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SERVICES AND PROTECTIONS FOR FARMWORKERS

This booklet has been created to help you understand some of the services available to workers in the State of New York, including your rights under the labor law.

IMPORTANT INFORMATION

KNOW YOUR RIGHTS

**Discrimination:** It is against the law for an employer to discriminate against workers because of:

- Age
- Race
- Creed
- Color
- Gender
- National origin
- Disability
- Marital status
- Military status
- Arrest or conviction record
- Sexual orientation
- Domestic violence victim status
- Predisposing genetic characteristics

Under Section 215 of the New York State Labor Law, it is illegal for an employer to discriminate, fire, or punish a worker because the worker has filed a complaint or exercised their rights under New York State Labor Law.

The Division of Labor Standards will also investigate any complaints regarding wages and/or work hours.
Right to Receive Visitors: The New York State Attorney General says that you have the right to receive, in the labor camp where you live (including employer-provided housing), visits by:

- Persons working for any government or private agencies who care about your health or welfare
- Doctors
- Lawyers
- Labor union representatives
- Clergy

You can have guests and visitors at the camp where you live, when you are not working, without asking permission of your employer or the owners of the labor camp/housing.

Child Care: In New York State, the Agri-Business Child Development program (ABCD) offers day care for the children of seasonal agricultural workers so that the parents can work. For more information, see the list of ABCD centers under Contacts.

Social Security: In most jobs, the employer must take contributions for Social Security out of your wages. Your wage statement will show you how much has been taken out.

Taxes: State and Federal income taxes come out of every paycheck. Your wage statement will show how much has been taken out. You may be able to get a full refund of the income tax taken from your paycheck. To find out if you qualify for a refund, you must file State and Federal income tax forms. If you are not a resident of New York State, there is a special tax form that you must complete. Please call 800-462-8100 and request an out-of-state resident tax form.

Veterans: There are special programs for veterans. If you served in the military, please contact the state Department of Labor. Some employers give preference to people who have been in the armed forces. For more information, call the New York State Department of Labor’s Veterans Employment Hotline at 800-342-3358.
SERVICES TO MIGRANT AND SEASONAL FARM LABORERS

New York State Department of Labor staff provides the same range of services to Migrant and Seasonal Farm laborers as are provided to non-Migrant and Seasonal Farm laborers job seekers. New York State is required to deliver all workforce development-related services, benefits, protections, career guidance/counseling, testing, job development, job training, and job referral services to Migrant and Seasonal Farm laborers on an equal and non-discriminatory basis.

NEW YORK STATE CAREER CENTERS

The New York State Department of Labor offers many types of help to people who are out of work or who are looking for another job. The network of New York State Career Centers offers a wide array of services to people, whether they live in the area or not or are migrant workers. These centers also have information about many programs other government agencies provide to people who have lost their jobs. Many other types of aid are offered on a walk-in, self-serve basis. If you visit a Career Center, you may be required to fill out certain paperwork.

Career Center services are free of charge. Here are some of the ways the New York State Department of Labor can help:

- Language assistance is available for those who are not fluent in English
- Help you explore vocational interests and develop career goals so that you may find work you would be good at and enjoy
- Prepare you for a job search with resume and interview skills assistance to help you get or keep a job
- Staff will interview you in order to gain understanding of your experience and job needs; this is done to help match you to existing job openings
- Assist you in computer job searches for openings locally, around the state, and throughout the country
- Test for the job you want, such as clerk or mechanic
- Keep your name and information on file so we can look for jobs for you; if an employer seeks an employee with your experience, we will notify you
- Refer you to community-based organizations and human services agencies for relief, assistance, training programs, etc.
- Help in finding schools, day care centers, or other children’s programs
Please tell us if you are a veteran, as you may receive preference for openings and special assistance if you are qualified.

Call 800-447-3992 to find the New York State Career Center nearest to you. For the complete list of New York State Career Centers, visit www.labor.ny.gov/career-center-locator.

Career Centers also offer specialized services to youth, those with certain disabilities, economically disadvantaged individuals, displaced homemakers, immigrant workers, ex-offenders, and those interested in apprenticeship opportunities. We can also help to determine a worker’s eligibility for Trade Adjustment Assistance, Work Opportunity Tax Credit, the Federal Bonding Program, and other hiring incentives for employers.

EMPLOYMENT SERVICE

EMPLOYMENT SERVICE AND EMPLOYMENT RELATED LAW COMPLAINT SYSTEM

According to federal regulations, New York State’s Employment Service operates the Employment Service Complaint System for filing and processing customer complaints related to the alleged Employment Service regulations and/or federal, state, and other employment laws. Employment Service Complaint Specialists may be contacted at New York State Career Centers throughout the state. Copies of complaints filed by MSFWs are also sent to the State Monitor Advocate (SMA), who ensures follow up of these complaints. To reach the State Monitor Advocate, see Contacts.

DIVISION OF IMMIGRANT POLICIES AND AFFAIRS

The Division of Immigrant Policies and Affairs (DIPA) works inside and outside of the Department of Labor to serve the needs of immigrants. We make sure the Department’s protections, services, and programs are available to everyone, including people with limited English proficiency.

THE FOREIGN LABOR CERTIFICATION UNIT

The New York State Department of Labor’s (NYSDOL) Foreign Labor Certification Unit (FLCU), within DIPA, processes H-2A and H-2B job order applications for employers conducting business in New York State. The NYSDOL works with the USDOL to ensure employers comply with state and federal laws.
THE FEDERAL H-2A VISA PROGRAM

The Federal H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring non-immigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

The employment must be of a seasonal nature and tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle. It also must require labor levels far above those necessary for ongoing operations.

The employment must be of a temporary nature when the employer’s need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

New York State’s primary goal in this program is to help the agricultural employer obtain qualified domestic workers for these positions. Our role in this federal program also includes:

- Processing the agricultural employer’s application for temporary employment certification
- Reviewing it for compliance with State and Federal regulations
- Placing the approved job order on New York State’s One Stop Operating System (OSOS) for interstate and intrastate distribution
- Following up on domestic applicant referrals made on the approved job orders
- Verifying that working and living conditions match those described in the job order
- Providing requested data to the United States Department of Labor (USDOL)

Here are some facts and tips to keep in mind for H-2A workers and other workers employed on the H-2A job order in New York State:

**Domestic Applicants:** H-2A employers must provide employment to any qualified, eligible U.S. worker who applies for the H-2A job opportunity during the recruitment period. The employer must hire all domestic applicants who:

- Meet the minimum qualifications for position
- Are available for the entire period of employment
- Have been fully apprised of all terms & conditions of employment in their primary language
DIPA offers free language interpretation and interview assistance to H-2A employers interviewing domestic applicants. Employers may also use the H-2A Referral Toolkit to help with local and domestic worker recruitment.

**H-2A Guest Workers:** The H-2A visa program allows foreign workers to come to the U.S. to do temporary agricultural work only. After the employment contract is over, H-2A workers must go back to their home country or they can be moved to another, approved federal job order. Also, H-2A workers must only work:

- For the employer listed on the contract
- At the location(s) stated on the contract
- Only for the period contracted
- On the crop activity stated on the contract
- At the rates of pay stated on the contract (hourly, piece rate etc.)

**Disclosure:** Every year upon hire, workers must be given a copy of the certified work contract, the ETA790, which states:

- The start and end dates of the contract
- The significant conditions of employment (transportation, housing, meals, etc.)
- The days that workers are not required to work (Sundays, federal holidays, etc.)
- The hours per day and the days per week a worker is expected to work
- The crop and area to be worked
- The rate of pay for each job
- That the employer will provide and pay for all required tools
- That the employer will provide workers’ compensation insurance for workers

**Deductions:** Workers must also be notified in writing of all deductions that are not already required by law, such as health insurance premiums or any other benefits the employer may provide. An employer is prohibited from deducting money from workers’ wages for the cost of new or broken tools, spoiled products, cleaning, transportation, laundry or any other expense that goes with running a business.
**Rates of Pay:** The employer must pay all covered workers at least the highest of the following applicable wage rates in effect at the time work is performed: the adverse effect wage rate (AEWR), the applicable prevailing wage, the agreed-upon collective bargaining rate, or the Federal or State statutory minimum wage.

Wages may be calculated based on hourly or “piece” rates of pay. The piece rate must be no less than the piece rate prevailing for the activity in the area of intended employment and must average no less than the highest required hourly wage rate in a pay period.

