

WE ARE YOUR DOL



Department
of Labor

A proud partner of the American Job Center network

LABOR RIGHTS AND PROTECTIONS

For Domestic Workers in New York

INFORMATION FOR DOMESTIC WORKERS

Domestic workers and their employers have rights and responsibilities under the Labor Law, including the Domestic Workers' Bill of Rights, which took effect on November 29, 2010. For more details, go to labor.ny.gov.

WHO IS A DOMESTIC WORKER?

A "domestic worker" is someone who works in another person's home. Their jobs include:

- Caring for children or a sick or elderly person
- Housekeeping chores
- Other domestic duties performed in the employers' homes

This law does not cover domestic workers:

- Who work on a casual basis, such as part-time babysitters in the home of their employers
- Who are relatives of their employers or of the person(s) for whom they offer care

DOMESTIC WORKERS SHOULD KNOW

Under New York State labor law, including the Domestic Workers' Bill of Rights, you:

- Must be paid at least the minimum wage
- Must receive overtime pay at 1 1/2 times your basic rate of pay after 40 hours of work in a calendar week (If you live in your employer's home, you must be paid overtime after 44 hours of work in a week)
- Must be given one day (24 hours) of rest per week – or, if you agree to work on that day, you must be paid at an overtime rate
- Are entitled to at least three paid days off after one year of work for the same employer

If you work at least 40 hours per week, you are also covered by:

- Workers' Compensation Insurance if you are hurt on the job
- Disability Benefits Insurance if you are injured or become ill outside of work and miss more than seven days of work as a result
- If you are employed by an agency to provide "companionship services," such as caring for an elderly person, the rules about overtime and a required day of rest do not apply to you
- If you complain to your employer or the Labor Department about a violation of these labor laws, your employer cannot retaliate against you. To file a complaint with the Labor Department, call **888-469-7365** or go to labor.ny.gov/workerprotection/laborstandards/workprot/lsdists.shtm for a list of Labor Department district offices
- The Domestic Workers' Bill of Rights protects you from certain forms of harassment by your employer. Your employer cannot subject you to unwelcome sexual advances or other verbal or physical actions of a sexual nature. They cannot harass you based on gender, race, religion or national origin and they cannot retaliate if you file a complaint. You can file an official complaint in court or with the New York State Division of Human Rights. You can get information at dhr.ny.gov or by phone at **888-392-3644** (toll-free)
- To learn about low-cost health insurance for you and your family, visit the New York State Department of Health web site at nyhealth.gov. Look for the "Health Insurance Programs" button on the "Site Contents" area at the right of the home page

INFORMATION FOR EMPLOYERS OF DOMESTIC WORKERS

If you employ a domestic worker or workers, you must:

- Provide the minimum benefits listed on the reverse
- Pay your worker(s) weekly
- Not deduct money from your worker's pay without written permission
- (Deductions must be authorized by law and for the worker's benefit. You may not make deductions from your worker's wages for breakage or other such reasons. You must give your worker a written notice that lists all deductions.)
- Keep detailed payroll and time records of the hours your employee(s) work, wages paid and any deductions made from wages
- Give your employee a written notice about your policies on sick leave, vacation, personal leave, holidays and hours of work
- Give your employee a written notice that includes their regular and overtime rates of pay and their regular payday
- (You can find this form at: labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm.)
- Not retaliate against a worker(s) for complaining to you or to the Labor Department about alleged labor law violations

- File for and pay Unemployment Insurance contributions on behalf of your worker(s)

(For more information, see the NYS Department of Labor Publication IA 318.D, Householder's Guide for Unemployment Insurance. This publication is available at labor.ny.gov/formsdocs/ui/IA318D.pdf.)

- Provide Workers' Compensation Insurance coverage and Disability Benefit Insurance coverage for any employee(s) who work(s) at least 40 hours per week

(You may obtain this insurance through the New York State Insurance Fund (NYSIF) or another company that sells these types of insurance in New York. NYSIF is a full-service insurance carrier that sells low-cost Workers' Compensation and Disability Benefit Insurance to any employer doing business in New York State. To find out more, visit nysif.com.)

There are federal and state tax obligations for both employers and workers. For information about your tax responsibilities, see the New York State Department of Taxation and Finance Tax Bulletin MU-350, available at tax.ny.gov.

Note to immigrant domestic workers and their employers:

Labor and tax laws, including the Domestic Workers' Bill of Rights, apply to all workers, regardless of their immigration status.



What are your responsibilities under the labor law?

