

## Abstract of Laws Relating to Payment of Wages

Article 6 of the Labor Law, relating to payment of wages, protects the rights of a worker to receive the wages earned. It assures payment of wages in full on regular pay days. It sets standards as to the frequency of pay days and authorizes the Labor Department to assist the worker in collecting unpaid wages.

The following is a summary of the basic provisions of the wage payment law.

### When Wages Must be Paid

The required frequency of payment depends on whether the employee is a manual worker, a railroad worker, a commission salesperson, or a clerical or other worker.

Most **manual workers** must be paid weekly, within seven calendar days after the end of the week in which the wages were earned. There are, however, two exceptions to this requirement: (1) a non-profit organization must pay its manual workers in accordance with the agreed terms of employment, but not less frequently than semi-monthly (2) an employer who, after demonstrating reliability in meeting its payroll responsibilities and furnishing proof that it meets other specific criteria, has received permission from the Commissioner, may pay its manual workers less frequently than weekly, but not less frequently than semi-monthly. A manual worker means a mechanic, a workingman or woman, or a laborer.

**Railroad workers**, other than executives, must be paid on or before Thursday of each week, the wages earned during the seven-day period ending on Tuesday of the preceding week.

**Commission salespersons** must be paid in accordance with the agreed terms of employment but not less frequently than once in each month and not later than the last day of the month following the month in which the money is earned. If the monthly payments of wages, salary, drawing account or commissions are substantial, then additional compensation such as incentive earnings may be paid less frequently than once in each month, but in no event later than the time provided in the employment agreement.

**Clerical and other workers** must be paid in accordance with the agreed terms of employment, but not less frequently than semi-monthly, on regular pay days designated in advance by the employer. This requirement applies also to executives, administrative, or professional employees earning \$900 a week or less.

No employee, whether clerical, manual, or other worker, may be required as a condition of employment to accept wages at periods other than provided by the law. At the time of hiring, the employee must be advised of the regular pay day and subsequently of any changes in the pay days prior to the time of such changes.

If employment is terminated, the employer must pay the wages not later than the regular pay day for the pay period during which the termination occurred. If requested by the employee, such wages shall be paid by mail.

An employee terminated from employment must be notified in writing, and within five days after the date of termination, of the exact date of such termination as well as the exact date of cancellation of employee benefits connected with such termination.

### Illegal Deductions or Charges

No deductions may be made from wages except deductions authorized by law, or which are authorized in writing by the employee and are for the employee's benefit. Authorized deductions include payments for

insurance premiums, pension, contributions to charitable organizations, payments for U.S. bonds, union dues, and similar payments for the benefit of the employee.

An employer may not make any charge against wages or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages. Examples of illegal deductions or charges include payments by the employee for spoilage, breakage, cash shortages or losses, and cost and maintenance of required uniforms.

### **Wage Statement Requirements**

Every employer must notify employees at the time of hiring of the rate of pay, and with every payment of wages furnish each employee with a statement of wages listing gross wages, deductions and net wages. Upon the request of an employee, the employer must furnish an explanation of how such wages were computed. A commission salesman may make written request that the employer furnish a statement of earnings paid or due and unpaid.

Under New York State minimum wage regulations, employers must also indicate on the wage statement the number of hours worked, the rates paid, and allowances, if any, claimed as part of the minimum wage.

### **Direct Deposit of Wages**

Employers may deposit an employee's net wages in a bank or other financial institution but only with the advance written consent of the employee.

### **Wage Claims**

The Division of Labor Standards in the Department of Labor assists workers in the collection of unpaid wages. Any employee, including domestics, employees of non-profit making institutions, and executives and professionals who earn \$900 a week or less, may file a claim with the Department. The claim is investigated, and an attempt is made to adjust equitably the differences between the employer and the employee.

The Commissioner of Labor is authorized to institute criminal proceedings for failure to pay wages.