**Adverse Effect Wage Rate (AEWR):** All workers performing the duties listed in the ETA790 work contract must be paid at least the federal AEWR, which is a separate minimum wage rate (a rate that will not adversely affect the employment opportunities of U.S. workers) for each state. The AEWR is published once a year by the USDOL with the assistance of the U.S. Department of Agriculture, for each state. For more information, visit the USDOL’s Office of Foreign Labor Certification website: [www.foreignlaborcert.doleta.gov/adverse.cfm](http://www.foreignlaborcert.doleta.gov/adverse.cfm)

**Wage Statements:** With each paycheck, employers must give every worker a wage statement that shows:

- The employer’s name, address, and telephone number
- The dates covered by the pay period
- The number of hours worked
- The number of hours refused (if applicable)
- The pay for each type of crop
- The pay rate (per hour, piece rate, etc.) and overtime rate
- The total earnings for the pay period
- All deductions from wages (with explanations for each deduction)

**Guarantee:** The total pay earned during the employment period must meet the Three-Quarter Guarantee of the entire ETA790 work contract. What that means is that the H-2A employers must guarantee to offer each covered worker employment for a total number of hours equal to at least 75% of the workdays in the contract period – called the “three-fourths guarantee.” For example, if a worker is on a contract for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker would need to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360). If an employer does not offer
the required hours or if it is impossible to fulfill the remainder of the contract and it is not the employer’s fault, the employer must make up any shortfall.

**Reasonable Transportation & Subsistence Costs:** The employer must either provide or pay for inbound transportation and daily meals to the place of employment or reimburse workers for reasonable costs when 50% of the work contract is completed. When the work contract is completed or if the contract cannot be fulfilled by the employer, the employer must provide or pay for the worker’s transportation and daily meals to his next job or home.

**Housing and Daily Transportation:** When a worker cannot return to their permanent residence within the same day, the employer must provide safe housing, utilities and daily transportation at no cost to the worker.

**Potable Drinking water:** Employers must provide safe, clean and cool drinking water in portable containers (with individual use cups) at the worksite and at no cost to the workers. Workers can also bring their own water, but this does not meet the employer’s obligation. The employer must also provide safe potable drinking water at all worker housing.

**Toilets and Hand Washing:** If workers will be in the fields for more than three hours (including travel time to and from the fields), employers must also provide one toilet and one hand washing station for every 20 workers. If there are 21 workers, the employer must provide two toilets and two hand washing stations. Toilets must be close to where the employees work. They must be clean, free of pests, and have self-closing doors that lock from the inside. There must be enough toilet paper for all workers for the entire day. Hand washing stations must be near the toilets. They must be stocked with clean water and enough soap and clean towels for every use, and provide a place to dispose of used towels. Employers must tell employees where they can get drinking water, use the toilet, and wash their hands.

**Workers’ Compensation:** The employer must provide workers’ compensation insurance coverage to all employees. A Notice of Workers’ Compensation Coverage poster, showing the name of the insurance company, policy number and coverage period must be clearly displayed in English and Spanish in an area visible to all employees.
Meal Periods: If the work day or shift is more than six hours, workers must receive at least one, 30-minute meal period. This meal period does not have to be paid but it must be provided. When a shift begins before 11 am and goes past 7 pm, the employer must provide an additional, 20-minute meal period for dinner, between the hours of 5-7 pm.

Other Protections: The employer may not require workers to pay, either directly or indirectly, for any employer-related costs to obtaining the H-2A labor certification, including the employer’s attorney or agent fees, the application fees, visa fees, transportation costs or any other recruitment costs.

H-2A Guest Worker Program Cards: The Foreign Labor Certification Unit (FLCU) has created an identification card intended to be a supplemental identification document for foreign guest (H-2A) workers. The card includes the name of the agricultural business, the H-2A job order number, as well as the start and end dates of the job order. The card is approximately 2 ½” x 3 ½” including lamination. This identification card program is being offered at no expense to employers with certified H-2A job orders in New York State. Upon request, the FLCU will produce the number of cards that correspond to the number of workers approved on the certified H-2A job order. Employers can request their cards by sending an email to dipa@labor.ny.gov.

AGRICULTURE LABOR PROGRAM
The Division of Immigrant Policies & Affairs within the Department of Labor houses the Agriculture Labor Program, which includes Agriculture Labor Specialists located across the state. The Agriculture Labor Program’s goal is to make sure that New York’s large and diverse agriculture industry thrives as it complies with state and federal laws. All Agriculture Labor Specialists speak both English and Spanish and can assist you and your workers with many labor-related matters.

FARM LABORER OUTREACH*
Federal regulations require that states conduct outreach to Migrant and Seasonal Farm laborers who are not being reached by typical employment services offered at the New York State Career Centers that operate exclusively during normal business hours. Agriculture Labor Specialists may contact Migrant and Seasonal Farm laborers (including H-2A workers) any day of the week or time of day, in their living, working, or gathering areas. Agriculture Labor Specialists provide information to farm laborers about labor laws, services available from the local Career Centers, local support services, and other job development services.
NEW YORK STATE MONITOR ADVOCATE

The New York State Monitor Advocate monitors the New York State Department of Labor’s Migrant and Seasonal Farm laborers employment services to ensure compliance with United States Department of Labor regulations.

Some of the responsibilities of the State Monitor Advocate are:

• Monitoring New York State Career Centers to ensure equity of services
• Monitoring outreach performed by the Agriculture Labor Specialist field staff throughout the state
• Ensuring that complaints submitted through the Employment Service Complaint System are addressed or referred to other agencies (i.e. Wage & Hour, OSHA, Human Rights, etc.) and following up on the referred complaints
• Working with the Foreign Labor Certification Unit to ensure that domestic workers who qualify for H-2A jobs are given every opportunity to obtain those jobs

HUMAN TRAFFICKING

Human trafficking is modern-day slavery and a serious crime. Anyone can be a victim; many may not realize that what is happening to them is a crime. Human trafficking is happening across the globe and in all 50 states. Human trafficking occurs when a group of people or an individual obtains or holds another person(s) in compelled service (sex or labor). The Department of Labor receives and screens tips of possible human trafficking. The Department of Labor refers possible victims for New York State confirmation, which provides the victim with access to free government benefits. If you or someone you know is being forced to work or have sex for profit against their will, you can get help by contacting the Counsel to Division of Immigrant Policies and Affairs at 877-466-9757 or by emailing: trafficking@labor.ny.gov. You also can call the National Human Trafficking Resource Center at 888-373-7888.
THE LAW

FARM LABORERS FAIR LABOR PRACTICES ACT (FLFLPA)

The bill, signed on July 17, 2019 by Governor Andrew Cuomo, establishes the Farm Laborers Fair Labor Practices Act to protect farm worker rights and ensure equitable housing and working conditions. The bill grants farm workers overtime pay, a day of rest each week, disability and Paid Family Leave coverage, unemployment benefits and other labor protections. Most of the provisions will be effective on January 1, 2020. The expansion of migrant housing permit requirement will be effective on January 1, 2021.

EFFECTIVE JANUARY 1, 2020:

WAGES AND OVERTIME

Farm laborers, including Foreign Visa workers, must now be paid one and a half times the regular rate of pay for hours worked over 60 in a calendar week. For questions, please call 833-NY-FARMS or visit www.labor.ny.gov/farmlabor.

DAY OF REST

Employers must now provide at least one day (24 consecutive hours) of rest in every calendar week. The employer must designate and notify the worker in advance of their day off and whenever possible, ensure that the day off coincides with a traditional day for religious worship.

Farm laborers are permitted to voluntarily work during this day of rest, provided the employer pays them at the overtime rate. Employers must keep a weekly record of hours and days worked.

UNEMPLOYMENT INSURANCE

Farm employers, and farm crew leaders under certain circumstances, are required to provide unemployment insurance coverage for their farm employees. H-2A Foreign Guest Workers are now excluded from unemployment insurance coverage. For questions, please contact NYS Department of Labor Unemployment Insurance Hotline at 888-899-8810.

WORKERS’ COMPENSATION

Farm employers, owners and operators are required to provide workers’ compensation coverage for their employees, regardless of their annual payroll, and all employers are required to post the mandatory workers’ compensation notice of compliance poster in both English and Spanish.
Additionally, farm labor contractors, forepersons, and supervisors who receive notice of an injury must notify the employer, owner or operator of claim forms. For questions, please contact Workers’ Compensation at 877-632-4996 or wcb.ny.gov/farmtoolkit.*

**DISABILITY INSURANCE AND PAID FAMILY LEAVE**

Farm employers, owners and operators are required to provide New York’s disability benefits (DB) and Paid Family Leave (PFL) insurance coverage to eligible farm laborers.

