



Webinar 6 – March 26, 2025

## Wage and Hour Updates

### WEBINAR OUTLINE

#### INTRO/SETTING THE STAGE

- The Importance of Wage and Hour Compliance

#### KEY AREAS OF WAGE AND HOUR COMPLIANCE: LEGAL REQUIREMENTS

- Minimum Wage
- Establishing Criteria for Overtime Pay
- Employee Classification
- Utilizing Reliable Timekeeping Systems
- Notice Requirements
- Timely and Accurate Payroll Practices

#### ISSUES RELATED TO WAGE AND HOUR COMPLIANCE

- What is Compensable Time?
- Hours Worked
- Accurate Timekeeping
- Wage Overpayments

#### HRtelligence TIPS

## I. INTRO/SETTING THE STAGE

### A. The Importance of Wage and Hour Compliance

- Wage and hour compliance is crucial for businesses as it ensures fair treatment of employees, protects against legal repercussions, and maintains a positive reputation, ultimately contributing to a stable and successful business environment.
- It's not just a legal obligation but a critical component of maintaining a fair and equitable workplace. Failure to comply with wage and hour laws can lead to significant financial penalties, damage to your company's reputation and costly litigation.

## II. KEY AREAS OF WAGE AND HOUR COMPLIANCE: LEGAL REQUIREMENTS

The Fair Labor Standards Act (“FLSA”) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

The New York State Division of Labor enforces the New York State Labor Laws that:

- Define wages, benefits, tips and frequency of payment of wages, benefits and tips
- Define categories of employees
- Delineate permissible deductions
- Set recordkeeping and notice requirements
- Set minimum wage
- Define hours of work and breaks

### A. Minimum Wage/Salary Thresholds

Overtime Exemption Salary Threshold Increases

Effective January 1, 2025, New York's salary basis test for employees classified as exempt under the administrative and executive exemptions increased as follows:

New York City, Westchester, and Long Island	\$1,237.50/week or \$64,350.00/year (increased from \$1,200.00/week or \$62,400.00/year)
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Remainder of New York state \$1,161.65/week or \$60,405.80/year (increased from 1,124.20/week or \$58,458.40/year)

### Minimum Wage Increases

Effective January 1, 2025, New York's minimum wage increased for employees (excluding home care aides and certain other industry employees) as follows:

New York City, Westchester, and Long Island \$16.50/hour (increased from \$16.00/hour)

Remainder of New York state \$15.50/hour (increased from 15.00/hour)

### Upcoming Changes to the Tip Credit for Tipped Employees

As of January 1, 2025, the allowable "tip credit" for food service workers and service employees and the minimum cash wage increased.

#### *Tipped Food Service Workers*

A food service worker is defined as any employee who is primarily engaged in the serving of food or beverages to guests, patrons, or customers in the hospitality industry, including but not limited to wait staff, bartenders, captains, and bussing personnel, and who regularly receives tips from such guests, patrons, or customers. The term food service worker does not include delivery workers.

This chart reflects cash wages and tip credits for food service workers, effective January 1, 2025:

New York City, Westchester, and Long Island \$11.00 cash wage and \$5.50 tip credit/hour (increased from \$10.65 cash wage and \$5.35 tip credit/hour)

Remainder of New York state \$10.35 cash wage and \$5.15 tip credit/hour (increased from \$10.00 cash wage and \$5.00 tip credit/hour)

#### *Tipped Service Employees*

A service employee is defined as an employee, other than a food service worker or fast food employee, who customarily receives tips.

This chart reflects cash wage and tip credit for service employees, effective January 1, 2025:

New York City, Westchester, and Long Island      \$13.75 cash wage and \$2.75 tip credit/hour  
(increased from \$13.35 cash wage and \$2.65 tip credit/hour)

Remainder of New York state      \$12.90 cash wage and \$2.60 tip credit/hour  
(increased from \$12.50 cash wage and \$2.50 tip credit/hour)

### Upcoming Changes to the Meal Credit

The allowable "meal credit" for food service workers, service employees, and non-service employees increased on January 1, 2025. It is important to note that employees covered by the Minimum Wage Order for Farm Workers will not experience a change in the meal credit.

