



# NEW YORK QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

PROVIDED BY BAKER DONELSON

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## At-Will Employment

New York is an at-will employment state, meaning that either the employee or employer may terminate an employment arrangement at any time so long as the termination is not contrary to law. [Murphy v. American Home Prods. Corp., 448 N.E.2d 86, 89 \(N.Y. 1983\).](#)

Exceptions to the at-will-employment presumption are found when there are constitutional, statutory, and express contract violations. See [Mulder v. Donaldson, Lufkin, Jenrette, 623 N.Y.S.2d 560, 563 \(N.Y. App. Div. 1995\).](#) Retaliatory actions, such as terminating a “whistleblower,” are prohibited as long as the employee discloses or threatens to disclose an actual violation of law that creates a substantial and specific danger to the public health or safety, see [Bordell v. General Elec. Co., 667 N.E.2d 922, 923 \(N.Y. 1996\).](#) However, in January 2022, the New York State Legislature enacted legislation that broadened the scope to include, “polic[ies] or practice[s] that the *employee reasonably believes* [are] in violation of law.” [N.Y. Lab. Law § 740 \(McKinney 2023\)\(emphasis added\).](#)

## Right-to-Work Laws

In New York, union membership may be required for employees whose compensation and benefits are negotiated on behalf of all employees by a union.

## Immigration Verification

New York places no additional employment verification procedures on employers beyond Federal I-9 compliance. There is no requirement to use E-Verify under New York state law.

## Drug Testing

There is no law in New York governing pre-employment drug and alcohol testing or employment drug and alcohol testing, except that employers may not test most workers for marijuana or cannabis as of March 2021. [N.Y. Lab. Law § 201-D \(McKinney 2023\).](#)

## Jury Duty Leave

In New York, an employee who is summoned to serve as a juror and notifies his employer prior to jury duty service shall not be penalized or discharged for taking a leave of absence from their employment duties. An employer who employs more than ten employees may not withhold the first \$40 of an employee’s daily wages during the first three days of jury duty. [N.Y. Jud. Law § 519 \(McKinney 2023\).](#)

## Voting Leave

In New York, an employee who lacks four consecutive hours while the polls are open, before or after their scheduled shift, may take off up to two hours without loss of pay to exercise their right to vote. The employee must notify the employer less than ten days but more than two working days before the day the employer votes in the election. Additionally, all employers must post a conspicuous notice in the workplace at least ten working days before the election regarding this policy and must remain posted until the close of polls on election day. [N.Y. Elec. Law § 3-110 \(McKinney 2023\).](#)

## Parental Leave

Full-time employees who work at least 20 hours per week are eligible for paid family leave if they have been employed for 26 or more consecutive weeks. Eligible employees may take up to 12 weeks of parental leave per calendar year. The employee taking leave should receive 67 percent of the employee’s average weekly wage, up to a cap of 67 percent of the current New York State Average Weekly Wage.

An employee may use paid family leave benefits to bond with the employee’s child during the first 12 months after the child’s birth or during the first twelve months after the child’s placement for adoption or foster care with the employee. An employee may also use paid leave to care for a family member with a serious health condition or for certain exigencies arising from a family member’s deployment in the armed forces of the United States. Employers are prohibited from taking retaliatory actions, such as termination, in response to an employee’s election of paid family leave. [N.Y. Workers’ Comp. Law §§ 200-239 \(McKinney 2022\).](#)

## Smoking Laws

New York law prohibits smoking and vaping indoors at indoor places of employment. [N.Y. Pub. Health Law § 1399-O \(McKinney 20232\)](#).

## Break Time to Express Milk

New York employers shall provide reasonable unpaid break time or paid break or mealtime each day as reasonably needed to allow an employee to express breast milk for up to three years following childbirth. The employer shall make reasonable efforts to provide an area in the workplace, or within close proximity to the work area, where an employee can express milk privately. [N.Y. Lab. Law § 206-C \(McKinney 20232\)](#).