All employers are prohibited from discriminating against employees who request DB or PFL claim forms. For questions, please call 844-337-6303.*

For more information and employer resources related to workers' compensation, disability benefits, and paid family leave, please see the Workers' Compensation Board's Toolkit for Farm Employers at wcb.ny.gov/farmtoolkit.

**RIGHT TO ORGANIZE**

Farm laborers now possess the right to organize, which includes forming, joining, or assisting labor organizations and the right to bargain collectively through representatives of their own choosing. This includes the right to engage in concerted activities (any activity, discussion or meeting directed at improving terms and conditions of employment, or the group interests of the employees), for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion of employers. However, farm laborers do not have the right to strike. Farm laborers are protected from retaliation, including termination if they are speaking to each other about labor conditions and organizing. For questions, please contact the Public Employment Relations Board (PERB) at 518-457-6410 or perb.ny.gov.

**EFFECTIVE JANUARY 1, 2021:**

**MIGRANT FARM LABORER HOUSING PERMIT**

Employers are required to contact the NYS Department of Health (or local County Health Department) and apply for a permit to operate a farm or processing labor camp which will be occupied by one or more migrant workers. For questions, please call 518-402-7600.
Migrant or Seasonal Farm Laborers

The federal Migrant and Seasonal Farm Laborer Protection Act and other federal laws provide certain protections and other services for Migrant and Seasonal Farm laborers.

Who is a Migrant or Seasonal Farm Laborer?

A worker can be a migrant farm laborer, a seasonal farm laborer, or a migrant food processing worker.

Seasonal Farm laborer: A person who, during the preceding 12 months, worked doing farm work. Someone who is employed on a farm, year-round, by the same employer, is not a seasonal farm laborer.

Migrant Farm laborer: A seasonal farm laborer who had to travel to the farm and was unable to reasonably return to their permanent residence within the same day. This means that the seasonal farm laborer has temporarily relocated from their permanent residence for the purpose of working on this job.

Migrant Food Processing Worker: A person who, during the preceding 12 months worked performing food processing (animal slaughtering; fruit and vegetable canning; prepared sauce manufacturing; frozen fruit, juice, and vegetable manufacturing) and who was not reasonably able to return to their permanent residence in the same day.

For more information about federal programs and protections for Migrant and Seasonal Farm laborers, visit www.doleta.gov/Farm laborer.

Minimum Wage Law

What is the minimum wage that I must be paid?

You must be paid at least the federal minimum wage or the state minimum wage, whichever is higher, per hour for the time you work, no less. If you are paid on a piece rate basis (by the basket or bushel), the piece rate must result in the minimum hourly wage rate or higher. If you are not earning this rate, you can call 888-525-2267 to file a complaint or contact your Agriculture Labor Specialist.
NEW YORK STATE MINIMUM WAGE

Historically, the New York State minimum wage has been the same as or higher than the federal minimum wage. The minimum wage in New York is as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>12/31/19</th>
<th>12/31/20</th>
<th>2021*</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City</td>
<td>$15.00/hour</td>
<td>$15.00/hour</td>
<td>$15.00/hour</td>
</tr>
<tr>
<td>Long Island and Westchester Co.</td>
<td>$13.00/hour</td>
<td>$14.00/hour</td>
<td>$15.00/hour</td>
</tr>
<tr>
<td>Remainder of New York State</td>
<td>$11.80/hour</td>
<td>$12.50/hour</td>
<td>*</td>
</tr>
</tbody>
</table>

*Annual increases for the rest of the state will continue until the rate reaches a $15 minimum wage.

What must I get paid if I work on a farm with H-2A workers?

If you perform a different job from the H-2A workers, you must be paid at least the state minimum wage for the time you work. If you perform the same duties as the H-2A workers, you must be paid the higher of the Adverse Effect Wage Rate or the Prevailing Wage, which are set by the U.S. Department of Labor. If you want to obtain information about the Adverse Effect Wage or the Prevailing Wage for your occupation, or you are concerned that the wage rate you are receiving is not correct, contact your Agriculture Labor Specialist.

Can minors be paid less than the Minimum Wage?

No, minors must be paid at least minimum wage.

What if my employer pays a piece rate?

If the employer pays on a piece rate basis, the piece rate must yield a wage equal to or greater than the minimum wage, even when the employee is a minor. This calculation must also include overtime if the total hours worked exceeds 60 in a week. For more information about the types of work minors can perform, see the Child Labor section later in this booklet.
Can my employer charge me for meals?
If your employer gives you meals, the employer is allowed to deduct $1.70 from your wages for each meal. But if you are a migrant seasonal farm laborer who earns less than $254 every two weeks (unless you choose not to work), your employer is not allowed to take money out for meals.

Can my employer charge me for housing?
No, if you are a migrant farm laborer, your employer cannot charge you for housing or utilities, from your wages or by a separate fee.

If you are a seasonal or year-round worker, and your employer provides housing and utilities as part of your employment, the following may be taken as a credit toward the minimum wage: $18.95 per week for a one-person room:
• $12.65 per week for a shared room
• $5.00 per day for a house or apartment with utilities for one person
• $8.00 per day for a house or apartment with utilities, if you live with your family (if other members of your family live with you or work for the same employer, you still pay only $8.00 per day)

The employer may take from your wages only the deductions listed later in this booklet under the heading “Deductions from Wages.”

Am I considered a farm laborer if I work in a packing house?
A person working in a packing house is a farm laborer only if all of the produce handled in the packing house is grown:
• On the same farm
• By the same grower/processor who owns the packing house and the farm

If you are handling goods from another farm, that work is not farm work, and you must be paid overtime for hours worked over 40 in a week.

Where can I find out the basic standards that migrant farm laborer housing must meet?
If you are a migrant seasonal farm laborer, you should call the New York State Department of Health’s Bureau of Community Environmental Health and Food Protection at 518-402-7600 or toll-free at 800-458-1158.
Can my employer pay me with products from the farm (milk, vegetables, fruit or eggs)?

Yes, but only if you have agreed to this form of payment. The employer must value the products at the price the stores pay the farmer for them, not the price the stores charge their customers.

If I am covered by federal law, does the state law apply to me?

Yes. You are always fully protected by the state labor laws. The law most protective of workers, whether it is state or federal. Your employer must comply with the law that gives the greatest advantage to the worker. For example, if the state minimum wage is higher than the federal minimum wage, your employer must pay the higher rate. For more information about the federal wage law, contact the nearest U.S. Department of Labor Wage and Hour Division office.

How many hours can I work?

If you are at least 14 years old, there are no restrictions on how many hours you may work on a farm when you are not required to be in school. The employer must count travel time between fields or required waiting time as work time and must pay you for all of it. Your employer must tell you in writing in your work agreement how many hours you are expected to work each day and each week.

Must I receive a higher rate for overtime hours?

Farm workers are entitled to overtime if their hours worked exceeds 60 in a calendar week.

What about workers in the packing house or processing plant?

Farm laborers in packing and processing plants are entitled to overtime when the hours worked exceed 60 in a calendar week. If they pack or process food that was not grown on the employer’s farm, they are entitled to overtime when the hours worked exceed 40 in a calendar week.

What about workers in a retail farm stand?

Workers in retail farm stands are entitled to overtime if the hours worked exceed 60 in a calendar week. If the stand sells goods not grown or produced on the farm, the workers are then entitled to overtime if the hours worked exceed 40 in a calendar week.
If my employer owes me wages, how do I collect this money?

The law says that you must receive all of your wages on the regular, designated payday. The Division of Labor Standards can help you collect money that may be due to you if you have been underpaid and you may file a wage claim by contacting the nearest office of the Division of Labor Standards at 518-457-2730. Another option is to file a wage claim with Small Claims Court for a fee. But you may not pursue both a claim with the Division of Labor Standards and a claim with Small Claims Court at the same time and for the same owed wages. You may choose only one of these remedies. To file a claim with Small Claims Court, contact your local County Clerk’s Office for information. For additional information, please visit nycourts.gov/courthelp/SmallClaims/index.shtml

PAYMENT OF WAGES

MEAL PERIODS COMMON QUESTIONS

Must I get fifteen-minute breaks?

No. Breaks are offered only if your employer has agreed to do so. Breaks or rest periods are not required by law, but your employer may decide to provide them. A break is a benefit that must appear in your work agreement if the employer agrees to provide them.

Am I entitled to a meal period during my work day?