#### *Food Service Workers*

This chart reflects the meal credit for food service workers, effective January 1, 2025:

New York City, Westchester, and Long Island      \$3.95/meal  
(increased from \$3.85/meal)

Remainder of New York state      \$3.95/meal  
(increased from \$3.80/meal)

#### *Service Employees*

This chart reflects the meal credit for service employees, effective January 1, 2025:

New York City, Westchester, and Long Island      \$4.60/meal  
(increased from \$4.45/meal)

Remainder of New York state      \$4.25/meal  
(increased from \$4.10/meal)

#### *Non-Service Employees*

A non-service employee is defined as any employee other than a service employee or a food service worker.

This chart reflects the meal credit for non-service employees, effective January 1, 2025:

New York City, Westchester, and Long Island      \$5.65/meal  
(increased from \$5.50/meal)

Remainder of New York state \$5.35/meal  
(increased from \$5.20/meal)

### Updates to the Uniform Allowance

The required "uniform allowance" for employers who require employees to wear a uniform but do not launder and maintain the uniform itself increased on January 1, 2025. A "required uniform" is defined as clothing required to be worn while working at the request of an employer, or to comply with any federal, state, city, or local law, rule, or regulation, except clothing that may be worn as part of an employee's ordinary wardrobe. It is important to note that employees covered by the Minimum Wage Order for Farm Workers and employees of certain non profit organizations are not required to pay a uniform maintenance allowance.

This chart reflects the required uniform maintenance allowance, effective January 1, 2025:

	Workweek of More Than 30 Hours	Workweek Between 20-30 Hours	Workweek of 20 Hours or Less
New York City, Westchester, and Long Island	\$20.50/week (increased from \$19.90/week)	\$16.25/week (increased from \$15.75/week)	\$9.80/week (increased from \$9.50/week)
Remainder of New York state	\$19.25/week (increased from \$18.65/week)	\$15.30/week (increased from \$14.80/week)	\$9.25/week (increased from \$8.95/week)

### B. Establishing Criteria for Overtime Pay

- Both federal law (FLSA) and state law (New York Minimum Wage Act and applicable regulations) generally require the payment of overtime wages for work performed over 40 hours per week.
- Overtime pay must be at least 1.5x their regular hourly rate.
- Employers must clearly define these policies and communicate them to staff, outlining the eligibility criteria, calculation method, and specific rules or exceptions.
- Overtime hours must be accurately tracked and recorded. This is vital for compliance with wage and hour regulations.

### C. Employee Classification

Every employee is either exempt or non-exempt.

- For the purposes of employee classification, non-exempt employees are not exempt from the FLSA's rules on wages and paid overtime and therefore are entitled to minimum wage protections and additional compensation for overtime hours worked more than 40 hours per week.
- Although nonexempt employees are frequently paid on an hourly basis, they may sometimes be paid a salary.

Employees are eligible for overtime any time they work over 40 hours a week, unless they fit into a specific FLSA exemption. To be exempt from the overtime requirements under the exemptions of the FLSA, employees must satisfy the following three tests:

- The salary basis test (*i.e.*, they must be paid a fixed, predetermined salary that is not reduced because of variations in the quality or quantity of work performed);
- The duties test (*i.e.*, their job duties must primarily involve executive, administrative or professional duties as defined by the FLSA regulations); and
- The salary threshold test (*i.e.*, the amount of salary they are paid must meet or exceed the standard salary level).

### **Salary Basis Test**

- Employees are paid on a salary or fee basis.
- In return, there's no overtime for working more than 40 hours a week.
- Guaranteed salary - no reduction if they work less than 40 hours or when work isn't available.

