

STATE OF NEW YORK DEPARTMENT OF LABOR



Minimum Wage Order for the Building Service Industry

Part 141 of Title 12 of Official Compilation of Codes, Rules and Regulations

Effective July 24, 2009

Promulgated by the Commissioner of Labor Pursuant to the Minimum Wage Act

(Article 19 of the New York State Labor Law)

(Statutory authority: Labor Law, Article 2, § 21 (11) and Article 19, § 652)

PART 141
BUILDING SERVICE INDUSTRY

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MINIMUM WAGE AND ALLOWANCES

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§ 141-1.1 Application.

Every employer in the building service industry shall pay to each employee, as defined herein, not less than the minimum wage rates provided in this Part.

§ 141-1.2 Unit rate for janitors in residential buildings.

For buildings with any number of units, resident or nonresident janitor and any type of heating--rate per unit per week:

- (a) \$3.45 on and after March 31, 2000;
- (b) \$4.00 on and after January 1, 2005;
- (c) \$4.50 on and after January 1, 2006;
- (d) \$4.80 on and after January 1, 2007;
- (e) \$4.85 on and after July 24, 2009.

§ 141-1.3 Basic minimum hourly wage rate.

For all employees except janitors in residential buildings, the basic minimum hourly wage rate shall be:

- (a) \$5.15 per hour on and after March 31, 2000;
- (b) \$6.00 per hour on and after January 1, 2005;

- (c) \$6.75 per hour on and after January 1, 2006;
- (d) \$7.15 per hour on and after January 1, 2007;
- (e) \$7.25 per hour on and after July 24, 2009, or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or its successors.

§ 141-1.4 Overtime hourly rate.

An employer shall pay an employee, except a janitor in a residential building, for overtime at a wage rate of 1 1/2 times the employee's regular rate for hours worked in excess of 40 hours in a workweek.

§ 141-1.5 Allowances for apartment.

An apartment furnished by an employer to an employee in a residential building, and occupied by him, may be considered part of the minimum wage, but the allowance for such apartment shall not exceed:

(a) For buildings with nine or more dwelling units, in which the employee's apartment is:

(1) on the ground or top floors of the building:

the lowest rental on June 1, 1975 for apartments having the same number of rooms in the building. Where the building does not have an apartment of comparable size, the allowance per room may not exceed the per-room value of the lowest rented apartment of the next larger or smaller size, whichever is lowest;

(2) above the ground and below the top floors of the building:

the average rental on June 1, 1975 of apartments with the same number of rooms, in the same line of the building, including the apartments on the ground and top floors;

(3) below curb level (in whole or in part):

(i) apartments for permanent occupancy: 85 percent of the lowest rental on June 1, 1975 for curb-level or above-curb-level apartments having the same number of rooms in the building. Where the building does not have an apartment of comparable size, the allowance per room may not exceed 85 percent of the per-room value of the lowest rented apartment of the next larger or smaller size, whichever is lowest;

(ii) apartments for temporary occupancy: 50 percent of the lowest rental on June 1, 1975 for curb-level or above-curb-level apartments having the same number of rooms in the building, whichever is lowest. Where the building does not have an apartment of comparable size, the allowance per room may not exceed 50 percent of the per-room value of the lowest rented apartment of the next larger or smaller size, whichever is lowest.

(b) For buildings with fewer than nine dwelling units, in which the employee's apartment is:

(1) at or above curb level:

the legal rental in effect on June 1, 1975 as established by the appropriate housing or rent commission for said apartment. Where the housing or rent commission has not established a ceiling rental for said apartment, the allowance may not exceed the average rental for apartments of comparable size (number of rooms) in the building;

(2) below curb level (in whole or in part):

(i) apartments for permanent occupancy: 85 percent of the lowest ceiling rental in effect on June 1, 1975 as established by the appropriate housing or rent commission for a comparable size (number of rooms) curb-level or above-curb-level apartment in the building, whichever is lowest. Where the appropriate housing or rent commission has not established a ceiling rental for a comparable size curb-level or above-curb-level apartment in the building, the allowance may not exceed 85 percent of the average rental for curb-level or above-curb-level apartments of comparable size in the building, whichever is lowest;

(ii) apartments for temporary occupancy: 50 percent of the lowest ceiling rental in effect on June 1, 1975 as established by the appropriate housing or rent commission for a comparable size (number of rooms) curb-level or above-curb-level apartment in the building, whichever is lowest. Where the appropriate housing or rent commission has not established a ceiling rental for a comparable size curb-level or above-curb-level apartment in the building, the allowance may not exceed 50 percent of the average rental for curb-level or above-curb-level apartments of comparable size in the building, whichever is lowest.