In general, if your shift is greater than six (6) hours, the law requires you to have at least a 30-minute, uninterrupted meal period. This time does not have to be (and typically is not) paid by your employer. However, if you are called to work during your meal period such that you get less than 20 minutes of break time, then you must be paid for your full meal period.

What are the basic exceptions to the 30-minute meal period?

There are instances where additional and/or longer meal periods are required. In some cases, the New York State Commissioner of Labor allows certain employers to shorten the meal period to not less than 20 minutes if they have obtained a special permit.
Please see the New York Labor regulations below:

<table>
<thead>
<tr>
<th>Shift Length</th>
<th>Meal Break Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shift is more than 6 hours and extends over the noonday meal period (11am – 2pm)</td>
<td>At least 30 minutes, between 11am and 2pm</td>
</tr>
<tr>
<td>Shift starts before 11am and lasts past 7pm</td>
<td>At least 30 minutes between 11am and 2pm, and at least an additional 20 minutes between 5pm and 7pm</td>
</tr>
<tr>
<td>Shift is more than 6 hours and starts between 1pm and 6am</td>
<td>At least 60 minutes (factory); 45 minutes (mercantile/other), somewhere in the middle of the shift</td>
</tr>
</tbody>
</table>


For more information about breaks and meal periods, contact the New York State Department of Labor at **518-457-2730**.

**Do I get one day of rest every week?**

Employers must provide at least one day (24 consecutive hours) of rest in every calendar week (Sunday-Saturday). Employers must designate and notify the worker in advance of their day off and, whenever possible, ensure that the day off coincides with a traditional day for religious worship.

**Can I waive my day of rest?**

Farm Laborers are permitted to voluntarily work during their designated day of rest, provided the employer pays that day of work at the overtime rate. Employers must keep a weekly record of hours and days worked.

**WAGE THEFT PREVENTION ACT**

New York has enacted the Wage Theft Prevention Act, which expanded the rights of employees in all industries, to assist with the recovery of unpaid or underpaid wages, and to increase penalties for employers who fail to follow labor laws.

The Wage Theft Prevention Act updated the following requirements:

**Record-keeping:** Requires more stringent record-keeping and employee notification requirements for employers.
**Collection:** Increases the amount of additional monetary penalties, known as “liquidated damages”, which can be applied to between 25% and 100% of lost wages.

**Penalties:** Increased criminal penalties for failure to pay minimum wage to up to a year in prison and increased civil penalties for non-compliance to up to $10,000.

**Whistleblowers:** Provides the New York State Department of Labor with the power to protect individuals who report workplace concerns against retaliation in cases of labor law violations.

**Am I required to have a work agreement?**

Your employer is required to provide you with a Pay Notice and Work Agreement, which you must sign, in order to work for that employer. Every employer must inform workers (including minors), in writing, of their conditions of employment (the work agreement) when they are hired. This contract must list the pay rate, hours of work, and benefits, if any. Every employer must post a copy of the farm minimum wage poster where employees can see it easily, along with a copy of a general work agreement that applies to all workers. We have blank work agreements on our Services for Agricultural Employers page at [labor.ny.gov/immigrants/agriculture-labor-program/services-for-agriculture-employers.shtm](labor.ny.gov/immigrants/agriculture-labor-program/services-for-agriculture-employers.shtm)

**What should my pay be?**

You must receive the rate of pay your employer agreed to pay, which should never be less than the minimum wage. Your employer must tell you the wage rate, in writing, in your work agreement and must pay you for all hours you work, including travel time and waiting time once you have reported to work for the day.

**How much is the pay for a youth under age 18?**

A young worker must be paid at least the minimum wage.

**When does my employer have to pay me?**

Your employer must pay manual laborers every week on the regularly designated pay day. You can be paid every two weeks only if you are paid up-to-date for the full two weeks.

**Does my employer have to tell me what day I will be paid?**

Yes. When you are hired, the employer must notify you, in writing, of the amount you will be paid and what day is the regular pay day each week.
The employer must list the regular pay day in the work agreement. You must be informed ahead of time if the pay day will change.

**How do I know if I am getting the right amount?**

Every time you get paid, your employer must give you a wage statement (paystub) showing how they calculated your pay. If other members of your family work for the same employer, you must each be provided with your own wage statement.

**What information should be included on my paystub?**

You must receive a wage statement (printed or written paystub) every time you are paid. The paystub must show:

If you are paid by piece work:

- The size/weight of the basket, pail, bin, or other container
- The number of these containers you produced during the time you worked (pay period)
- The employer’s full name, address, and telephone number
- Your name
- The total number of hours you worked
- Rates paid
- Gross wages
- Legal allowances or deductions
- The total money you received (net wages)

If you do not agree with your wage statement, contact the nearest office of the Division of Labor Standards listed under Contacts or contact the Agriculture Labor Specialist in your area.

**Can I be paid by either cash or a check?**

Yes. Employers can pay farm laborers either in cash or by check. You should be able to cash your paycheck for the full amount, on pay day and without having to pay any fee to the bank or to anyone else. The employer does not have to give you extra time to cash your paycheck.

For more information about the Wage Theft Prevention Act, visit our website at labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm
WAGE DEDUCTION COMMON QUESTIONS

What deductions can be taken from my wages?

The only deductions that can be taken from your pay are:

- Those required by law, such as social security, income tax, and court-ordered garnishments
- Those that benefit you and that you have authorized in writing, such as insurance premiums, savings, or allowances for meals or lodging, if permitted by law

If you are a non-migrant worker, your employer can make deductions of limited amounts for meals, lodging, and utilities provided to you. See Page 16 for the amounts allowed.

If you are a migrant worker, your employer cannot make any deductions for lodging and utilities provided to you.

Can my employer demand a kickback of part of my wages?

No. It is against the law for your employer, your farm labor contractor, or any person to demand or accept part of your wages in return for getting you a job or keeping you in that job.

If someone tries to do this, you can report it to the nearest office of the Division of Labor Standards listed under Contacts.

Can my employer make deductions for transportation?

Yes, if you are a domestic worker, but only for the first trip “in,” when you arrive at the workplace, and for the last trip “out,” when you leave the workplace for the season. You must authorize this deduction in writing. Under New York State law, the employer cannot charge you more than 10% of your total weekly pay.

H-2A workers may not be charged for transportation from their place of origin to the workplace or to return from the workplace to their home country.

To learn more, contact the nearest U.S. Department of Labor Wage and Hour Division office listed under Contacts.

Can my employer make deductions for daily commuting to and from work?

No. The employer or the farm labor contractor cannot charge you for daily transportation to and from work or between worksites.
ENHANCED RULES AGAINST RETALIATION

The Wage Theft Prevention Act extends the protections under Labor Law Section 215, which prohibits an employer from retaliating against an employee for complaining about a violation of Labor Law:

- Threats, including calling or threatening to call immigration, are included as forms of retaliation
- It is illegal for any person to retaliate, not just the employer
- Employers or their agents can be fined up to $20,000 and assessed another $20,000 in liquidated damages
- The employer may be ordered to reinstate the worker’s job. Or the employer may have to pay the person for lost salary or pay a lump sum in lieu of reinstatement
- Retaliation carries criminal penalties for employee complaints about any section of the labor law
- The protection applies to any worker who alleges that the employer has done something that the employee thinks breaks a labor law (This applies even if the employee is mistaken about the law, if they acted in good faith. It applies even if the employee does not cite a specific part of the labor law.)
- This law protects workers even if the employer incorrectly believes the workers made a complaint

What is retaliation?

Retaliation is any action which negatively affects a worker because that worker has engaged in a protected activity. Even threatening an employee can be considered retaliation. Examples of retaliatory actions can include discharge, suspension, transfer to another shift, or a reduction in wage or hours.

What are some of these protected activities?

Employees have the right to complain to their employer, the Department of Labor, or the Attorney General about a possible violation of the Labor Law and regulations issued under it. They can file a complaint about these possible violations, give information about their conditions of employment to the Department or Attorney General, and testify at hearings or other proceedings.

Does there really have to be a violation for the worker to be protected?

No. If the worker has a good faith belief that there is a problem in the workplace, their activities are protected.
What are the possible penalties for retaliation?

Employers or their agents can be fined up to $20,000 and assessed another $20,000 in liquidated damages. The Department of Labor can also request reinstatement of the worker and/or compensation for lost wages. There are potential criminal penalties but those would be prosecuted by an agency other than the Department of Labor.

What if I have any other questions about the Wage Theft Prevention Act?

You can email your questions to labor.sm.ls.ask@labor.ny.gov.