### **Fringe Benefits - Wage Supplements**

Employers who have established a policy to provide their employees with a specific wage supplement are required by Article 6 to abide by their agreement to furnish the promised benefit. Wage supplements include vacation or holiday pay, paid sick leave, reimbursement of expenses, and other similar items.

Employers are required to notify employees in writing or by publicly posting the employer's policy on sick leave, vacation, personal leave, holidays and hours.

Claims are accepted from employees, including executives and professionals earning \$900 a week or less, who have not received agreed benefits from their employers. Every effort is made to assist the claimant in collecting these benefits.

### **Kick-Back of Wages**

It is unlawful for any person to request, demand, or receive a return of any part of a worker's agreed wages upon the understanding that failure to comply with such request or demand will prevent the worker from procuring or retaining employment. The collection of dues for a duly constituted labor organization does not come under the prohibition.

### **Tip Appropriation**

It is unlawful for an employer, or any other person, to demand or accept any part of the tip earnings of an employee. This prohibition does not apply to hat checking. The law permits practices where a fixed percentage of a patron's bill is added for gratuities distributed to employees in connection with special functions such as banquets. Voluntary sharing of tips by a waiter with a busboy or similar employee is also permissible.

## Equal Pay

An employer may not differentiate in rates of pay solely because of sex where male and female workers are employed in the same establishment to do equal work on jobs requiring equal effort, skill and responsibility, and which is performed under similar working conditions. Differentials in pay between employees based on factors other than sex, such as a seniority system, a merit system or a system which measures earnings by quantity or quality of production are permitted.

The Commissioner of Labor may enforce claims of workers based on violations of the Equal Pay Law in the same manner and with the same penalties as apply to any violation of the wage payment laws.

## Civil Penalties

An employer who fails to pay wages, benefits or supplements in accordance with the provisions of the Labor Law is subject to the imposition of interest charges at the rate of interest then in effect as prescribed by the Superintendent of Banks pursuant to Section 14-a of the banking law per annum from the date of underpayment to the date of payment and may also be subject to the imposition of a civil penalty. Where an employer has previously been found in violation, or where the current failure to pay wages, benefits or supplements is found to be willful or egregious, the civil penalty is to equal twice the total amount found due. An employer who fails to provide a wage statement, or who violates other non-monetary provisions of Article 6 of the Labor Law, is subject to a maximum penalty of \$1,000 for a first violation, \$2,000 for a second violation and \$3,000 for a third or subsequent violation. For "kick-back" of wages, the civil penalty shall be at least \$2,500 but not more than \$5,000 per violation. An Order to Comply, which includes the amount due, the mandatory interest charged and any civil penalty, will be filed in the County Clerk's Office and will have the effect of a money judgment.

## Criminal Penalties

Employers who fail to pay wages in accordance with the provisions of the Labor Law, and the officers and agents of any corporation who knowingly permit such failure, are guilty of a misdemeanor for the first offense and a felony for the second offense. They are also subject to a fine of not less than five hundred nor more than twenty thousand dollars and imprisonment for not more than one year.

For more information, call or write the nearest office of the Division of Labor Standards, of the New York State Department of Labor, listed below:

### **Albany District**

1220 Washington Ave.  
Bldg. 12 Room 185A  
Albany, NY 12226  
(518) 457-2730

### **Buffalo District**

295 Main Street  
Suite 914  
Buffalo, NY 14203  
(716) 847-7141

### **New York City District**

55 Hanson Place  
11th Floor  
Brooklyn, NY 11217  
(212) 775-3880

### **Syracuse District**

333 East Washington Street  
Room 121  
Syracuse, NY 13202  
(315) 428-4057

### **Bronx District**

55 Hanson Place  
11th Floor  
Brooklyn, NY 11217  
(212) 775-3597

### **Garden City District**

400 Oak Street  
Suite 102  
Garden City, NY 11530  
(516) 794-8195

### **Rochester District**

276 Waring Road  
Room 104  
Rochester, NY 14609  
(585) 258-4550

### **White Plains District**

120 Bloomingdale Road  
White Plains, NY 10605  
(914) 997-9521