If you employ one or more domestic workers, you must:

- Pay your worker at least the minimum wage appropriate for your region. See the minimum wage schedule at www.labor.ny.gov/minimumwage. You may need or choose to pay more than the minimum wage. If you provide meals and/or lodging for your employee, you may receive a credit toward the minimum wage paid to the worker. Call 1-888-52-LABOR for more information.
- Pay overtime at 1 1/2 times your employee's basic rate after 40 hours of work in a calendar week. If your employee lives in your home, you must pay overtime after 44 hours of work in a week.
- Provide one day (24 hours) of rest per week. If your employee agrees to work on that day, you must pay overtime. The law encourages you to (where possible) set your employee's day of rest to coincide with their day of worship, if they have one.
- Give at least three paid days off after one year of work for you. Again, you may provide more than three paid days off.
- Offer a written notice about your policies on sick leave, vacation, personal leave, holidays and hours of work.
- Give your employee a written notice that lists the regular and overtime rates of pay and the regular payday. You can find a sample on the [Department of Labor website](#).
- Not retaliate against a worker(s) for complaining to you or to the Labor Department about labor law violations.

See more information about the Department of Labor [Division of Labor Standards](#).

Required insurance coverage

You must pay taxes for [unemployment insurance](#) for your employee(s), if you pay \$500 or more in *cash wages* to someone working in or about your home in a calendar quarter. For instructions, see [Householder's Guide for Unemployment Insurance](#) from the New York State Department of Labor.

If your employee works at least 40 hours per week, you must provide [Workers' Compensation Insurance](#). This covers them in case they are hurt on the job. You can buy Workers' Compensation Insurance from a private company or through the [New York State Insurance Fund](#) (NYSIF). NYSIF is a full-service, low-cost insurance carrier available to any employer doing business in New York State.

Domestic workers who work over 40 hours a week are also entitled to statutory disability benefits. When an employee cannot work because they are injured or sick (defined to include pregnancy) as a result of something that does not occur in the course of their work, the employer must have an insurance policy that pays the worker up to \$170 per week for up to 26 weeks, if the worker cannot return to work during that period and is not receiving other compensation from the employer. You can charge your worker(s) up to sixty cents a week for the cost of that policy.

You may purchase Disability Benefits insurance from a private company or through the [New York State Insurance Fund](#), as described above.

New Human Rights protections

The Domestic Workers' Bill of Rights protects your worker(s) from certain forms of harassment based on gender, race, religion or national origin. You cannot retaliate against an employee if they complain about harassment. If an employee experiences these kinds of harassment or retaliation, they can file a complaint with the [New York State Division of Human Rights](#).

See [frequently asked questions for businesses](#) from the New York State Division of Human Rights for more information.

Health Insurance

You are not required to provide health insurance for your employee(s) or their families.

You can learn more about low-cost health insurance from the [New York State Department of Health](#).

The New York State Department of Health also offers a [Criminal History Record Check](#). If you hire a home health aide or personal assistant through an agency, the agency usually does a criminal history check through the Department of Health. If you hire someone yourself, you will not have access to a criminal history on that person.

Other State and Federal Taxes

You will need to pay the employer's portion of FICA taxes. You also may need to withhold federal, state, and local employment taxes. Wages paid to a domestic worker are taxable income to that worker. The worker must report that income on his or her federal and state income tax returns and the employer must also file certain forms to comply with tax requirements. For more information about your tax responsibilities, see the New York State Department of Taxation and Finance's web page about [Hiring](#)

[Household Help](#). You should also consult with an accountant or with the Internal Revenue Service (IRS) about your federal tax obligations.

If You Hire an Immigrant Domestic Worker

The Domestic Workers' Bill of Rights and all New York State Labor Laws protect all workers, whether they are:

- A citizen of the United States
- A legal permanent resident
- An immigrant with other lawful status (such as temporary protected status)
- An undocumented worker

These laws cover ALL workers. Their immigration status does not matter.

The only exception is au pairs hired through the federal au pair program and admitted into the United States under a J-1 visa, which are subject to special federal rules.

Labor and tax laws, including the Domestic Workers Bill of Rights, apply to all workers regardless of their immigration status. Although workers must be legally authorized to work in the United States in order to receive unemployment insurance, an employer must still pay unemployment insurance and other taxes for employees who are undocumented.

NYS Department of Labor Division of Labor Standards

The New York State Department of Labor's Division of Labor Standards enforces wage and hour laws that affect domestic workers.