SEXUAL HARASSMENT PREVENTION POLICY

New York State Labor Law requires that every employer in the New York State adopt a sexual harassment prevention policy. Employers that do not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:

• Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
• Provide examples of prohibited conduct that would constitute unlawful sexual harassment
• Include information about the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws
• Include a complaint form
• Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties
• Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially
• Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue
• Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful
COMPLAINT FORM

New York State Labor Law requires all employers to adopt a sexual harassment policy that includes a complaint form for employees to report alleged incidents of sexual harassment.

NEW YORK STATE SEXUAL HARASSMENT PREVENTION REQUIREMENTS

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

• Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment

• Such conduct is made either explicitly or implicitly a term or condition of employment

• Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment

A sexually harassing hostile work environment includes, but is not limited to: words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient’s job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” harassment.

Sexual harassment is a form of workplace discrimination and is against the law. All employees have a legal right to a workplace free from sexual harassment and employers must commit to a discrimination-free work environment.
Sexual Harassment Prevention Policy: New York State Labor Law requires that every employer in the New York State to adopt a sexual harassment prevention policy. Employers that do not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:

- Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- Provide examples of prohibited conduct that would constitute unlawful sexual harassment
- Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment and a statement that there may be applicable local laws
- Include a complaint form
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially
- Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue
- Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful

Sexual Harassment Prevention Policy Notice: This poster, which is an optional tool, is one way to direct both employees and non-employees to your Sexual Harassment Prevention Policy and should be displayed in a highly visible place.

ny.gov/combating-sexual-harassment-workplace/employers#model-sexual-harassment-policy

Model Complaint Form: New York State Labor Law requires all employers to adopt a sexual harassment policy that includes a complaint form for employees to report alleged incidents of sexual harassment. Employers can download the model complaint form and share with their employees.

ny.gov/combating-sexual-harassment-workplace/employers
The Sexual Harassment Prevention Training Requirements:
Every employer in New York State is required to provide employees with sexual harassment prevention training. An employer that does not use the model training developed by the Department of Labor and Division of Human Rights must ensure that the training that they use meets or exceeds the following minimum standards. Model training materials are available to employers to download. The training must:

- Be interactive
- Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- Include examples of conduct that would constitute unlawful sexual harassment
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment.
- Include information concerning employees’ rights of redress and all available forums for adjudicating complaints
- Include information addressing conduct by supervisors and any additional responsibilities for such supervisors

Each employee must receive training on an annual basis

Training Videos: New York State has created model training videos that are available online at the links below. These videos, which may be watched via YouTube or downloaded, meet all state minimum training requirements except one: the videos alone are not considered interactive. If you are using this video to meet the training requirements, you must also:

- Ask questions of employees as part of the program
- Accommodate questions asked by employees, with answers provided in a timely manner
- Require feedback from employees about the training and the materials presented

During this interactive portion, employers should be prepared to address questions raised by employees including those specific to their industry, questions about the organization’s reporting process and questions about how hypothetical cases would be handled.
SEXUAL HARASSMENT PREVENTION FAQS FOR EMPLOYERS

**What type of records must employers maintain to verify compliance?**

No signed acknowledgement of having read the policy is required, but employers are encouraged to keep a signed acknowledgement and to keep a copy of training records. These records may be helpful in addressing any future complaints or lawsuits.

**Does this law apply to New York City employers and will the mandated New York City training meet the training requirements of the New York State Law?**

Yes. It applies to all employers in New York State, including New York City. The New York City Commission on Human Rights partnered with the New York State Division of Human Rights and the New York State Department of Labor so NYC-based employers can meet compliance with both the New York State and New York City training requirements by using the online training provided by the New York City Commission on Human Rights. New York City’s online training is available here.

**LANGUAGES**

**Will New York State make resources available for training in languages other than English?**

Yes. Materials have been translated into Spanish, Chinese, Korean, Russian, Italian, Polish, Bengali and Haitian-Creole. Additional languages may be added in the future.

**Am I required to provide the notice, policy and training in languages other than English?**

Yes. Employers must provide employees with these materials in both English and in an employee’s primary language if is Spanish, Chinese, Korean, Polish, Russian, Haitian-Creole, Bengali or Italian.
Model materials are available online. However, as employers may be held liable for the conduct of all of their employees, employers are strongly encouraged to provide a policy and training in the language spoken by the employee.

SEXUAL HARASSMENT PREVENTION NOTICE

*Can the required sexual harassment prevention notice be delivered digitally?*

Yes. The notice must be delivered in writing, which includes in print or digitally (for example, via email). The notice must link to or include, as an attachment or printed copy, the policy and training materials.

*What constitutes training materials as part of the notice?*

Training materials include any printed materials, scripts, Q+As, outlines, handouts, PowerPoint slides, etc.

*What if the training materials are delivered through software or video?*

If you are using the model state materials or other training materials available online, an electronic or printed copy, or a link to such materials is sufficient. In other instances, employers and training providers should make reasonable efforts to provide the information, including providing print-outs or links to training materials, scripts or PowerPoint slides, etc.

*What does “at the time of hiring” mean?*

It is recommended that the employer provides this notice prior to or at the beginning of their first day of work.

POLICY

*How can employers provide their policy to employees?*

Employers must provide employees with their policy in writing both at the time of hiring and during each annual training. This is done in the form of a notice that must also include sexual harassment prevention training materials. This may be done in print or electronically (for example via email). If a copy is made available on a work computer, workers must be able to print a copy for their own records.
Is there any employer responsibility to train third-party vendors or other non-employees who interact one-time or regularly in an office located in New York State?

No. However, posting a copy of your policy in an area that is highly visible further communicates your effort as a responsible employer.

What should I do if a temporary employee is being harassed by an employee of another company?

In such circumstances, you should inform both the company and the temporary employee’s firm. However, if you are able to take action in order to prevent or end such harassment you should do so, as outlined in the policy.

What policy, if any, must be provided to contractors, subcontractors, vendors and consultants?

Employers do not have to provide any policy to independent contractors, vendors or consultants as such individuals are not employees of the employer. However, the State Human Rights Law imposes liability on the employer for their actions, and you are encouraged to provide the policy and training to anyone providing services in the workplace.

If an employer already has established investigative procedures which are similar, but not identical to those provided in the model, can the employer deviate from these specific requirements and remain compliant with the law?

Yes. But the investigative procedures that the employer will be using should be outlined in the employer’s policy.

Does the complaint form need to be included, in full, in the policy?

No. Employers should, however, be clear about where the form may be found, for example, on a company’s internal website.

TRAINING

Who is considered an Employee for the training requirement? And when does the training need to be completed?

“Employee” includes all workers, regardless of immigration status. Employee also includes exempt or non-exempt employees, part-time workers, seasonal workers, and temporary workers.
How often must employees receive sexual harassment training?

Employees must be trained at least once per year. This may be based on the calendar year, anniversary of each employee’s start date, or any other date the employer chooses.

How soon do new employees need to be trained?

As employers may be liable for the actions of employees immediately upon hire, the State encourages training as soon as possible. Employers should distribute the policy to employees at the time of hiring as part of a notice, which also includes training materials.

Is there a minimum number of training hours employees must complete each year?

No, as long as they receive training that meets or exceeds the minimum standards.

What are the obligations of employment agencies? What about employees who received the same training from another employer within the past year?

The law requires that employers provide a sexual harassment prevention policy and training on an annual basis to all employees. An employer may choose to deem the training requirement satisfied if a new employee can verify completion through a previous employer or through a temporary help firm.

An agency or any other worker organization (e.g. labor union) may choose to provide training to workers, however, the employer may still be liable for the employee’s conduct and understanding of policies and should train the employee on any nuances and processes specific to the company or industry.

I am an employer based in New York State but also have employees who only work in other states. Do they need to be trained as well?

No. Only employees who work or will work in New York State need to be trained. However, if an individual works a portion of their time in New York State, even if they’re based in another state, they must be trained.
Are minor employees (e.g., child actors) required to take sexual harassment training?

Yes. However, those employing children under the age of 14 may opt to simplify the training and policy while still meeting the minimum requirements.

What does “interactive training” mean?

New York State law requires all sexual harassment training to be interactive. Training may be online, so long as it is interactive. Examples of employee participation include:

- If the training is web-based, it has questions at the end of a section and the employee must select the right answer;
- If the training is web-based, the employees have an option to submit a question online and receive an answer immediately or in a timely manner;
- In an in-person or live training, the presenter asks the employees questions or gives them time throughout the presentation to ask questions;
- Web-based or in-person trainings that provide a Feedback Survey for employees to turn in after they have completed the training

NOTE: Any one of the above examples would meet the minimum requirement for being interactive. An individual watching a training video or reading a document only, with no feedback mechanism or interaction, would NOT be considered interactive.

