

Sections 142-2.3 and 142-3.3 of 12 NYCRR are amended to read as follows:

§ 142-2.3 Call-in pay.

(a) Call-in pay shall be provided as set forth below.

(1) Reporting to work. An employee who by request or permission of the employer reports for work on any [day] shift shall be paid for at least four hours[, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage] of call-in pay.

(2) Unscheduled shift. An employee who by request or permission of the employer reports to work for any shift for hours that have not been scheduled at least 14 days in advance of the shift shall be paid an additional two hours of call-in pay. Where an employer provides a weekly schedule, 14-day period referenced in this section may be measured from the last day of the schedule.

(3) Cancelled shift. An employee whose shift is cancelled by the employer shall be paid for at least two hours of call-in pay, if the shift is cancelled within 14 days, or for at least four hours of call-in pay if the shift is cancelled within 72 hours, in advance of the scheduled start of such shift.

(4) On-call. An employee who is required by the employer to be available to report to work for any shift shall be paid for at least four hours of call-in pay.

(5) Call for schedule. An employee who is required by the employer to be in contact with the employer within 72 hours of start of the shift to confirm whether to report to work shall be paid for at least four hours of call-in pay.

(b) Calculation of call-in pay. Call-in pay shall be calculated as follows.

(1) Actual attendance. Payments for time of actual attendance shall be calculated at the employee's regular rate or overtime rate of pay, whichever is applicable, minus any allowances permitted under this Part.

(2) Minimum rate. Payments for other hours of call-in pay shall be calculated at the basic minimum hourly rate with no allowances. Such payments are not payments for time worked or work performed and need not be included in the regular rate for purposes of calculating overtime pay.

(3) Offsets. Call-in pay shall not be offset by the required use of leave time, or by payments in excess of those required under this Part.

(4) Shorter work days. The four hours of call-in pay for reporting to work and for cancelled shifts under paragraphs (1) and (3) of subdivision (a) of this section may be reduced to the lesser number of hours that the employee is scheduled to work and normally works, for that shift.

(c) Applicability. This section applies to all employees, except as provided below.

(1) This section shall not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.

(2) Paragraphs (2) through (5) of subdivision (a) of this section shall not apply to employees during work weeks when their weekly wages exceed 40 times the applicable basic hourly minimum wage rate.

(3) In addition, paragraphs (2) through (5) of subdivision (a) of this section shall also not apply to employees whose duties are directly dependent on weather conditions, or to employees whose duties are necessary to protect the health or safety of the public or any person, or to employees whose assignments are subject to work orders, or cancellations thereof; provided, however, that such employees also receive weekly compensation that exceeds the number of compensable hours worked times the applicable basic minimum wage rate, with no allowances.

(4) Paragraph (2) of subdivision (a) of this section (unscheduled shift) shall not apply to: (i) any new employee during the first two weeks of employment; or (ii) any employee who volunteers to cover a new shift or a previously scheduled shift. For purposes of this section, the term "new shift" shall mean the first two weeks of an additional shift that results in a net increase in staffing at a single workplace during the period of time covered by such shift; the term "previously scheduled shift" shall mean a shift that would not have been subject to unscheduled shift call-in pay if worked by the employee who was originally assigned to work that shift; and the term "volunteers" shall mean that the employee may refuse to cover the new or previously scheduled shift.

(5) Paragraphs (2) and (3) of subdivision (a) of this section (unscheduled shift and cancelled shift) shall not apply when an employer responds to weather or other travel advisories by offering employees the option to voluntarily reduce or increase their scheduled hours, so that employees may stay home, arrive early, arrive late, depart early, depart late, or any combination thereof, without call-in pay for unscheduled or cancelled shifts.

(6) In addition, paragraph (3) of subdivision (a) of this section (cancelled shift) shall also not apply when an employer cancels a shift at the employee's request for time off, or when operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer's control, including, but not limited to, a state of emergency declared by federal, state, or local government.

(d) **Safe Harbor.** For purposes of paragraph (4) of subdivision (c) of this section, there shall be a rebuttable presumption that an employee has volunteered to cover a new or previously scheduled shift if the employer provides a written good faith estimate of hours to all employees upon hiring, or after the effective date of this section for previously hired employees, which may be amended at the employee's request or upon two weeks' notice by the employer, and if the request to cover a new or previously scheduled shift is either: (i) made by the employee whose shift would be covered; or (ii) made by the employer in a written communication to a group of employees requesting a volunteer from among the group and identifying a reasonable deadline for responses. If no employee volunteers prior to the deadline, the employer may assign an employee to cover the shift without the additional call-in pay required for unscheduled shifts.