### **Job Duties Test**

A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations.

### **D. Utilizing Reliable Timekeeping Systems**

- Keeping track of the hours your employees work is essential to running an efficient business. Timekeeping keeps your payroll on track by making sure your employees are paid accurately for the hours they've worked and that overtime is calculated correctly.

- Effective employee timekeeping helps you better manage your workforce, pay your employees accurately and ensure your business is staying compliant with local labor laws.

Benefits of effective employee timekeeping:

- Fewer payroll errors
- Better compliance with labor laws
- Improved productivity
- Higher employee morale
- Better decision making

Different Methods of Timekeeping:

- Online timekeeping software
- Mobile Time Tracking Apps
- Biometric timekeeping
- Manual timekeeping

## E. Notice Requirements

### ○ **Notice of Pay Rate**

The Wage Theft Prevention Act (WTPA) requires employers to give **written** notice of wage rates to each new hire and to all employees by February 1<sup>st</sup> of each year.

The notice must include:

- Rate or rates of pay, including overtime rate of pay (if it applies)
- How the employee is paid: by the hour, shift, day, week, commission, etc.
- Regular payday
- Official name of the employer and any other names used for business (DBA)
- Address and phone number of the employer's main office or principal location
- Allowances taken as part of the minimum wage (tips, meal and lodging deductions)

*Note: The notice must be given both in English and in the employee's primary language (if the Labor Department offers a translation). The Department currently offers translations in the following languages: Spanish, Chinese, Haitian Creole, Korean, Polish and Russian.*

### ○ **Wage Statements**

Employers must give each employee a wage statement or pay stub each payday that lists all payroll data and must give any employee who asks a written explanation of how they computed wages.

With regard to information that must be given to workers on their pay stubs, the WTPA requires all pay stubs/wage statements to contain the following:

- Employer's name, address, and phone number
- Employee name

- Dates covered by payment (pay period)
- Basis of payment (hourly, salary, commission, etc.)
- Rates paid (regular and overtime)
- Hours worked (regular and overtime)
- Allowances or credits applied against wages
- Gross wages
- Any deductions from wages, and
- Net wages

## F. Timely and Accurate Payroll Practices

Proper record-keeping guarantees that employee hours, wages, benefits, and deductions are all accurately tracked, resulting in timely and accurate payments. This prevents disputes and legal issues stemming from payment discrepancies.

### Types of Payroll Records

In general, employers should keep the following important payroll records:

- **Employee Information.** Employee's legal name, address, social security number, and date of birth.
- **Employment Information.** Offer letters, date of employment, Form I-9s, occupation/titles, job description, background checks, professional references, acknowledged company policies, evaluations/reviews, and termination information.
- **Pay Information.** Pay agreement/status, wages paid each period, type of wage payment, time and day of week employee's work week starts. Total number of regular hours worked each day and each week. Overtime hours and amount paid. Date of payment and the pay period covered by the payment. Supplemental pay, tips, Amounts, and dates of all taxable annuities, pension payments, bonuses, and commissions.
- **Deductions.** Benefits, deferred compensation information, etc.
- **Direct Deposit Details.** Bank/financial institution names, account numbers, and routing numbers.
- **Timesheets.** Regular hours worked, overtime hours.
- **Leave Records.** Paid time off (PTO) and vacation time balances. Leave requests documentation, such as the Family Medical Leave Act (FMLA), state-paid leave programs, and paid sick leave.
- **Reimbursement Forms.** Expense reports for travel, mileage, etc.
- **Tax Documents.** Federal, state, and local tax forms/returns, W-4, W-2 forms.
- **Employer Tax Information.** Payroll reports and payment receipts

Accurate payroll records offer valuable insights into employee performance, productivity, and costs. This data enables business owners to identify trends, make



more informed hiring decisions, assess the effectiveness of compensation structures, and implement performance-based incentives.