Is a live trainer required and does a trainer need to have a certification?

While a best practice for effective and engaging trainings, a live trainer is not specifically required. Live trainers may appear in person or via phone, video conference, etc. No certification is required and the State does not currently certify or license training providers.

May I use a third-party vendor to provide training? How do I ensure it meets the standards?

You may use a third-party vendor or organization or deliver the training by existing employees or managers. You should review any third-party training to ensure it meets or exceeds the minimum standards required under the law.
Are there different training requirements for employees in managerial/supervisory roles?

Employers must make managers and supervisors as well as all employees aware of the extra requirements for those in managerial/supervisory roles. The model training does address the additional requirements, and employers may choose to provide additional or separate training to supervisors and managers.

What happens if some employees fail to take the training despite an employer’s best efforts to make it available, and to require everyone to take it?

Employers are required to ensure that all employees receive training on an annual basis. Employers may take appropriate administrative remedies to ensure compliance.

Are businesses required to pay workers for the time spent in training, for instance, during the onboarding process before their actual assignment begins?

Employers must follow federal regulations (see e.g., 29 CFR 785.27-785.32), which generally require that employer-provided training time is counted as regular work hours.

How does the Sexual Harassment Prevention training time impact the Hospitality Wage Order’s 80/20 rule?

Like other mandatory trainings, this does not impact the percentage in the Order and should be treated in line with other employer trainings. It should be either added in line with the existing proportion or training hours should be excluded from the 80/20 calculation.

Are sections in the model training materials that are not expressly required in the law mandatory?

No, but they are strongly recommended. In addition, employers are encouraged to exceed the minimum training requirements.
OTHER COMPENSATION (BENEFITS/WAGE ENHANCEMENTS)

Should I get paid for holidays, sick days or vacations?

You get paid for these benefits only if your employer has agreed to pay them. The employer can decide to pay for such benefits as vacation, sick leave, or holidays, but it is not a requirement. This is a benefit that must appear in your work agreement if the employer agrees to give it and must be honored.

Does the employer need to provide workers’ compensation insurance coverage?

Regardless of annual payroll, all farm employers, owners and operators are required to provide workers’ compensation coverage for their employees.

Am I entitled to disability coverage and Paid Family Leave?

Farm employers, owners and operators are required to provide New York’s disability benefits and Paid Family Leave insurance coverage to eligible farm laborers. See PaidFamilyLeave.ny.gov for information on Paid Family Leave employee eligibility and opt out waivers that employers must give to those who qualify.

Do I need unemployment insurance?

Employers are required to continue to provide farm laborers with unemployment insurance coverage, including crew leaders. H-2A Foreign Guest Workers will be excluded from unemployment insurance coverage.

SAFETY AND HEALTH-RELATED REGULATIONS

DRINKING WATER

Must my employer provide drinking water near my work place?

Yes. An employer who uses paid farm laborers or food-processing workers must provide safe drinking water close to your work location and at no cost to the employees.

FIELD SANITATION

Must my employer provide toilet facilities in the field?

Yes. By New York State law, the employer must provide toilet and hand-washing facilities and, if necessary, transportation to them.
If there are five or more workers at the same location, the employer must provide at least one toilet and hand-washing facility for every 20 workers. Both units shall be:

- Located together
- Within one quarter-mile walking distance
- If the terrain is impassable, at the closest point reachable by motor vehicle

If half or more of the 20 workers are women, there must be one toilet designated for men and one for women. Each one must be marked with an appropriate sign.

If your employer is not providing drinking water close to your work location or toilet and hand-washing facilities, call the nearest office of the Division of Labor Standards listed under Contacts or contact the Agriculture Labor Specialist in your area.

**PESTICIDE USAGE**

Under state law, you have the right to know about the health effect of any poisons in your work site. Your employer must set up an education and training program for you if they use dangerous materials near you.

Under federal law, employers must tell workers about the dangers from chemicals in the workplace. People who use pesticides on the job must be certified or supervised by a certified applicator.

For more information, call the New York State Department of Environmental Conservation at **518-457-7842** or the nearest federal OSHA office toll free at **800-321-6742**.

**NEW YORK’S MIGRANT REGISTRATION LAW**

**CERTIFICATE OF REGISTRATION (GROWER/PROCESSOR)**

A Grower or Processor who hires five or more out-of-state migrants, not including H-2A workers, must get a Certificate of Registration, even if they use a Farm Labor Contractor for recruiting and hiring.

**CERTIFICATE OF REGISTRATION (FARM LABOR CONTRACTOR)**

A Farm Labor Contractor that places five or more out-of-state migrants to work on farms must obtain a Certificate of Registration. Each application for a Certificate must be signed by the grower after the Farm Labor Contractor signs it.
MIGRANT REGISTRATION LAW COMMON QUESTIONS

What is a Farm Labor Contractor?
A Farm Labor Contractor is a person or business that charges a fee to recruit, transport, supply, or hire migrant seasonal farm laborers to work for a farm or food-processing business. The Farm Labor Contractor may be a crew leader who supervises the workers or may be a distant company with no representative on site. The Farm Labor Contractor must register with the New York State Department of Labor, which issues a Certificate of Registration.

What is a Certificate of Registration?
A Certificate of Registration is an official card that allows a Farm Labor Contractor to provide migrant seasonal farm laborers to the employer whose name is on the card. The Farm Labor Contractor must have one certificate for each farm or food processing business they serve. To apply for this certificate, the Farm Labor Contractor must give information about the working and living conditions of the workers to the New York State Department of Labor.

Who pays the Farm Labor Contractor?
The employer pays the Farm Labor Contractor’s fees at the employer’s own expense. It is against the law for workers to pay an employer or a Farm Labor Contractor to get a job or to keep one. The farmer cannot take money from your wages to pay the Farm Labor Contractor.

Can the Farm Labor Contractor charge me for services that they provide?
No. The Farm Labor Contractor cannot charge for:

- Check cashing
- Transportation
- Housing
- Finding you the job

CHILD LABOR
There are many types of “employment certificates” or “work permits” for minors under the age of 18 (commonly referred to as “working papers”) to work in a variety of industries. In this booklet, only Farmwork Permits will be discussed.
CHILD LABOR QUESTIONS

Can children aged 12-13 do farm work?

Yes. They may only be employed in:

• Hand-harvesting of berries, fruits, and vegetables, and must have a farm work permit

• Working for parents or guardians, at times when school is not in session, on the home farm or at other outdoor work that is not part of a trade, business, or service (this type of job does not require a work permit)

• Assisting a parent, aunt, uncle, grandparent or guardian selling produce from their own farm at a farm stand they own or lease during time when school is not in session (the minor must be with the parent or guardian or have their written permission to do this; this type of job does not require a work permit)

What kinds of working papers are required for farm work?

Workers younger than 16 years of age must obtain one of the following Farm Work Permits:

Farmwork Permit AT-24: a yellow permit for 14 and 15 year olds. This permit allows these minors to work before and after school, on weekends and during vacations. There is no limit on the hours they can work.

Farmwork Permit AT-25: a white permit for 12 and 13 year olds. This permit allows these minors to work in the hand-harvesting of fruits, berries and vegetables. They can work only four (4) hours a day as follows:

• From Labor Day to June 20th between 9 AM and 4 PM
• From June 21st to Labor Day between 7 AM and 7 PM

The minor (age 12-15) must be with a parent or guardian or give the employer written consent from the parent to the employer.

Can minors aged 14-15 do farm work?

Yes. Minors 14 and 15 years of age can do farm work that is not forbidden by regulation for children below the age of 16. There is no restriction on the hours they may work, except that they may not work during school hours. A Farm Work Permit issued by the school and signed by each employer is required.
Can minors aged 16-17 do farm work?

Yes. Minors 16 and 17 years of age can do any type of farm work not forbidden by regulation for children younger than 18. There is no restriction on the hours they may work, except that they may not work during school hours. A farm work permit is not required for this age group.

Are minors allowed to perform all kinds of farm work?

No. New York State and Federal regulations prohibit work that is dangerous or could cause injury to minors under 18 (State) and under 16 (Federal). There are some exceptions to this rule (see next page).

