

Restriction of Homework in All Industries

Part 160 of Title 12 of Official Compilation of Codes, Rules and Regulations Based on Labor Law
Changes Effective May 19, 1999

Promulgated by the Commissioner of Labor Pursuant to Article 13 of the New York State Labor Law



PART 160
RESTRICTION OF HOMEWORK IN ALL INDUSTRIES
(Statutory Authority: Labor Law, art. 13, §* 351. 362; art, 2, 21)

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Historical Note

Part (§§ 160.1 – 160.4) repealed, new ((§§ 160.1 – 160.7) filed effective April 28, 1999 eff. May 19, 1999.

§ 160.1 Purpose.

This regulation implements the legislative intent of article 13 of the Labor Law which requires strict control and gradual elimination of homework. It establishes procedures for the issuance of employer permits and homemaker certificates and provisions for the suspension and revocation of the permits and certificates. The regulation also establishes a procedure for the issuance of variations.

Historical Note

Sec. repealed, new filed April 28, 1999 eff. May 19, 1999.

§ 160.2 Definitions.

As used in this regulation, the term:

(a) *Commissioner* shall mean the Commissioner of Labor.

(b) *Clerical work* shall mean typing, stenciling, transcribing, copying, bookkeeping and stenographic work, but shall not include inserting, collating, labeling, nesting, sorting, stamping or similar work.

(c) *Employer* shall mean any person who either directly or through an employee, agent, independent contractor, or any other person, delivers or causes to be delivered to another person, any materials to be manufactured in a home, and which are thereafter to be returned to said person, not for the personal use of said person or a member of said person's family, or to be delivered, mailed or shipped to others,

(d) *Home* shall mean a room or apartment in any house.

(e) *Homework* shall mean the manufacturing in a home, in whole or in part, with or of material which has been furnished by an employer, of any article or articles to be returned to

said employer, or to be delivered, mailed or delivered to others, but shall not include clerical

work performed in a home.

(f) *Homeworker* shall mean any person who performs homework.

(g) *Homework contractor or distributor* shall mean any person who for the account or benefit of an employer delivers to a homeworker or any other person not engaged by such employer articles or materials to be manufactured in a home and thereafter to be returned to said person or otherwise disposed of in accordance with his direction.

(h) *House* shall mean any building in which one or more persons regularly sleep, and shall include outbuildings upon premises which include such building.

(i) *Industrial establishment* shall mean any premises, not in connection with a home, in which employees are engaged in work subject to this regulation.

(j) *Manufacture, manufacturing, manufactured or making* includes preparation, alteration, repair or finishing, in whole or in part, or handling in any way.

(k) *On a full time basis* shall mean 30 hours or more in a calendar week.

(l) *Person* includes an individual, firm, partnership, cooperative, association, or corporation.

Historical Note

Sec. repealed, new filed April 28, 1999 eff. May 19, 1999.

§ 160.3 Employer permits.

(a) No employer shall distribute or cause to be distributed homework unless said employer holds a permit for such distribution issued by the commissioner.

(b) An application for a permit shall be made upon a form prescribed by the commissioner and shall contain such information as the commissioner finds necessary to effectuate the purposes of article 13 of the Labor Law and of this regulation.

(c) No permit shall be issued to any employer who, on the effective date of this order, did not possess an unexpired permit previously issued by the commissioner.

(d) No permit shall be issued unless such employer maintained an industrial establishment which employs at least one employee, exclusive of the spouse or child of the employer, on a full time basis, performing similar operations as those to be performed by a homeworker and such permit shall not authorize the distribution of homework during any week when less than one full time employee is so employed.

(e) No employer holding a permit shall distribute homework to any homeworker who does not possess a valid homeworker certificate permitting employment by such employer and unless he maintains a copy of such certificate on file in his industrial establishment.

(f) An employer holding a permit shall distribute homework directly to his homeworkers and only from the industrial establishment shown on the permit.

(g) An employer shall not use the services of a homework contractor or distributor.

Historical Note

Sec. repealed, new filed April 28, 1999 eff. May 19, 1999.

§ 160.4 Homeworker certificates.

(a) No person shall perform homework unless he/she holds a valid homeworker certificate issued by the commissioner.

(b) A homeworker certificate shall be issued on the application of an employer who has a permit to distribute homework. Such application shall be on a form prescribed by the commissioner and shall contain such information as the commissioner finds necessary to effectuate the purposes of article 13 of the Labor Law and this regulation.

