see*[**¶19,185**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=PAYROLL&linkType=docloc&locId=payroll_19185&permaId=i63f0ebc663e811ddb8bdc7f8ee2eaa77&tagName=PAR&endParm=y)) on the pay stub of every laborer, worker, and mechanic who they employ, beginning with the employee's first pay statement. In addition, at the beginning of the performance of every public works contract, and with the first paycheck after July 1st of each year, all laborers, workers and mechanics must receive written notification of the New York State Department of Labor telephone number and address that they can contact if they are not receiving the appropriate prevailing wage rate for their job classification. Contractors may be subject to a civil penalty of $50 for the first violation, $250 for the second violation, and $500 for subsequent violations, if they don't follow these rules [[**N.Y. Lab. Law § 220**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny220_lab&permaId=i7f5b5484072f11dd9c3cc7f8ee2eaa77&tagName=SEC&endParm=y)].

***Social Security numbers.*** Employers are prohibited from utilizing Social Security numbers (SSN) for employee identification and recordkeeping purposes. The "NY Social Security Number Protection Law," among other things, prohibits employers from printing an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document. An SSN may still be requested for purposes of employment, including in the course of the administration of a claim or benefit, for tax compliance, or for the collection of child support [[**N.Y. Gen. Bus. Law § 399-ddd**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny399-ddd_gbu&permaId=i1b39595cd695eec7e3ff909c6e4cf690&tagName=SEC&endParm=y)].

***Deductions from pay.*** An employer cannot make any charge against wages or require any employee to make any payment by separate transaction unless the charge or payment is permitted as a deduction from wages. Permissible deductions are amounts that are: (1) authorized by law or rule issued by any governmental agency; (2) expressly authorized in writing by an employee and for the employee's benefit (the employee's authorization must be kept on the employer's premises); (3) *effective Oct. 9, 2013,* for the recovery of overpayments; and (4) for the repayment of wage advances [[**N.Y. Lab. Law § 193**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny193_lab&permaId=i79fcf8d49f2d4485a019ea79e7831e07&tagName=SEC&endParm=y); [**NYCRR 12 § 195-2.1**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny195-2.1_t12&permaId=i4245f03bc5e14e1fc3729dcdda323ac9&tagName=REG&endParm=y)].

*Deductions authorized by law.* These deductions include, but are not limited to, deductions for the recovery of overpayments; for repayment of salary advances, and for pre-tax contribution plans approved by the IRS; and wage garnishments and levies for child support and taxes, which may be involuntary as long as they are made in accordance with the statutes and regulations authorizing them [[**NYCRR 12 § 195-3.1**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny195-3.1_t12&permaId=ibe0a5f28064c682bf333f33e441de605&tagName=REG&endParm=y)].

*Deductions authorized by the employee and for the employee's benefit.* A deduction is authorized by the employee if it is agreed to in a collective bargaining agreement between the representative of the employee and the employer, or by a written agreement between the employer and the employees that is express, written, voluntary, and “informed.'' An authorization is “informed'' when the employee is provided with written notice of all terms and conditions of the deduction, its benefit and the details of the manner in which deductions will be made. Such written notice must be provided prior to the execution of the initial authorization and prior to a deduction being made, any change in the amount of a deduction, or a substantial change in the benefits of a deduction. A deduction can only be made following the employee's receipt of written notice of all terms and conditions of the payment, and/or its benefits, and the details of the manner in which the deductions will be made. Employees must also have access to current account information detailing each individual expenditure and a running total of all charges that will be deducted from their pay on the following payday [[**N.Y. Lab. Law § 193**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny193_lab&permaId=i79fcf8d49f2d4485a019ea79e7831e07&tagName=SEC&endParm=y); [**NYCRR 12 § 195-4.2**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny195-4.2_t12&permaId=i75311429018467fa9bd3fc6183ab113c&tagName=REG&endParm=y)].