NEW YORK STATE PROHIBITED OCCUPATIONS*

No one under the age of 18 may work or assist in the following:

- Construction work, including wrecking, demolition, roofing, or excavating operations and the painting or exterior cleaning of a building structure from an elevated surface
- The operation of circular saws, band saws, and guillotine shears
- In or about a slaughtering and meat-packing establishment or rendering plant
- The operation of power-driven woodworking, metal-forming, metal-punching, metal-shearing, bakery, or paper products machines
- The operation of power-driven hoisting apparatus
- The manufacture of brick, tile, and like products
- Exposure to radioactive substances or ionizing radiation, or exposure to silica or other harmful dust
- Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill
- In mining or in connection with a mine or quarry
- As a helper on a motor vehicle
- In the care or operation of a freight or passenger elevator, except that a minor over 16 may operate automatic, push-button control elevators
- In manufacturing, packing, or storing of explosives, or in the use or delivery of explosives
• Operating or using any emery, tripoli, rouge, corundum, stone, silicon carbide, or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or iridium are manufactured

• Adjusting belts to machinery or cleaning, oiling, or wiping machinery

• Packing paints, dry colors, or red or white leads

• Preparing any composition in which dangerous or poisonous acids are used

• Operating steam boilers subject to Section 204 of the Labor Law

• In penal or correctional institutions, if the job relates to the custody or care of prisoners or inmates

**EXCEPTIONS**

These rules do not apply to:

• Workers younger than 18 who are apprentices individually registered in Department of Labor registered apprenticeship programs

• Student-learners enrolled in recognized cooperative vocational training programs

• Trainees in approved on-the-job training programs

• Workers 16 or 17 years old who have completed training as a student learner or trainee in an approved on-the-job training program

• Workers 16 or 17 years old who have completed a training program given by a public school or a non-profit institution that includes DOL approved safety instruction

* Source Part 190 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the state of New York (Cited as 12 NYCRR 190) July 24, 2009

**FARM LABOR (UNDER 16 YEARS OF AGE)**

In addition, there is a Federal Hazardous Occupations Order covering minors less than 16 years of age engaged in farm work. The order lists 16 forbidden jobs for minors less than 16 years of age, including working with certain power-driven farm machinery, operating a tractor with over 20 PTO horsepower, and working with explosives or certain chemicals.

These rules on child labor on farms do not apply to minors who work on a farm owned or run by their parents or to students in
a recognized vocational education training program. In addition, there are exemptions for 4-H members who have completed certain training programs and students in other approved farm training and education programs.

If the federal regulations are stronger or more protective than the state regulations, then the federal rules apply.

**FREQUENTLY ASKED QUESTIONS**

**Who can provide working papers?**

Schools supply working papers to their students upon request. Your child can find out about getting working papers at the school office. If your child does not go to school, you or your child can contact any high school within New York State.

**Are working papers required for out-of-state minors?**

Yes. All minors 12 to 15 years old who want to do farm work in New York State, no matter where they are from, must get working papers in order to work. The minor may obtain working papers from the school closest to the farm or place of employment.

**Do you have to obtain a Farm Work Permit for each job?**

No. A Farm Work Permit can be used for more than one job in the same type of work, but each employer must sign it. The permit remains valid so long as the minor is in the covered age group.

**POSTING PROVISIONS**

The employer must make a schedule for all minors and post it in a conspicuous place. The schedule shows the hours that minors start and end work. The hours of work can be changed, as long as the changes are posted on the schedule.

**How can a minor get help with a workplace problem?**

The minor, or a parent or guardian on their behalf, can get advice or file a complaint by contacting the nearest office of the U.S. Department of Labor, Wage and Hour Division or the New York State Department of Labor, Division of Labor Standards.

**MORE INFORMATION**

For more information about employment certificates including Farmwork Permits, contact a local high school or visit the state Education Department’s website at [www.p12.nysed.gov/sss/pps/workingpapers](http://www.p12.nysed.gov/sss/pps/workingpapers).
UNEMPLOYMENT INSURANCE

Unemployment Insurance is a cash benefit provided by law to workers who have lost their jobs through no fault of their own. To qualify, the unemployed person must be ready, willing and able to work. The payments help the unemployed person with their financial obligations while they search for another job.

Is my farm work covered by Unemployment Insurance?

Yes, your farm work is covered by Unemployment Insurance. You are eligible, even if you have worked in more than one state. Unemployment Insurance is not available for H-2A workers.

How do I know if I am covered?

If you lose your job and want to know if you qualify for unemployment insurance benefits, call our toll-free line at 888-209-8124. Follow the voice instructions to apply. We offer services in many languages through the telephone service. You may also apply on our website: www.labor.ny.gov.

Do I have to pay Unemployment Insurance contributions?

No, not in New York State. In New York, employers pay Unemployment Insurance contributions at their sole expense, according to a formula determined by the New York State Department of Labor. This is a cost of doing business for employers. They are not allowed to take this money out of your pay.

APPLYING FOR UNEMPLOYMENT INSURANCE

Online: If you have internet access, you can apply online on our website: www.labor.ny.gov.

By phone: The New York State Department of Labor has a telephone claim system that will help you file for unemployment insurance benefits. You cannot use a rotary dial phone. You must use:

- A touch-tone phone
- A phone with a pulse-tone switch
- A mobile phone or other mobile device

Before placing the call or logging in, you should have the following information available:

- Your Social Security Number
- Your New York State driver’s license or Motor Vehicle ID card number (if you have one)
• Your mailing address and zip code
• A telephone number where you can be contacted during business hours
• Your alien registration card number (if you have one)
• The names and addresses of all employers for whom you have worked within the last 18 months, including those in another state
• Your total gross earnings (wage statements/pay stubs, W2 forms, etc.) for each of your employers during the last 18 months
• A copy of your most recent separation form DD 214 (if you are an ex-service member claiming benefits based on your military service)

However, you should apply for Unemployment Insurance benefits as soon as possible after you stop working, even if you do not have all of this information.

If you have a speech or hearing impairment or certain other disabilities, you may ask a friend or relative to help in the telephone claim process. You must be present when that person makes the call for you. The toll-free number for all of New York State is 888-209-8124.

RECEIVING MY UI BENEFITS

Direct Deposit: You can sign up for Direct Deposit of Unemployment Insurance benefits into a bank account if you file your claim on the web.

Debit Card: If you do not sign up for direct deposit, you will receive payments through a direct payment card. The card is mailed to you after you are approved to receive benefits. You can use the card at all Chase/Allpoint ATMs and any bank that honors MasterCard, as well as at any merchant that accepts debit cards.

HOW LONG WILL I RECEIVE BENEFITS?

The Unemployment Insurance benefit is calculated based on your earnings at jobs that you held during the previous 18 months. If you collect the full benefit each week, the basic unemployment benefits will last 26 weeks. If you work part time, you may be eligible for partial benefits. If you collect only partial benefits and still qualify, the funds will remain available for a longer period of time, up to 52 weeks when the claim expires. There are extensions of benefits for certain workers. You can find out the details on our website www.labor.ny.gov/unemploymentassistance.shtm, through the Telephone Claims Center at 888-209-8124, or you can ask for details at your local Department of Labor office or New York State...
WORKERS’ COMPENSATION

Workers’ Compensation is a form of insurance which provides medical care and lost wages due to a work-related injury or condition. This benefit is payable once a claim is accepted by the Workers’ Compensation Board and/or your employer’s insurance company. The process starts upon receipt of the injured worker’s claim form and proper medical documentation from a treating doctor.

Employers in New York State are required to obtain a Workers’ Compensation insurance policy (some exceptions apply) and if an injury or illness occurs, their insurance company will provide the benefits to you. If a death is a result of work, then your family can file a claim and may be eligible to receive Workers’ Compensation benefits in accordance with the law. For further information you may call the New York State Workers’ Compensation Board toll-free at 877-632-4996.

WORKERS’ COMPENSATION COMMON QUESTIONS

Am I covered by Workers’ Compensation Insurance?
Yes. If you believe that you have an illness or injury caused by your job, you should file a claim.

What should I do if I have an accident on the job?
If you were injured on the job, you must report the injury to your supervisor or your employer in writing within 30 days. Then you must file a Board Form C-3 with the Workers’ Compensation Board as soon as possible, but you have up to two years to do so. You must also see a doctor that is authorized by the Workers’ Compensation Board. This doctor should then file proper medical documentation with both the Workers’ Compensation Board and the employer’s Workers’ Compensation insurance company.

What should I do if I have a work-related illness or disease?
If you have an illness or disease which you believe is caused by your work or working conditions, you should file a claim as well. You must notify your employer, in writing, within 30 days from the time you were diagnosed with a work related illness/condition or from the time you knew or should have known that it was caused by work. Again, you have up to two years from this date to file a claim with the Workers’ Compensation Board.