(c) In no event shall an employer who gives an employee a cash wage in addition to the occupancy of an apartment, reduce the cash wage to such employee or his successor, by offsetting it by an increase in the rent allowance for such apartment in an amount greater than that allowed on June 1, 1975.

§ 141-1.6 Allowances for utilities.

Utility service charges expended by the employer for the private use of an employee may be considered part of the minimum wage. Allowances for such charges shall not exceed:

(a) *Gas - electricity.*

(1) When the employee's apartment has its own exclusive gas or electric meter: full charge, as shown on the bill for a specific period.

(2) When the employee's gas or electric consumption is registered on the building line meter, or when gas or electric bills are not shown at the time of inspection:

(i) With refrigerator:

- (1) \$14.40 per month on and after March 31, 2000;
- (2) \$16.80 per month on and after January 1, 2005;
- (3) \$18.90 per month on and after January 1, 2006;
- (4) \$20.00 per month on and after January 1, 2007;
- (5) \$20.30 per month on and after July 24, 2009.

(ii) Without refrigerator:

- (1) \$10.40 per month on and after March 31, 2000;
- (2) \$12.10 per month on and after January 1, 2005;
- (3) \$13.65 per month on and after January 1, 2006;
- (4) \$14.45 per month on and after January 1, 2007;
- (5) \$14.65 per month on and after July 24, 2009.

(b) Telephone, when required by the employer – the amount in excess of the minimum billing rate.

§ 141-1.7 Allowance for tips or gratuities.

Tips or gratuities from tenants and others shall not be counted as part of the minimum wage.

§ 141-1.8 Required uniforms.

No allowance for the supply, maintenance, or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform he shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages. Where the employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein:

(a) \$6.40 per week on and after March 31, 2000, if the employee works more than 30 hours weekly; \$5.05 per week on and after March 31, 2000, if the employee works more than 20 but not more than 30 hours weekly; and \$3.05 per week on and after March 31, 2000, if the employee works 20 hours or less weekly;

(b) \$7.45 per week on and after January 1, 2005, if the employee works more than 30 hours weekly; \$5.90 per week on and after January 1, 2005, if the employee works more than 20 but not more than 30 hours weekly; and \$3.55 per week on and after January 1, 2005, if the employee works 20 hours or less weekly;

(c) \$8.40 per week on and after January 1, 2006, if the employee works more than 30 hours weekly; \$6.60 per week on and after January 1, 2006, if the employee works more than 20 but not more than 30 hours weekly; and \$4.00 per week on and after January 1, 2006, if the employee works 20 hours or less weekly;

(d) \$8.90 per week on and after January 1, 2007, if the employee works more than 30 hours weekly; \$7.00 per week on and after January 1, 2007, if the employee works more than 20 but not more than 30 hours weekly; and \$4.25 per week on and after January 1, 2007, if the employee works 20 hours or less weekly;

(e) \$9.00 per week on and after July 24, 2009, if the employee works more than 30 hours weekly; \$7.10 per week on and after July 24, 2009, if the employee works more than 20 but not more than 30 hours weekly; and \$4.30 per week on and after July 24, 2009, if the employee works 20 hours or less weekly.

§ 141-1.9 Allowance for tools and supplies.

No allowance for tools and supplies required by the employer for the maintenance of the building shall be permitted as part of the minimum wage. Where an employee advances the cost of such tools or supplies, he shall be reimbursed no later than the time of the next payment of wages.

§ 141-1.10 Other allowances.

No other allowances for any other items, services or facilities furnished by the employer to an employee shall be permitted as part of the minimum wage.

**SUBPART 141-2
REGULATIONS**

Section

- 141-2.1 Employer records
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§ 141-2.1 Employer records.

Employers shall make the following records or sworn certified copies thereof available upon request of the commissioner, or his authorized representative, at the place of employment:

(a) *Payroll records.* Every employer shall establish, maintain and preserve for not less than six years, payroll records which shall show for each employee:

- (1) name and address;
- (2) apartment number if allowance for apartment is claimed;
- (3) social security number;
- (4) occupational classification (resident janitor, nonresident janitor, "all other" workers) and wage rate;
- (5) for janitors in residential buildings:
 - (i) number of units in building;
- (6) for "all other" employees: the number of hours worked daily and weekly;
- (7) cash wages;
- (8) allowances claimed as part of the minimum wage, listing separately the value of the apartment and each utility supplied;
- (9) gross wages (cash wages plus allowances);
- (10) legal deductions;
- (11) net wages; and
- (12) student classification.