Deductions are for the benefit of the employee when the deduction is for one of the items expressly listed in [**N.Y. Lab. Law § 193(1)(b)**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny193%281%29%28b%29_lab&permaId=i79fcf8d49f2d4485a019ea79e7831e07&tagName=PARA&endParm=y). These deductions are limited to payments for: (1) insurance premiums and prepaid legal plans; (2) pension, or health and welfare benefits; (3) charitable contributions; (4) purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least 20% of the profits from the event are being contributed to a bona fide charitable organization; (5) U.S. bonds; (6) union dues and similar payments for the benefit of the employee; (7) discounted parking or transit tickets; (8) fitness or health club dues; (9) cafeteria, and vending machine purchases; (10) pharmacy purchases made at the office; (11) tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions; (12) day care, before-school and after-school care expenses; (13) housing provided at no more than market rates by non-profit hospitals or affiliates; and (14) similar payments for the benefit of the employee [[**N.Y. Lab. Law § 193(1)(b)**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny193%281%29%28b%29_lab&permaId=i79fcf8d49f2d4485a019ea79e7831e07&tagName=PARA&endParm=y);[**NYCRR 12 § 195-4.3**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny195-4.3_t12&permaId=iade390a96438448ae4f98b6f8f5958d8&tagName=REG&endParm=y)].

Prohibited deductions include: (1) employee purchases of tools, equipment, and clothing that are required for work; (2) repayment of unauthorized expenses or employer losses (including for spoilage and breakage, and cash shortages); (3) fines or penalties for employee conduct such as tardiness, excessive leave, or misconduct; (4) contributions to political action committees, campaigns, and similar payments; and (5) fees, interest, or the employer's administrative costs; or any deductions not similar to those specifically allowed, including any repayments of loans, advances, or overpayments that are not in accordance with the regulations [[**NYCRR 12 § 195-4.5**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny195-4.5_t12&permaId=i28591a34eb37c53b8d61f02cc9cf3117&tagName=REG&endParm=y)].

*Deductions for wage overpayments.* Employers are permitted under certain circumstances to make a deduction for the recovery of overpaid wages that resulted from mathematical errors. Employees must be provided with a notice of intent to deduct at least three days prior to the deduction. Employees have the right to dispute the overpayment and terms of recovery. Employers may only recover overpayments that were made eight weeks prior to the issuance of the notice. Employers may only make deductions to recover overpayments for a period of 6 years from the original overpayment [[**N.Y. Lab. Law § 193**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny193_lab&permaId=i79fcf8d49f2d4485a019ea79e7831e07&tagName=SEC&endParm=y); [**NYCRR 12 § 195-5.1**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny195-5.1_t12&permaId=ia5e51d7a34a0460890a8ba0bf296fe1d&tagName=REG&endParm=y)].

*Deductions for advances and loans.* An employer may make deductions from an employee's wages for repayment of advances of salary or wages made by the employer to the employee. An “advance'' is the provision of money by the employer to the employee based on the anticipation of the earning of future wages. Non-interest-bearing loans are for the benefit of the employee. Interest bearing loans are not considered to be for the benefit of the employee, and therefore no deduction may be made from an employee's wages to repay such loans under any circumstances [[**NYCRR 12 § 195-5.2**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny195-5.2_t12&permaId=i4e98252fb54dc781b2fdb16136f0e618&tagName=REG&endParm=y)].

**Rulings**In 2006, the New York Court of Appeals (the state's highest court) ruled that fees an employer charged to employees to obtain their net pay at an on-site cash-dispensing machine (CDM) was an unlawful deduction from employee wages that violated the state's labor law [*Angello v. Labor Ready, Inc.*, NYS Court of Appeals, Dkt. No. 149, 11/16/2006].