(c) No homeworker certificate shall be issued to, or be valid for, any person who is employed in an employers industrial establishment.

(d) The number of homeworker certificates that an employer may apply for shall not exceed the number of unexpired certificates previously issued by the commissioner that the employer possessed on the effective date of this regulation.

(e) In any industry covered by Federal regulations governing homeworkers issued under the Fair Labor Standards Act, the industrial homeworker shall, upon request, submit any unexpired Federal certificate for the particular industry issued by the Wage and Hour Division of the United States Department of Labor.

Historical Note

Sec. repealed, new filed April 28, 1999 eff. May 19, 1999.

§ 160.5 Special homeworker certificates.

(a) A special homeworker certificate may be issued to a homeworker who the commissioner finds is unable to work in an industrial establishment because of age, physical or mental disability, or the care of an invalid.

(b) All of the provisions of this regulation applicable to homeworker certificates shall be applicable to such special homeworker certificates.

Historical Note

Sec. filed April 28, 1999 eff. May 19, 1999.

§ 160.6 General provisions.

(a) *Limitation on amount of homework.* The maximum amount of homework which may be given to a homeworker shall not exceed the average amount produced by employees working on similar operations in the employer's industrial establishment. There shall be a presumption of noncompliance with this provision if the average weekly wages of a homeworker exceeds the average weekly wage of employees performing similar operations in the employer's industrial establishment.

(b) *Rates of pay to homeworkers.* A homeworker shall be paid at least the same piece or hourly rate as employees working on similar operations in the employer's industrial establishment.

(c) *Transportation.* Delivery and return of all homework shall be made by the employer without any charge to the homeworker. If the homeworker transports the homework to or from the employer, or mails or ships it to others, the employer shall compensate or reimburse the homeworker for expenses necessarily incurred.

(d) *Homeworkers.* (1) A homeworker shall hold only one effective certificate at a time and shall work only for the employer named on the certificate.

(2) No homeworker shall be employed in an employer's industrial establishment.

(3) Homework shall be performed only in the home in which the homeworker resides.

(4) The homeworker shall not permit a minor or any other person to assist in any

way with the homework.

(e) *Employer records.* (1) In addition to any other records required by the Labor Law, the employer shall keep as part of his payroll records and preserve for a period of six years the name and address of each homeworker, the date and amount of work assigned to each homeworker, the operations performed, the rate of pay, the date and amount of work returned or shipped and mailed to others, the weekly hours worked on each lot of work, and the weekly amount of gross wages, deductions from gross wages, and net wages paid to each homeworker.

(2) Employer records, including but not limited to, the employer's payroll and production records, shall be available for inspection at the employer's industrial establishment by the commissioner or his duly authorized representative. Upon request of the commissioner or his duly authorized representative, the employer shall submit a copy of his payroll records subscribed and affirmed by him as true and accurate under the penalties of perjury.

(f) *Homeworker records.* (1) Each homeworker shall keep records in a form prescribed by the commissioner showing the date on which homework was received from the employer, the amount of homework received, the number of hours worked on each lot, the date homework was returned to the employer or mailed or shipped to others, and the total weekly payments made by the employer to the homeworker.

(2) Such forms shall remain the property of the Department of Labor and shall be available for inspection by the commissioner or his duly authorized representative and, upon request, at the home of the homeworker. At the request of the commissioner or his duly authorized representative, such completed forms shall be returned to the department.

(g) *Labeling of work.* The employer shall attach to all materials or articles delivered to a homeworker a label, written or printed typed in English, bearing the name and address of his place of business.

(h) *Revocations and suspensions.* An employer's permit or a homeworker's certificate may be suspended or revoked by the commissioner if, upon investigation, the commissioner finds that the employer or homeworker has violated any provisions of the Labor Law, or a rule or regulation of the commissioner, or has failed to comply with an order of the commissioner within the time limit specified by such order. An opportunity to be heard shall be granted before any such suspension or revocation.

Historical Note

Sec. filed April 28, 1999 eff. May 19, 1999.

§ 160.7 Variations.

If there shall be unnecessary and unusual hardship in the carrying out of the provisions of this regulation, the commissioner may, after appropriate investigation, make a variation from such provision, if the intent of this regulation and article 13 of the Labor Law is observed. Any person affected by this regulation may petition the commissioner for such variation, stating in writing the grounds therefore.

Historical Note

Sec. filed April 28, 1999 eff. May 19, 1999.