(b) For each individual for whom student status is claimed, a statement from the school which such individual attends, indicating whether or not such individual:

- (1) is a student whose course of instruction is one leading to a degree, diploma or certificate; or
- (2) is completing residence requirements for a degree; and
- (3) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

(c) Records for individuals permitted to work in an executive, administrative or professional capacity shall show:

- (1) name and address;
- (2) social security number;
- (3) description of occupation; and
- (4) for individuals working in an executive or administrative capacity, total wages, and the value of allowances, if any, for each payroll period.

(d) *Records of apartment rentals as of June 1, 1975.*

(1) Where an allowance for an apartment furnished to an employee is part of the minimum wage, the employer shall maintain the following records, showing for each of the apartments in the building, the apartment rental as of June 1, 1975:

- (i) apartment number;
- (ii) floor on which apartment is located;
- (iii) number of rooms; and

(iv) apartment rental.

(2) The employer shall also maintain a certificate or permit, where required by law, authorizing occupancy by an employee of an apartment in whole or in part below curb level.

(3) In the event such records of apartment rentals or such certificate or permit are not furnished, no apartment allowance shall be permitted.

§ 141-2.2 Statement to employee.

Every employer covered by this Part shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages. In the case of janitors, the number of units shall be recorded in the place of hours worked.

§ 141-2.3 Posting.

Every employer covered by this Part shall post in a conspicuous place in his or her establishment a notice issued by the Department of Labor summarizing minimum wage provisions of this Part.

§ 141-2.4 Condition for allowance for apartment.

No allowance will be permitted for an apartment furnished by an employer to an employee unless the employer makes available to the Commissioner of Labor, or his representative, the rental records prescribed in this Part.

§ 141-2.5 Payments in addition to regular wages.

(a) Payments in addition to regular wages may be considered part of the minimum wage, provided they are:

- (1) for work generally performed by janitors;
- (2) recorded in the payroll book; and
- (3) credited only for the payroll period during which payment was made.

(b) Payments for painting an apartment or for major repairs may not be considered as part of the minimum wage.

§ 141-2.6 Count of units.

Janitors employed in residential buildings that also include business and/or commercial units shall be paid for the total number of residential, business and commercial units combined. Housing accommodations occupied by employees shall be included in the total count of units. Units which are withdrawn from the rental market shall not be included in the count.

§ 141-2.7 Employer residing on building premises.

Where the employer resides in the building or within a distance of 200 feet therefrom and where the employer participates substantially in the maintenance, care or operation of the building, such employer may consider an employee in such building to be an "all other" worker.

§ 141-2.8 Limitations as to minimum weekly wage of janitors.

The unit rates prescribed herein shall not be applicable to janitors who are paid at least:

- (1) \$219.10 per week on and after March 31, 2000, by a building owner or managing agent for whom the employee renders janitorial services;
- (2) \$255.25 per week on and after January 1, 2005, by a building owner or managing agent for whom the employee renders janitorial services;
- (3) \$287.15 per week on and after January 1, 2006, by a building owner or managing agent for whom the employee renders janitorial services;
- (4) \$304.10 per week on and after January 1, 2007, by a building owner or managing agent for whom the employee renders janitorial services;
- (5) \$308.35 per week on and after July 24, 2009, by a building owner or managing agent for whom the employee renders janitorial services.

§ 141-2.9 Basis for wage payment.

The minimum wage provided by this Part shall be required for each week of work regardless of the frequency of payment, whether the wage is a commission, bonus, piece rate or unit rate, or any other basis.

§ 141-2.10 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

- (1) deductions for spoilage or breakage;
- (2) deductions for cash shortages or losses; and
- (3) fines or penalties for lateness, misconduct, or quitting by an employee without notice.

(b) The minimum wages shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer.

§ 141-2.11 Employment covered by more than one wage order.

An employee in the building service industry who works for the same employer at an occupation governed by another New York State minimum wage order:

(a) for two hours or more during any one day; or

(b) for 12 hours or more in any week.

shall be paid for all hours of working time for that day or week in accordance with the minimum wage standards contained in the minimum wage order for such other industry, or for the building service industry, whichever is higher.

§ 141-2.12 Learner or apprentice rates.

No learner or apprentice shall be paid less than the minimum rate prescribed in this Part.

§ 141-2.13 Rehabilitation programs.

For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such a program shall be deemed to meet the requirements of this Part.

§ 141-2.14 Student obtaining vocational experience.

A student is not deemed to be working or to be permitted to work if, in order to fulfill the curriculum requirements of the educational institution which the student attends, such student is required to obtain supervised and directed vocational experience in another establishment.