In 2011, the NY Department of Labor (DOL) issued an opinion letter stating that deductions from a “Paid Time Off'' leave bank to recoup wage overpayments are prohibited under [**N.Y. Lab. Law § 193**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny193_lab&permaId=i79fcf8d49f2d4485a019ea79e7831e07&tagName=SEC&endParm=y), regardless of an employer's written policy that allows such a deduction [DOL Opinion Letter, RO-10-0074, 2/4/11].

No deductions may be made for spoilage or breakage, cash shortages or losses, or fines or penalties for tardiness, misconduct or quitting without notice [[**N.Y. Lab. Law § 193**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny193_lab&permaId=i79fcf8d49f2d4485a019ea79e7831e07&tagName=SEC&endParm=y)].

Deductions for uniforms are prohibited if the clothing cannot be worn as part of an ordinary wardrobe [[**NYCRR 12 § 142-2.22**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTREGS&linkType=docloc&locId=ny142-2.22_t12&permaId=ia81e3a4e438111db9260c7f8ee2eaa77&tagName=REG&endParm=y)].

***Notices; posting; recordkeeping.*** The *Wage Theft Prevention Act* requires an employer to provide a notice in English, and in the primary language of the employee, at the time of hire that contains: the rate of pay (by the hour, shift, day, week, salary, piece, commission, etc.); allowances, including tips, meals, or lodging allowances claimed as part of the minimum wage; the regular pay day designated by the employer; the name of the employer and any dba names; the physical address of the employer's main office; the telephone number of the employer; and the regular hourly rate and overtime rate (if the employee is eligible for overtime). Employers must obtain a written acknowledgment from each employee that he/she received the notice. The signed statement must be kept on file for 6 years [[**N.Y. Lab. Law § 195(1)(a)**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny195%281%29%28a%29_lab&permaId=i890dffc0ee8711db90a5c7f8ee2eaa77&tagName=PARA&endParm=y); NYS DOL Press Release, 10/29/09].

**Notice not required after time of hire**Employers were also required to provide this notice to workers on or before February 1st of each subsequent year of employment, but 2014 legislation eliminated this requirement *beginning in February 2015* [New York State Department of Labor website, Notice of Pay Rate, 12/29/14].

Employers must also notify employees in writing of any changes to the above information at least seven calendar days prior to the time of the change, unless the change is reflected on the wage statement. Employers must establish, maintain, and preserve for not less than six years payroll records showing hours worked, gross wages, deductions, and net wages for each employee. An employer must notify employees in writing, or by publicly posting, its policy on sick leave, vacation, personal leave, holidays, and hours. Copies of the labor law and applicable wage orders must be posted in a conspicuous location [[**N.Y. Lab. Law § 195**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny195_lab&permaId=i890dffc0ee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

There are frequently asked questions about the Wage Theft Prevention Act on the New York State Department of Labor (NYSDOL) website, along with guidelines on the Act and model pay notices that can be sent out to employees.

[***Click here to view NYSDOL frequently asked questions on the Wage Theft Prevention Act.***](file:///C%3A%5Capp%5Cview%5CframeBlob?usid=bae86p132af3&BLOBID=/resource/TX/ny_wtpact&DocID=i420ce56cef0e11dd9cd30a48867caa77&StyleSheetId=11&attach=%C2%B617%2C168+New+York+-+Wage+Payment&bccAddr=kelley%40completepayroll.com&collId=T0toc270a3&docTid=T0PAYROLL%3A12352.91-1&docViewProp=showAnnotations%3Dtrue%5E%5Eemail%3Dtrue%5E%5EshowHighlightAnnotations%3Dtrue&emailDisclaimer=&faction=create&feature=tcheckpoint&format=HTML&lastCpReqId=698140&searchHandle=i0ad6ada700000157c457654f84543fec&subject=Checkpoint+document+from+kelley%40completepayroll.com&toAddr=kelley%40completepayroll.com&tool=email&toolsContent=DOCUMENT&toolsData=&toolsFormClipDBName=&toolsFormClipText=&toolsFormClipTitle=%26%23182%3B17%2C168+New+York+-+Wage+Payment&toolsFormDocCite=&toolsFormDocList=i420ce56cef0e11dd9cd30a48867caa77&toolsFormOrigUrl=%2Fapp%2Fview%2FdocText%3Fusid%3Dbae86p132af3%26DocID%3Di420ce56cef0e11dd9cd30a48867caa77%26collId%3DT0toc270a3%26docTid%3DT0PAYROLL%253A12352.91-1%26feature%3Dtcheckpoint%26lastCpReqId%3D697554%26searchHandle%3Di0ad6ada700000157c457654f84543fec&toolsFormToolId=email&toolsTocGuid=&uMsg=)