### III. ISSUES RELATED TO WAGE AND HOUR COMPLIANCE

#### A. What is Compensable Time?

Employees must be paid for all time they are “suffered or permitted” to work.

- If you require or allow an employee to work, the time spent is generally hours worked.
- Even if you do not require or request work to be performed, but you allow (*e.g.*, you know or have reason to know) such work to be performed, that time is compensable.

Note: It is not sufficient to simply prohibit or discourage the employee from performing the work.

#### B. Hours Worked

Employers are required to track all hours worked by employees. The FLSA’s definition of “hours worked” includes any time an employee needs to be on duty or on the employer’s premises.

Time spent in job-related meetings or training, commuting to work sites, or on any other job-related travel during regular work hours also constitutes hours worked.

For non-exempt employees, time spent using technology outside of the traditional workplace to respond to work email, access the company network, check phone messages, or perform other work tasks is generally considered compensable work time.

Non-exempt employees must report all time spent working, including time they spend checking work email outside of work hours/before or after work. Remote or off-duty work is also compensable.

#### Training Time

Attendance at lectures, meetings, training programs and similar activities must be counted as working time unless all of the following criteria are met:

- it is outside normal hours,
- it is voluntary,
- it is not job-related, and
- no other work is concurrently performed

## Travel Time

Under the Fair Labor Standards Act, whether or not travel time is considered “working time” and therefore compensable depends upon the kind of travel involved.

- New York law requires an employee to be paid for all time an employee is permitted to work, and includes time spent traveling if traveling is part of the employee’s duties.
- Generally, commuting time is not compensable

Non-exempt employees may be entitled to compensation for travel time when:

- After returning home for the day, they travel a substantial distance to respond to a call at the employer’s customer’s location;
- They travel for a special one-day assignment in another city; or
- They travel overnight.

Employees required to travel to the employer’s office before/after a job site must be compensated.

## Breaks

New York has very specific rules regarding meal breaks for non-exempt employees. The amount of breaks, and the time spent on break, depends upon the employee’s work hours. Note, these breaks do not need to be paid, but employees need to clock in and out before and after the break.

Employees (other than those who work in factories) who work a shift of more than six (6) hours which extend over the noonday meal period (from 11:00 am to 2:00 pm) are entitled to at least a thirty (30) minute break for a meal period.

Employees who work for a shift starting before 11:00 am and continuing later than 7:00 pm are allowed an additional meal period of at least twenty (20) minutes between 5:00 pm- 7:00 pm).

Employees who work a shift of more than six (6) hours starting between 1:00 pm and 6:00 am shall be allowed a forty-five (45) minute meal period.

Non-exempt employees should sign in and out at the start and end of their break periods.

While the New York Labor Law does not require that employers provide rest periods of short duration (5 to 20 minutes), if they are provided to or taken by employees, they must be counted as working time.

## C. Time-Keeping Methods

The Fair Labor Standards Act (FLSA) requires employers to maintain accurate records of hours worked by nonexempt employees. Employers may use any timekeeping method they choose.

- they may use a time clock
- have a timekeeper keep track of employee's work hours, or
- tell their workers to write their own times on the records.

Any timekeeping plan is acceptable as long as it is complete and accurate.

Some employees work on a fixed schedule from which they seldom vary. An employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker did follow the schedule.

The hours an employee starts and end work must be recorded as the start/end times affect the required breaks and potential for spread of hours pay.

When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked, on an exception basis.

It is recommended that employers provide employees with a copy of their fixed schedule and tell the employees that if there are any changes to their schedule for a week, it should be noted.

The employee and their supervisor should also sign the schedule to certify that these were the hours that were actually worked.

At the end of each pay period, the Company should require employees to review their time records and verify that they are accurate. However, wages should not be withheld if the employees fails to verify their time record. Furthermore, non-exempt employees should be paid for overtime worked, even if the overtime was not authorized in advance.