Domestic workers are covered for minimum wage and overtime wages. See the minimum wage schedule at www.labor.ny.gov/minimumwage. You and your employee can agree on a higher rate of pay. If your employee doesn't live in your home, the employee entitled to overtime pay of 1 ½ times the regular rate of pay when the employee works more than 40 hours a week. If your employee lives in your home, you must pay the employee overtime after 44 hours of work.

When you hire an employee, you must give a written notice of:

- The rate of pay you both have agreed on
- The overtime rate of pay
- The regular payday

Employers must pay domestic workers each week. They can pay in cash or by check.

Each week, employees must get a written statement that shows:

- The number of hours worked
- Gross pay (total before any deductions)
- Any deductions for taxes or other money taken out of the employee's pay

Your employee must agree in writing to any deductions from his/her pay. An employer only can take deductions authorized by law. You cannot charge the employee for breakage, supplies, and equipment. Also, you must keep an accurate record of your employee's daily and weekly hours. You must provide this record to the Department of Labor if we ask for it.

Domestic workers are entitled to a day of rest (24 hours) in each calendar week. You and your employee need to agree on what day of the week he/she can take off. The day off may be the same as your employee's day of worship, and the law encourages employers to allow this where possible, but it is not required. Your employee can agree to work on his/her day off, but you have to pay your employee overtime for any hours worked that day.

If your employee works a shift of more than 6 hours on any day, the employee is entitled to at least 30 minutes free from duty for a meal period. You do not have to pay your employee for this time. If you give your employee short (10 to 15 minute) breaks, these are considered time worked and cannot be deducted from your employee's pay.

After your employee works for you for more than one year, your employee is entitled to three paid days of rest. You may give your workers other benefits such as more than three paid vacation days, sick leave, or health insurance. If you do give you these

benefits, you must put the benefit plan (including vacation days) in writing and give your employee a copy.

If you have any questions, you may contact the offices of the Division of Labor standards. You may write, call or visit. If your employee believes that you are not following the law, your employee has a right to contact the offices of the Division of Labor Standards.

Our address is:

NYS Department of Labor
Division of Labor Standards
W. Averell Harriman State Office Campus
Building 12
Albany, NY 12240

Our phone number for Labor Standards questions is: 1-888-52-LABOR

Our email is: labor.sm.ls.ask@labor.ny.gov

To find a local office:

Visit the [Department of Labor website](#).

How to Obtain Unemployment Insurance for Domestic Workers

If you have paid *cash wages* of \$500 or more in total, in a calendar quarter, to the people working in or about your home, you are required to pay New York State (NYS) unemployment insurance (UI). Your liability begins on the first day of that calendar quarter.

If you need to register and would like to apply online or download a registration application (NYS100), visit the Department of Labor [Employer Registration web page](#). You may also call 1-800-899-8810 to request a paper application.

If the NYS Department of Labor determines that you are liable for unemployment insurance taxes, you must report the wages paid your worker(s) and pay unemployment insurance taxes on a quarterly basis. You can do this on a Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return (form NYS45 and NYS45ATT if applicable). The first \$8,500 of wages paid to each employee per calendar year is taxable. You must submit quarterly returns even if there are no wages to report. Returns are due 30 days after the end of each calendar quarter.

The fastest and easiest way to file your NYS45 returns is through Webfile. You can register for Webfile through the [New York State Department of Taxation and Finance](#). You can also download paper NYS45 series forms from that site.

What Is Covered and Non-covered Employment For Personal Or Domestic Services?

An employee is considered to be in “covered employment” if they work in New York State for an employer who is liable for unemployment insurance. Generally, a person providing home health aide services is considered an employee.

Some people are not covered under New York State Unemployment Insurance Law and cannot be covered voluntarily. Their earnings are not taxable, and they do not have a right to unemployment benefits. These **excluded** people are:

- Your spouse or child under the age of 21
- Students who regularly attend elementary or high school during the day. (However, employers who are liable for unemployment taxes under the Federal Unemployment Tax Act must pay unemployment taxes to New York State on wages they pay to these students.)
- Children under age 14
- Babysitters under age 18
- People under age 21 who do casual (occasional) work in and around the house, such as shoveling snow or washing windows (that does not involve the use of power-driven machinery)

- Independent contractors. These are people who are in business for themselves. People who use their services do not direct and control their work.

If you are not sure about a specific situation, call the Liability & Determination Section of the New York State Department of Labor at 1-888-899-8810 or (518) 457-2635.

Workers' Compensation Insurance and the New York State Insurance Fund

If you employ a domestic worker who works more than 40 hours per week, you must provide Workers' Compensation Insurance for them. As the largest provider of Workers' Compensation Insurance in the state, the New York State Insurance Fund (NYSIF) can help you obtain this insurance.