[***Click here to view NYSDOL guidelines and instructions on the Act (Feb. 2015)***](file:///C%3A%5Capp%5Cview%5CframeBlob?usid=bae86p132af3&BLOBID=/resource/TX/ny_guidelineswageratenotice_2015&DocID=i420ce56cef0e11dd9cd30a48867caa77&StyleSheetId=11&attach=%C2%B617%2C168+New+York+-+Wage+Payment&bccAddr=kelley%40completepayroll.com&collId=T0toc270a3&docTid=T0PAYROLL%3A12352.91-1&docViewProp=showAnnotations%3Dtrue%5E%5Eemail%3Dtrue%5E%5EshowHighlightAnnotations%3Dtrue&emailDisclaimer=&faction=create&feature=tcheckpoint&format=HTML&lastCpReqId=698140&searchHandle=i0ad6ada700000157c457654f84543fec&subject=Checkpoint+document+from+kelley%40completepayroll.com&toAddr=kelley%40completepayroll.com&tool=email&toolsContent=DOCUMENT&toolsData=&toolsFormClipDBName=&toolsFormClipText=&toolsFormClipTitle=%26%23182%3B17%2C168+New+York+-+Wage+Payment&toolsFormDocCite=&toolsFormDocList=i420ce56cef0e11dd9cd30a48867caa77&toolsFormOrigUrl=%2Fapp%2Fview%2FdocText%3Fusid%3Dbae86p132af3%26DocID%3Di420ce56cef0e11dd9cd30a48867caa77%26collId%3DT0toc270a3%26docTid%3DT0PAYROLL%253A12352.91-1%26feature%3Dtcheckpoint%26lastCpReqId%3D697554%26searchHandle%3Di0ad6ada700000157c457654f84543fec&toolsFormToolId=email&toolsTocGuid=&uMsg=)

[***Click here to view NYSDOL model pay notices to employees (Feb. 2015).***](file:///C%3A%5Capp%5Cview%5CframeBlob?usid=bae86p132af3&BLOBID=/resource/TX/ny_noticeofpayratepayday_2015&DocID=i420ce56cef0e11dd9cd30a48867caa77&StyleSheetId=11&attach=%C2%B617%2C168+New+York+-+Wage+Payment&bccAddr=kelley%40completepayroll.com&collId=T0toc270a3&docTid=T0PAYROLL%3A12352.91-1&docViewProp=showAnnotations%3Dtrue%5E%5Eemail%3Dtrue%5E%5EshowHighlightAnnotations%3Dtrue&emailDisclaimer=&faction=create&feature=tcheckpoint&format=HTML&lastCpReqId=698140&searchHandle=i0ad6ada700000157c457654f84543fec&subject=Checkpoint+document+from+kelley%40completepayroll.com&toAddr=kelley%40completepayroll.com&tool=email&toolsContent=DOCUMENT&toolsData=&toolsFormClipDBName=&toolsFormClipText=&toolsFormClipTitle=%26%23182%3B17%2C168+New+York+-+Wage+Payment&toolsFormDocCite=&toolsFormDocList=i420ce56cef0e11dd9cd30a48867caa77&toolsFormOrigUrl=%2Fapp%2Fview%2FdocText%3Fusid%3Dbae86p132af3%26DocID%3Di420ce56cef0e11dd9cd30a48867caa77%26collId%3DT0toc270a3%26docTid%3DT0PAYROLL%253A12352.91-1%26feature%3Dtcheckpoint%26lastCpReqId%3D697554%26searchHandle%3Di0ad6ada700000157c457654f84543fec&toolsFormToolId=email&toolsTocGuid=&uMsg=)