**SUBPART 141-3
DEFINITIONS**

Section

- 141-3.1 Building service industry
- 141-3.2 Employee
- 141-3.3 Regular rate
- 141-3.4 Janitor
- 141-3.5 Resident janitor
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- 141-3.8 Apartments for permanent occupancy below curb level
- 141-3.9 Apartments for temporary occupancy below curb level
- 141-3.10 Residential unit
- 141-3.11 Required uniforms

§ 141-3.1 Building service industry.

(a) The *building service industry* includes any person, corporation or establishment engaged in whole or in part in renting, servicing, cleaning, maintaining, selling, or managing buildings or building space, and all occupations, operations and services in connection therewith or incidental thereto. The industry includes, but is not limited to, real estate owners, building owners, operators, lessors, managing agents and independent contractors.

(b) The *building service industry* does not include (1) a building trades contractor engaged exclusively in the field of construction, or (2) any building owned, operated and used solely for religious, charitable or educational purposes by a nonprofit organization organized exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. These exclusions shall not be deemed to be exclusions from coverage under another minimum wage order.

§ 141-3.2 Employee.

(a) *Employee* means any individual permitted to work by an employer in the building service industry, except as provided below.

(b) Employee does not include:

(1) an employee of an owner or lessee of a building occupying the entire building for his own use if such employee works exclusively in that building; or

(2) an individual working in or in connection with a bungalow colony. These exclusions shall not be deemed to be exclusions from coverage under another minimum wage order; or

(3) any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) Employee also does not include any individual permitted to work in, or as:

(1) Executive, administrative or professional capacity.

(i) Executive. Work in a bona fide executive capacity means work by an individual:

(a) whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof; and

(b) who customarily and regularly directs the work of two or more other employees therein; and

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) who customarily and regularly exercises discretionary powers; and

(e) who is paid for his services a salary of not less than:

(1) \$386.25 per week on and after March 31, 2000, inclusive of board, lodging, other allowances and facilities;

(2) \$450.00 per week on and after January 1, 2005, inclusive of board, lodging, other allowances and facilities;

(3) \$506.25 per week on and after January 1, 2006, inclusive of board, lodging, other allowances and facilities;

(4) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(5) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities.

(ii) Administrative. Work in a *bona fide administrative capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of his or her employer; and

(b) who customarily and regularly exercises discretion and independent judgment; and

(c) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (*e.g.*, employment as an administrative assistant); or who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary of not less than:

(1) \$386.25 per week on and after March 31, 2000, inclusive of board, lodging, other allowances and facilities;

(2) \$450.00 per week on and after January 1, 2005, inclusive of board, lodging, other allowances and facilities;

(3) \$506.25 per week on and after January 1, 2006, inclusive of board, lodging, other allowances and facilities;

(4) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(5) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities.

(iii) Professional. Work in a *bona fide professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes; or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

(i) making sales; or

(ii) selling and delivering articles or goods; or

(iii) obtaining orders or contracts for service or the use of facilities.

§ 141-3.3 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece rate, salary, or other basis than hourly rate, the regular hourly rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 141-3.4 Janitor.

A *janitor* is a person employed to render any physical service in connection with the maintenance, care or operation of a residential building. Where there is only one employee, such employee shall be deemed the janitor. Where there is more than one employee in the building,

the employer shall designate an employee who lives in the building as the janitor. No building may have more than one janitor.

§ 141-3.5 Resident janitor.

A *resident janitor* is a janitor as defined above who resides in the building where he or she renders services, or in another building within a distance of 200 feet there from.

§ 141-3.6 Nonresident janitor.

A *nonresident janitor* is a janitor as defined above who does not reside in the building where he or she renders services, or in another building within a distance of 200 feet therefrom.

§ 141-3.7 "All other" employees.

"*All other*" employees means all building service employees other than janitors in residential buildings.

§ 141-3.8 Apartments for permanent occupancy below curb level.

An *apartment for permanent occupancy below curb level* is an apartment in whole or in part below curb level which is permitted by law to be occupied for living purposes without restriction.

§ 141-3.9 Apartments for temporary occupancy below curb level.

An *apartment for temporary occupancy below curb level* is an apartment in whole or in part below curb level permitted to be occupied for living purposes, under a permit or certificate issued by the departments having jurisdiction thereof, for a temporary duration period and only by the then occupant of the apartment.

§ 141-3.10 Residential unit.

A *residential unit* is that portion of a dwelling consisting of one or more living rooms, which group of rooms is separated from all other groups within a dwelling.

§ 141-3.11 Required uniforms.

A *required uniform* shall be that clothing worn by an employee, at the request of an employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of an employee's ordinary wardrobe.