§ 142-3.3 Call-in pay.

(a) Call-in pay shall be provided as set forth below.

(1) **Reporting to work.** An employee who by request or permission of the employer reports for work on any [day] shift shall be paid for at least four hours[, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage] of call-in pay.

(2) **Unscheduled shift.** An employee who by request or permission of the employer reports to work for any shift for hours that have not been scheduled at least 14 days in advance of the shift shall be paid an additional two hours of call-in pay. Where an employer provides a weekly schedule, 14-day period referenced in this section may be measured from the last day of the schedule.

(3) **Cancelled shift.** An employee whose shift is cancelled by the employer shall be paid for at least two hours of call-in pay, if the shift is cancelled within 14 days, or for at least four hours of call-in pay if the shift is cancelled within 72 hours, in advance of the scheduled start of such shift.

(4) **On-call.** An employee who is required by the employer to be available to report to work for any shift shall be paid for at least four hours of call-in pay.

(5) **Call for schedule.** An employee who is required by the employer to be in contact with the employer within 72 hours of start of the shift to confirm whether to report to work shall be paid for at least four hours of call-in pay.

(b) **Calculation of call-in pay.** Call-in pay shall be calculated as follows.

(1) **Actual attendance.** Payments for time of actual attendance shall be calculated at the employee's regular rate or overtime rate of pay, whichever is applicable, minus any allowances permitted under this Part.

(2) **Minimum rate.** Payments for other hours of call-in pay shall be calculated at the basic minimum hourly rate with no allowances. Such payments are not payments for time worked or work performed and need not be included in the regular rate for purposes of calculating overtime pay.

(3) **Offsets.** Call-in pay shall not be offset by the required use of leave time, or by payments in excess of those required under this Part.

(4) **Shorter work days.** The four hours of call-in pay for reporting to work and for cancelled shifts under paragraphs (1) and (3) of subdivision (a) of this section may be reduced to the lesser number of hours that the employee is scheduled to work and normally works, for that shift.

(c) **Applicability.** This section applies to all employees, except as provided below.

(1) This section shall not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.

(2) Paragraphs (2) through (5) of subdivision (a) of this section shall not apply to employees during work weeks when their weekly wages exceed 40 times the applicable basic hourly minimum wage rate.

(3) In addition, paragraphs (2) through (5) of subdivision (a) of this section shall also not apply to employees whose duties are directly dependent on weather conditions, or to employees whose duties are necessary to protect the health or safety of the public or any person, or to employees whose assignments are subject to work orders, or cancellations thereof; provided, however, that such employees also receive weekly compensation that exceeds the number of compensable hours worked times the applicable basic minimum wage rate, with no allowances.

(4) Paragraph (2) of subdivision (a) of this section (unscheduled shift) shall not apply to: (i) any new employee during the first two weeks of employment; or (ii) any employee who volunteers to cover a new shift or a previously scheduled shift. For purposes of this section, the term "new shift" shall mean the first two weeks of an additional shift that results in a net increase in staffing at a single workplace during the period of time covered by such shift; the term "previously scheduled shift" shall mean a shift that would not have been subject to unscheduled shift call-in pay if worked by the employee who was originally assigned to work that shift; and the term "volunteers" shall mean that the employee may refuse to cover the new or previously scheduled shift.

(5) Paragraphs (2) and (3) of subdivision (a) of this section (unscheduled shift and cancelled shift) shall not apply when an employer responds to weather or other travel advisories by offering employees the option to voluntarily reduce or increase their scheduled

hours, so that employees may stay home, arrive early, arrive late, depart early, depart late, or any combination thereof, without call-in pay for unscheduled or cancelled shifts.

(6) In addition, paragraph (3) of subdivision (a) of this section (cancelled shift) shall also not apply when an employer cancels a shift at the employee's request for time off, or when operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer's control, including, but not limited to, a state of emergency declared by federal, state, or local government.

(d) **Safe Harbor.** For purposes of paragraph (4) of subdivision (c) of this section, there shall be a rebuttable presumption that an employee has volunteered to cover a new or previously scheduled shift if the employer provides a written good faith estimate of hours to all employees upon hiring, or after the effective date of this section for previously hired employees, which may be amended at the employee's request or upon two weeks' notice by the employer, and if the request to cover a new or previously scheduled shift is either: (i) made by the employee whose shift would be covered; or (ii) made by the employer in a written communication to a group of employees requesting a volunteer from among the group and identifying a reasonable deadline for responses. If no employee volunteers prior to the deadline, the employer may assign an employee to cover the shift without the additional call-in pay required for unscheduled shifts.