New employees may recover $50 per work week (up to $2,500) in a civil action, if after ten business days of their first day of employment, an employer has failed to provide the notice required in the Wage Theft Prevention Act [[**N.Y. Lab. Law § 198**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny198_lab&permaId=i89193958ee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

*Workers Adjustment and Retraining Notification (WARN) Act.* The New York State Workers Adjustment and Retraining Notification (WARN) Act requires employers to provide 90 days' notice prior to a plant closing, mass layoff or relocation. The Act applies to private employers with 50 or more workers who lay off at least 25 employees. Penalties will be assessed against employers who violate these rules [[**N.Y. Lab. Law § 598**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny598_lab&permaId=i5acbbd6a1057eff6cac39d2c1a40661b&tagName=SEC&endParm=y)].

*Commission salespeople.* Agreed terms of employment between employers and commissioned salespeople must be in writing, signed by both parties, and kept on file by the employer for not less than 3 years. The writing must include a description of how wages, salary, drawing account, commissions, and all other monies earned and payable are calculated. The failure of an employer to produce signed written terms upon request by the Commissioner will result in the presumption that the terms as represented by the commissioned salesperson are the agreed terms of employment [[**N.Y. Lab. Law § 191(1)(c)**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny191%281%29%28c%29_lab&permaId=i858dd5d27cd511dcadfec7f8ee2eaa77&tagName=PARA&endParm=y)].

*Protecting employee personal information.* Employers must protect employee personal information when disposing of business records using one of the following four methods: (1) shredding the records prior to disposal of the record, (2) destroying the personal identifying information contained in the record, (3) modifying the record to make the personal identifying information unreadable, or (4) taking actions consistent with commonly accepted industry practices that the employer reasonably believes will ensure that no unauthorized person will have access to the personal identifying information contained in the record. Violations can result in a civil penalty imposed by the court of not more than $5,000 [[**N.Y. Gen. Bus. Law § 399-H**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny399-h_gbu&permaId=ic4ed6217755b609e8375d0f13e95ee21&tagName=SEC&endParm=y)].

***Jury duty pay.*** Employers generally are not required to pay workers for time spent as jurors. However, an employer that employs more than 10 employees must pay the first $40 of the juror's daily wages during the first three days of jury service.

Trial and grand jurors (except those in town and village courts and those whose wages are paid while they are on jury duty) are generally entitled to a court-provided per-diem allowance of $40 a day for fees and travel expenses (physical attendance at the court is required). However, eligible jurors are not entitled to this allowance for the first three days if their employer is required to pay them wages of $40 a day for three days [[**N.Y. Judiciary Law § 519**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny519_jul&permaId=i8878f268ee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y); [**N.Y. Judiciary Law § 521**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny521_jul&permaId=i887a78aeee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

***Time Off to Vote.*** Employees are allowed time off to vote if polls are not open for four consecutive hours outside the employee's regular shift. The employee must notify the employer of the need for time off at least two but not more than ten working days prior to the election, and the employer may specify whether the employee takes time off at the beginning or end of the shift. Only up to two hours of time off needs to be paid for [[**N.Y. Elec. Law § 3-110**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny3-110_ele&permaId=i879868d8ee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

***Payment bond.*** The commissioner of labor can require an employer convicted of a violation of the wage payment law, or one that for 10 days (after expiration of the time for appeal) left unsatisfied a judgment for nonpayment of wages, to deposit a sufficient and adequate bond with two or more approved sureties. Under the terms of the bond, the employer must pay wages for future periods (up to two years) according to the law and pay any judgment on the recovery of wages. Should the employer fail to post a bond within 10 days, the commissioner can bring a suit to require it to furnish the bond or to cease doing business [[**N.Y. Lab. Law § 196**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny196_lab&permaId=i8910a1bcee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