## Meal Breaks

New York's laws on meal and rest breaks for non-factory employees are broken down into the following categories:

- An employee who works a shift of more than six hours that extends over the noonday meal period (between 11:00 a.m. – 2:00 p.m.) must be given 30 minutes off during that time period.
- An employee who works more than six hours of a shift that starts between 1:00 p.m. and 6:00 a.m. must be given a meal period of no less than 45 minutes midway between the beginning and end of the shift.
- An employee who starts work before 11:00 a.m. and continues to work past 7:00 p.m. must be given an additional meal period of at least 20 minutes between 5:00 p.m. and 7:00 p.m.

Factory employees must be given a 60-minute meal break for the noonday meal period. [N.Y. Lab. Law § 162 \(McKinney 2023\)](#).

## Minimum Wage

The basic minimum hourly wage rate for all employees, except janitors in residential buildings, in New York is established as follows:

- In New York City, all employers are now required to pay \$15 per hour.
- In Nassau, Suffolk, and Westchester counties, effective December 31, 2021, all employers are required to pay \$15 per hour.
- In the remainder of the State of New York, effective December 31, 2022, the minimum wage is \$14.20 per hour.
- Minimum wage for fast food employees in all regions of the State of New York is \$15 per hour.

[N.Y. Comp. Codes R. & Regs. tit. 12, § 146-1.2 \(2023\)](#).

New York law addressing tips and tip credits may be found here [N.Y. Comp. Codes R. & Regs. tit. 12, § 141-1.3 \(2023\)](#).

In New York, if a higher wage is established by Federal law pursuant to [29 U.S.C. § 206](#), such wage shall apply.

## Overtime

Generally, if an employee works more than 40 hours in a week, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. See, e.g., [N.Y. Comp. Codes R. & Regs. tit. 12, § 141-1.4 \(2023\)](#) and [§142-2.2](#). This does not apply to agricultural employees.

## Wage and Recordkeeping

Every employer shall make and keep for a period of not less than six years accurate, detailed payroll records including all notices as required under statute. [N.Y. Lab. Law § 195 \(4\) \(McKinney 2023\)](#).

## Final Payments

New York law states that an employer shall pay the wages not later than the regular payday for the pay period during which the termination occurred. Such wages must be paid by mail if requested by the employee. [N.Y. Lab. Law § 191\(3\) \(McKinney 2023\)](#).

## Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. [N.Y. Lab. Law § 501 \(McKinney 2023\)](#). The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the New York Department of Labor, and additional information regarding the benefits may be accessed at [www.ny.gov/services/unemployment-0](http://www.ny.gov/services/unemployment-0).

## Workers' Compensation

The New York Workers' Compensation Law, [N.Y. Workers' comp. Law § 1 et. seq \(McKinney 2023\)](#), applies to most employers in New York, including employers of domestic and agricultural workers. [N.Y. Workers' comp. Law § 3 \(McKinney 2023\)](#). Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Law. Under the Law, a workplace injury must be reported to the employer in writing within 30 days after the accident; failing to report an injury in a timely manner may result in a denial of benefits. [N.Y. Workers' comp. Law § 18 \(McKinney 2023\)](#).

The Law is administered by the New York Workers' Compensation Board, and additional information regarding the Act may be accessed at [www.wcb.ny.gov/content/main/Workers/lp\\_workers-comp.jsp](http://www.wcb.ny.gov/content/main/Workers/lp_workers-comp.jsp). New York prohibits employers from discriminating against employees in connection with workers' compensation claims. [N.Y. Workers' comp. Law § 120 \(McKinney 2023\)](#).

## Child Labor

New York has one of the strictest child labor laws in the country. Subject to limited exceptions, the minimum age for employment under New York state law is 14. No minor under the age of 18 is permitted to work before 6 a.m. or between 10 p.m. and midnight on a school night unless the minor has special permission and a certificate of satisfactory academic standing from a school. There are restrictions for places of work dealing with minors, as well as restrictions on the hours per day and per week that a minor may work. [N.Y. Lab. Law § 130 \(McKinney\)](#); [N.Y. Lab. Law § 143 \(McKinney\)](#).

## Gun Laws

New York does not have a specific law that restricts an employer from prohibiting employees from firearm possession in the workplace. Employers are therefore free to implement policies restricting employee possession of firearms at work, including in company parking lots.