### **Time Rounding**

The FLSA permits employers to round employees' hours to a maximum of 15 minutes. Any time rounding policy must be applied fairly and cannot consistently round in the company's favor or result in the failure to count all of the time employees have actually worked. If an employer rounds to the nearest 15 minutes, they may round down employee time from one to seven minutes, but they must round up.

### **Spread of Hours**

New York has a unique “spread of hours” law. The “spread of hours” is the interval between the beginning and end of an employee’s workday. This would apply if an employee’s workday lasts longer than ten (10) hours, or their hours of work are split (not consecutive) but start and end over a ten (10) hour period.

In either case, the employee may be entitled to an extra hour of pay at the minimum wage rate. However, with the exception of the hospitality industry, in all industries and sectors requiring spread-of-hours” pay, the New York Department of Labor (“DOL”) and most New York courts have interpreted the “spread of hours” requirement to not affect workers whose total weekly compensation is sufficiently above the minimum rate.

Employers must pay special attention to employees’ timesheets to see if there are any employees who are working over a 10 hour period (in either a consecutive or split shift). In those cases, the employer will need to calculate whether the employee is earning minimum wage, and, if so, provide an additional hour of payment for that shift.

*Note: Many payroll providers are nationwide companies and may not be aware of New York’s spread of hours requirement. The fact that an employer’s payroll company is not tracking spread of hours does not absolve employers from liability for failing to comply with this law. We recommend that employers contact their payroll provider to ensure that spread of hours are being tracked and that payment is being provided when applicable because, as with all New York Labor laws, there are penalties associated with non-compliance.*

#### D. New York Call-In Pay

“Call-in pay” is a requirement that employees in New York be paid a minimum amount for reporting to work when the employer directs the employee to stop working before the end of a regularly scheduled shift.

Employers are generally required to pay employees who report to work (either by request or permission of the employer) for the following time (whichever is less) at the basic minimum hourly wage:

- At least 4 hours; or
- The number of hours in the regularly scheduled shift.

Note: Call-in pay for hours in excess of the actual hours worked is not counted as hours worked for purposes of determining overtime.

A special set of wage rules covers New York employees working in the hospitality industry. These requirements generally apply to any employee working in a restaurant or hotel.

#### E. Wage Overpayments

Pursuant to Labor Law Section 193, an employer can make deductions from an employee’s wages for “an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer”.

NY Labor law has very specific steps that must be taken for employers who wish to recoup overpaid wages to employees, as explained below:

- Notice of Intent : The employer must provide a 'Notice of Intent' to the employee at least three days before the date of a deduction if the entire deduction will be taken in a single wage payment, OR three weeks prior to the start of deductions that will be taken periodically.
- Limits to Timing, Duration, Frequency, and Method: An employer can recover overpayments made within eight (8) weeks before the issuance of a notice of intent to recoup an overpayment. Additionally, an employer may not make wage deductions more frequently than once per pay period.
- The amount an employer may recover for overpayments through wage deductions is limited to the following:
  1. Where the entire overpayment is less than or equal to the net wages in the next wage payment, the entire amount of the overpayment may be recouped in the next wage payment; otherwise,
  2. Deductions for overpayments are limited to 12.5 percent of the gross wages (provided the deduction does not reduce wages below the minimum wage rate).
- Dispute Resolution: Employers are required to adopt and notify employees of the procedure to dispute the overpayment and terms of recovery, or seek a delay in the recovery of the overpayment.
- Repayments by the Employer: The employer is required to repay the employee for any deduction found to be improper under the dispute resolution procedure.



Here are some key takeaways for employers:

- Employers are required to keep accurate employment records, payroll records, and records of hours worked, and to provide employees with information about how their wages are calculated - Employers must also keep records to demonstrate compliance with these requirements.
- Ensure proper classification of employees
- Track all hours worked
- Know current federal and state laws
- Update your company policies and employee handbook with legal guidance and updates
- Train managers, HR, executives, and employees