***Penalties.*** An employer failing to pay wages due may be subject to a civil fine of $500 for each failure [[**N.Y. Lab. Law § 197**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny197_lab&permaId=i8917a994ee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

In addition, employers that fail to pay wages or do so improperly are guilty of a misdemeanor for the first offense and, upon conviction, may be subject to a criminal fine of between $500 and $20,000 or be imprisoned for one year. If a second offense occurs within six years, the employer may be charged with a felony and, upon conviction, be fined from $500 to $20,000 or imprisoned for up to one year and a day, or both. Employers who have been assessed a civil penalty for repeated, willful, or egregious wage payments violations are required to post certain information on the New York State Department of Labor website [[**N.Y. Lab. Law § 198-a**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny198-a_lab&permaId=i891b62faee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y);[**N.Y. Lab. Law § 219-c**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny219-c_lab&permaId=ic2c126beaca2c7e78b7cb0cff35c82b9&tagName=SEC&endParm=y)].

Employers that penalize employees because they complained of employer violations will be guilty of a misdemeanor and will be fined from $1,000 to $10,000. All remedies can be enforced simultaneously or consecutively, as far as they are consistent with each other [[**N.Y. Lab. Law § 215**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny215_lab&permaId=i894f32a6ee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

If the commissioner finds a violation of the payment of wages and minimum wage laws, the commissioner must issue a compliance order directing the employer to pay the amount due in wages, benefits, or wage supplements to the employee. Such payments include interest at the rate prescribed by the superintendent of banks.

The same provisions for assessing civil penalties and interest apply to compliance orders issued under the minimum wage and payment of wages laws applying to public works and building service employees. The commissioner may enter into reciprocal agreements with other states for the collection of wages [[**N.Y. Lab. Law § 196**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny196_lab&permaId=i8910a1bcee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y); [**N.Y. Lab. Law § 198**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny198_lab&permaId=i89193958ee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y); [**N.Y. Lab. Law § 220**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny220_lab&permaId=i7f5b5484072f11dd9c3cc7f8ee2eaa77&tagName=SEC&endParm=y); [**N.Y. Lab. Law § 220-b**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny220-b_lab&permaId=i7ddfd008072f11ddb33bc7f8ee2eaa77&tagName=SEC&endParm=y); [**N.Y. Lab. Law § 235**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny235_lab&permaId=i8989510cee8711db90a5c7f8ee2eaa77&tagName=SEC&endParm=y)].

Any manufacturer, contractor, or retailer in the apparel industry who ships, delivers, or sells any apparel or sections of apparel and knows or should know that such goods were produced in violation of the state wage payment and minimum wage laws shall be deemed to have violated the law. Retailers can avoid liability by securing a written assurance from the manufacturer that the goods were produced in compliance with the law [[**N.Y. Lab. Law § 345(10)**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny345%2810%29_lab&permaId=i899b3d22ee8711db90a5c7f8ee2eaa77&tagName=SBSEC&endParm=y)].

***Deceased employees.***

*Maximum amount payable.* (1) $30,000 within 30 days of death (includes bonus, pension, retirement or death benefit, or profit share payable by employer, plan, or system). (2) $15,000 within 31 days to 6 months of death (includes above types of payments). (3) $5,000 if more than 6 months after death (includes above types of payments) [[**N.Y. Surr. Ct. Proc. Act § 1310**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny1310_sgp&permaId=i5cd85068835b48ab8907ed87c51d6b11&tagName=SEC&endParm=y)].