Workers' Compensation Insurance protects employers from liability for on-the-job injuries that result in employee disability or death. It also provides injured workers with monetary payments and medical benefits, or, in the case of death, survivor benefits to their dependents.

NYSIF was created as part of the Workers' Compensation Law of 1914 and is New York's largest Workers' Compensation Insurance carrier. By law, NYSIF is a competitive insurance carrier that sells Workers' Compensation and Disability Benefits Insurance to any employer doing business in New York State. Approximately 175,000 employers have NYSIF Workers' Compensation Insurance policies, which is about 31 percent of the market. Contact NYSIF at **1-888-875-5790** or visit the [NYSIF website](#) to learn more about obtaining Workers' Compensation Insurance from NYSIF.

New York State Human Rights Law Employment Rights of Domestic Workers

As of November 29, 2010, the New York State Human Rights Law protects domestic workers from certain forms of harassment based on gender, race, religion or national origin. Also, an employer cannot retaliate against a worker if they complain about harassment. *Laws of 2010, Chapter 481.*

A person is considered a domestic worker if they work in another person's home to care for a child; serve as a companion for a sick, convalescing or elderly person; do housekeeping; or perform any other domestic service purpose. *N.Y. Labor Law § 2.16 and Human Rights Law (N.Y. Exec. Law) § 296-b.*

For other kinds of work, the Human Rights Law applies only to employers who have four or more employees. However, the Human Rights Law has special provisions barring harassment against domestic workers that apply to **all** employers of domestic workers, regardless of the number of employees they have.

What kinds of harassment are against the law?

The law bars several kinds of harassment against domestic workers, both men and women. Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature can be the subject of a claim under the Human Rights Law if any of the following occurs:

- Either explicitly or implicitly, an employer has made giving in to sexual advances or requests for sexual favors a term or condition of keeping your job. An employee believes that if he/she objects, the employee will be fired, and the only way to escape the harassment is to quit the job
- An employer bases employment decisions, such as hours of work or how much an employee is paid, on whether or not he/she submits to the employer's sexual advances or other verbal or physical conduct of a sexual nature
- The unwanted advances or other sexual conduct, either purposely or in effect, interfere with an employee's work performance by creating an intimidating, hostile, or offensive working environment

Examples of harassment forbidden by the new law can include:

- Pressure to engage in unwelcome sexual activities
- Unnecessary or inappropriate physical contact
- Sexual assault
- A pattern of sexual comments or questions or the creation of an atmosphere that taken together, constitutes harassment or abuse

An action taken based on an employee's race, gender, religion or national origin is also considered harassment under the law if it is intended to interfere with another person's work performance by creating an intimidating, hostile or offensive work environment.

Harassment of a domestic worker that constitutes a hostile work environment under the Human Rights Law can include offensive or humiliating comments or jokes about an employee's gender, race, religion or national origin.

Retaliation for complaining about harassment

Under the New York State Human Rights Law, an employer cannot retaliate against a worker who complains about harassment in the workplace, or who files a complaint with the NYS Division of Human Rights. This means that an employer cannot fire an employee who complains about harassment, nor can the employer take any other negative actions against the employee because the employee filed a complaint.

What Human Rights Law does *not* cover

The Human Rights Law does *not* cover domestic workers who:

- Work on only a casual basis, such as those who occasionally babysit or do other household services for a limited amount of time
- Work for a person they are related to by blood, marriage or adoption

How to file a complaint

If an employee thinks that he or she has been:

- sexually harassed by an employer,
- harassed because of his/her gender, race, religion or national origin, or
- retaliated against because he/she complained about harassment,

the employee can file a complaint with the New York State Division of Human Rights.

The complaint must be filed with the NYS Division of Human Rights within one year of when the harassment occurred. The harassment must have occurred on or after November 29, 2010 in order for a complaint to be filed.

The complaint may also be filed in state court within three years of when the alleged harassment occurred. The employee will probably need an attorney to help with this.

The Division of Human Rights has regional offices throughout the state. A complaint can be filed at the regional office nearest to the home or place of employment. For more information, please go to the website of the [NYS Division of Human Rights](#).

New York State Department of Health Programs

The programs most likely to be of help to workers are the [New York State of Health Marketplace](#) and [Medicaid](#).

Medicaid is a program for those who cannot afford to pay for medical care. It provides broad coverage, including routine health care, hospitalizations, prescriptions and other services. Go to the Department of Health [Medicaid web page](#) for more information.