If you die from this illness or disease, your family can file a claim and may be eligible for compensation.
How do I file a Workers Compensation claim?

File an Employee’s Claim for Compensation (Board Form C-3) with the New York State Workers’ Compensation Board. This form can be obtained by calling the Workers’ Compensation Board at 877-632-4996. This form is also available for completion online or by phone.

Can my employer fire me for filing for Workers’ Compensation?

No. An employer may not fire or discriminate against an employee who files a Workers’ Compensation claim. The law also protects employees who testify in a Workers’ Compensation hearing.

Do I pay out of pocket for anything related to a work injury/condition?

No, you do not pay out of pocket for an office visit or an attorney. Simply provide the doctor’s office with the employer and/or employers’ insurance company’s information so that the doctor’s office can bill the insurance company. No co-pays can be charged. Attorneys are paid out of any awards you receive.

For more information about the Workers’ Compensation claims process, call the toll-free number at 877-632-4996 or visit www.wcb.ny.gov.
CONTACTS

NEW YORK STATE DEPARTMENT OF LABOR

New York State Department of Labor Division of Immigrant Policies and Affairs
877-466-9757
www.labor.ny.gov/immigrants/index.shtm

New York State Monitor Advocate
Email: SMA@labor.ny.gov
Mailing address: State Office Campus, Building 12, Room 570, Albany, NY 12240

Counsel, Division of Immigrant Policies and Affairs
NYS Department of Labor
75 Varick Street, 7th Floor
New York, NY 10013
Hotline: 877-466-9757
Fax: 212-775-3389
Email: trafficking@labor.ny.gov

Agriculture Labor Program
To contact an Agriculture Labor Specialist you may do one of the following.

- Visit www.labor.ny.gov/immigrants/agriculture-labor-program.shtm
- Email: dipa@labor.ny.gov
- Call 877-466-9757

Foreign Labor Certification Unit
H-2A: H2A@labor.ny.gov
Fax: 716-851-2607
Mailing address: 284 Main Street, Mezzanine, Buffalo NY 14202

H-2B: H2B@labor.ny.gov
Fax: 585-339-9457
Mailing address: 276 Waring Road, Rochester NY 14609

New York State Career Centers
800-447-3992
www.labor.ny.gov/career-center-locator/

New York State Department of Labor Division of Labor Standards
888-4-NYSDOL (888-469-7365)
New York State Department of Labor – Unemployment Insurance Division
Filing a claim for unemployment insurance benefits:
Web service: www.labor.ny.gov
Phone service: 888-209-8124, Monday-Friday, 8 AM to 5 PM Eastern Time

U.S. Department of Labor Wage and Hour Division Office
866-4-US-WAGE (866-487-9243) press 2 for Spanish
TTY: 877-889-5627
Monday-Friday, 8 AM to 8 PM Eastern Time
www.dol.gov/whd

New York State Department of Health
Bureau of Community Environmental Health and Food Protection
518-406-7600 or toll-free 800-458-1158
www.health.ny.gov/environmental/regs

New York State Division of Human Rights
888-392-3644
www.dhr.ny.gov

New York State Workers’ Compensation Board Offices
328 State Street, Schenectady, NY 12305-2318
877-632-4996
Hours: Monday, Thursday, Friday 8:30 AM to 4:30 PM and Tuesday, Wednesday 8:30 AM to 6:00 PM
www.wcb.ny.gov

For questions related to injured workers:
Advocate for Injured Workers: 518-462-8884 or 800-580-6665

For questions about Workers’ Compensation for on-the-job injuries/claims:
District Offices and Service Centers

Albany: 866-750-5157
Binghamton: 866-802-3604
Brooklyn: 800-877-1373
Buffalo: 866-211-0645
Long Island: 866-681-5354
Manhattan: 800-877-1373
Peekskill: 866-746-0552
Queens: 800-877-1373
Rochester: 866-211-0644
Syracuse: 866-802-3730
OTHER SERVICES FOR AGRICULTURAL WORKERS

Agri-Business Child Development Centers (ABCDs)
These year-round child care centers, operated by New York State Federation of Growers’ & Processors’ Associations, Inc. and supported by the New York State Department of Agriculture and Markets, offer comprehensive educational, health and social services to eligible families.

Batavia: 585-343-8160
Florida: 845-651-2270
Fredonia: 716-672-5395
Geneva: 315-781-3267
Goshen: 845-294-6221
Holley: 585-638-5932
Kingston: 845-481-4691
Lake Ontario: 315-589-7421
Middletown: 845-956-2270
New Paltz: 845-255-7571
Newfane: 716-439-4524
Red Creek: 315-754-8759

Agri-Business Child Development headquarters
847 Union Street, Schenectady, NY 12308
Phone: 518-346-6447
Website: www.abcdny.org
or www.agriculture.ny.gov/programs/childdev.html

PathStone Corporation
PathStone Corporation (formerly Rural Opportunities, Inc.) is a federal grantee agency under contract with the United States Department of Labor, Employment and Training Administration to provide training and other services to migrant and seasonal farmworkers.

PathStone Field Offices:
Albion: 585-589-7027
Williamson: 315-483-9151
Dunkirk: 716-366-9015 x-5156
Lockport: 716-201-1086
Middletown: 845-343-0771
North Collins: 716-366-9015 x-5156
Riverhead: 631-727-4866
Wappingers Falls: 845-298-8998
Corporate Office: 585-340-3300
Toll Free, 24-hour: 800-888-6770
Website: www.pathstone.org
Migrant Education Tutorial and Support Service
Brockport: 585-395-2356 (Monroe, Niagara, and Orleans counties)
Cortland: 607-753-4706 (Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Onondaga, Otsego, Schoharie, Schuyler, Tioga, and Tompkins counties)
Fredonia: 716-673-3526 (Cattaraugus, Chautauqua, and Erie counties)
Mid-Hudson: 845-257-2950 (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester counties)
North Country: 315-267-2514 (Clinton, Essex, Franklin, Hamilton, and St. Lawrence counties)
Oswego: 315-963-4291 (Jefferson, Lewis, Oswego, and Wayne counties)
Long Island – Metro: 631-208-1936 (Nassau, Suffolk counties, and the New York City Boroughs of Bronx, Brooklyn, Manhattan, Queens, and Staten Island)

New York State Department of Health
Division of Family Health
Migrant and Seasonal Farmworker Health Program Clinics

Finger Lakes Migrant Health Care Project
165 Main Street, PO Box 423
Penn Yan, New York 14527
Phone: 315-531-9102
Fax: 315-531-9103

Hudson River Migrant Health Program
Hudson River Health Care
1037 Main Street
Peekskill, New York 10566
Phone: 914-734-8503
Fax: 914-734-8745

Niagara Falls Memorial Medical Center
621 Tenth Street
Niagara Falls, New York 14302
Niagara County Migrant Health Program
Phone: 716-278-4620
Fax: 716-285-8992
Oak Orchard Community Health Center
300 West Avenue
Brockport, New York 14420-1118
Phone: 585-637-5319
Fax: 585-637-4990

Oswego County Opportunities, Inc
239 Oneida Street
Fulton, New York 13069-1288
Phone: 315-598-4715
Fax: 315-598-4733

Suffolk County Health Department
Riverhead Health Center
300 Center Drive
Riverhead, New York 11901
Phone: 631-852-1819
Fax: 631-852-3723

EMERGENCY PHONE NUMBER (POLICE, FIRE, AND MEDICAL):
911 (only to be used for emergencies)

This booklet was originally published on paper and posted to our website in 2014. The printed book contains the month and year that it was printed (MM/YY) on the back cover. We intend for the printed books to have a shelf life of two to three years. If any parts of the book are updated before the next printing, the update can be found on our website. If any part of the book is updated, between printings the revision date will be reflected on the online version (MM/YY). If the printed booklet that you are looking at is more than two years old, please feel free to contact us to request an updated booklet. You can Email dipa@labor.ny.gov or call 877-466-9757.

http://www.labor.ny.gov/immigrants/agriculture-labor-program/services-for-agriculture-workers.shtm

If you have any questions about anything found in this booklet or anything else regarding farm work in New York, please contact an Agriculture Labor Specialist see Contacts.

This publication was prepared by the Office of Communications of the New York State Department of Labor, State Office Building Campus, Building 12, Albany, NY 12240-0012. It gives general information on some of the laws related to farmworkers in New York State. It is not an official interpretation of the laws.