*To whom payable.* Within 30 days of death — designated beneficiary or surviving spouse; after 30 days — surviving spouse, adult children, parent, sibling, niece or nephew, creditor, or person paying funeral expenses (in that order); after 6 months — distributee, creditor, or person paying funeral expenses [[**N.Y. Surr. Ct. Proc. Act § 1310**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny1310_sgp&permaId=i5cd85068835b48ab8907ed87c51d6b11&tagName=SEC&endParm=y)].

*Conditions of payment.* For (1) above to apply, payment must be made within 30 days after employee's death. Affidavit must be made by surviving spouse showing that the wage payment and all other payments received by spouse under this provision do not total more than $30,000. For (2) above to apply, payment must be within 31 days to 6 months after employee's death. Affidavit must be made by person receiving or at whose request payment is made, showing (a) date of death, (b) relationship to decedent, (c) that no executor or administrator has qualified or been appointed, (d) the names and addresses of persons entitled to and who will receive the money when paid, and (e) that the payment and all other payments made by debtors under this provision, known to affiant, do not total more than $15,000. For (3) to apply, payment must be made more than 6 months after the employee's death. Affidavit must be made by the person paid showing (a) date of death, (b) that no executor or administrator has qualified or been appointed, (c) that the deceased employee was not survived by a spouse or minor child, (d) that the affiant is entitled to payment, and (e) that the payment and all other payments made by debtors under this provision, known to the affiant, do not total more than $5,000. *Note:* A payment made in good faith under (1), (2), or (3), above discharges employer's indebtedness to the extent of the payment [[**N.Y. Surr. Ct. Proc. Act § 1310**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLNTCODE&linkType=docloc&locId=ny1310_sgp&permaId=i5cd85068835b48ab8907ed87c51d6b11&tagName=SEC&endParm=y)].

***Unclaimed wages.*** Any wages payable by a domestic or foreign corporation and held for a resident that remain unclaimed for more than three years are presumed abandoned [[**N.Y. Aband. Prop. Law § 501**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLCODN&linkType=docloc&locId=ny501_abn&permaId=iSLCODN%3A25540.1&tagName=SEC&endParm=y)].

*Reporting and remitting.* Employers must file a verified report with the state comptroller by May 1 of each year for wages of $20 or more unclaimed as of March 31 of the preceding year. Wages of less than $20 may be reported in the aggregate. Payment must be remitted with the verified report.

The report may be submitted online. Diskettes must be in the National Association of Unclaimed Property Administrators (NAUPA) format. Negative reporting (report must be filed even if no unclaimed property to report for the year) is required. The state accepts property with a last known address in another state and allows out of state holders to remit property if it is for ten or fewer properties totaling $1,000 or less [[**N.Y. Aband. Prop. Law § 401**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLCODN&linkType=docloc&locId=ny401_abn&permaId=iSLCODN%3A25534.1&tagName=SEC&endParm=y); [**N.Y. Aband. Prop. Law § 1419**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLCODN&linkType=docloc&locId=ny1419_abn&permaId=iSLCODN%3A25642.1&tagName=SEC&endParm=y); Office of the State Comptroller website, Handbook for Reporters of Unclaimed Funds].

*Recordkeeping.* Employers must maintain all records necessary to establish the accuracy and completeness of the verified report for five years from the December 31 of the year the report must be filed [N.Y. Aband. Prop. Law § 1419-a ].

*Penalties.* An employer that fails to file a complete report may be subject to a fine of $100 for each day the report is not filed. An employer that fails to remit payment must pay interest on the wages at a rate of 10% per year from the date the wages should have been delivered. The state offers a voluntary compliance program under which penalties and interest may be waived for first-time reporters and certain holders who have failed to report a particular type of property [[**N.Y. Aband. Prop. Law § 1412**](https://checkpoint.riag.com/app/find?begParm=y&app.version=16.09&dbName=SLCODN&linkType=docloc&locId=ny1412_abn&permaId=iSLCODN%3A25634.1&tagName=SEC&endParm=y); Office of the State Comptroller website, Handbook for Reporters of Unclaimed Funds ].

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