



**Immigrant Policies
and Affairs**

Labor Information for **Agricultural Employers**

A Division of the New York State Department of Labor

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Agriculture Labor Program

Businesses

Our Agriculture Labor Specialists can help you:

- Recruit local workers in time for your harvest
- Screen workers for the right skills and experience
- Find the answers to questions about recruiting and registering workers
- Understand your responsibilities (labor laws and compliance issues)
- Interpret labor market data and employment trends

Under federal labor laws, states must assure that Migrant and Seasonal Farm Workers are served equally as are other job seekers. In New York State, our Agriculture Labor Program assists both agricultural employers and workers.

Our Agriculture Labor Specialists are located throughout the state. They can assist you, one on one, with many Department of Labor services designed for agribusiness.

Job Seekers

Our Agriculture Labor Specialists can help you:

- Find a job that fits your skills and experience
- Branch out into related fields
- Explore openings in other locations
- Learn about training options
- Resolve a work-related complaint

Our New York State Career Center system serves everyone. Each location has people who can help you with your job search, as well as computers that can be used by people of most abilities. We also have interpreters. If you need help, ask us.

1-877-466-9757

dipa@labor.ny.gov

www.labor.ny.gov

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Agricultural Employment Services Outreach Form

Employer/Business Name: _____

Unemployment Insurance Registration Number (if applicable) or FEIN: _____

Contact person to discuss labor needs: _____

Title: _____

E-Mail address: _____

Phone: _____

Address: _____

City _____ State ____ Zip _____ Telephone # (____) ____ - _____

Type of Agricultural Employer (commodity): _____

Best day of week and time of day to conduct outreach: _____

Summary of labor needs for the upcoming season:

Job Order Information

Job Order Number: _____

Worksite, if different from business address: _____

Title of job opening: _____

Number of openings: _____ Education required: _____

Experience required: _____ Will you accept a trainee? No Yes

Will you accept related experience? No Yes

If yes, please specify: _____

Job is: Full-time Part-time Regular Temporary Seasonal

From (dates) _____ to _____

Work hours: From _____ to _____ Total hours per week: _____

Overtime Offered? No Yes Mark work days: Sun Mon Tues Wed Thurs Fri Sat

Salary range: From \$ _____ to \$ _____ Per _____

Pay Day: _____ Pay Period: Weekly Bi-weekly ¹

Housing Provided: No Yes Charge, if any: _____

Other Benefits provided: _____

Driver License Required: No Yes Class _____ Drug testing: No Yes ²

Physical Ability requirements (ex.: Lifting): _____

¹ Please note that Section 191 of the New York State Labor Law requires that manual workers be paid no later than seven calendar days after the end of the week in which wages were earned.

² This may be required only after job hire and if relevant to job opening

Job description:

Candidates should: Contact employer directly Contact a Career Center or an Agricultural Labor Specialist

New York Farm Jobs Bulletin

In addition to announcing this job opportunity in the NYS DOL Job Bank, you may choose to have your job order appear in the **New York Farm Jobs Bulletin**, which is published in English and Spanish and distributed according to your preference below:

Yes, I would like this job to appear in the New York Farm Jobs Bulletin (choose one or both):

Regional – Job will be posted locally, in different locations around the community.

State-wide - Job announcement will be posted locally and on the DOL website ³.

No – Job will still be available to job seekers and Career Center staff through the NYS Job Bank

Additional comments:

Signature of Employer or Representative

Date

Agricultural Labor Specialist

Date

Instructions to Employers for Self Service

Please send this completed and signed form:

to (Agriculture Labor Specialist) _____⁴

by: Mail fax email: _____

³ Please be aware that if you recruit a worker from outside of your local area, you may be responsible for the cost of the worker’s inbound transportation and housing, as required by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The MSPA statute appears at [29 U.S.C. §1801](#) et seq. The federal regulations implementing MSPA appear in [29 CFR Part 500](#).

⁴ Employer may provide consent by phone to Agriculture Labor Specialist but it must be noted here.

Services for Businesses

Supporting Business Needs in New York

In good economic times or bad, the New York State Department of Labor has no-cost programs and services that can save your business time and money. Be it recruiting and training new employees or providing guidance on a variety of labor issues, we can help.

Job Postings

Post your jobs with the New York State Job Bank (www.labor.ny.gov/jobs) for free! You can use the Indexing feature to copy openings from your own web site, post jobs directly or have Business Services staff assist you. You give us the job description, skills and abilities desired, and we'll find you the best match possible. You also get access to our Talent Bank, which will allow you to search for qualified individuals who meet your hiring needs.

Career Fairs/Custom Recruiting

This is another way to find qualified workers. These no-cost events offer a setting where you can meet several candidates face-to-face. We can target events to specific industries or to an individual business. We can hold events at Department of Labor facilities or at your place of business.

Skills Matching Services – NY Talent and SMART

NY Talent is a new tool that helps businesses find the most qualified candidates for their job openings. It offers a job order tool and the ability to search resumes. SMART (Skills Matching and Referral Technology) is the sister tool that jobseekers use to build resumes and match to job orders. Both tools use artificial intelligence technology to analyze job orders and resumes using skills matching, rather than keyword matching.

HR Consulting

Need help with Human Resources issues? We can:

- Write/review your job descriptions and employee handbooks
- Develop performance evaluations and personnel policies
- Create orientation sessions for new workers
- Hone job interview techniques for efficiency and compliance
- Analyze employee turnover
- Explain labor laws to help you comply with wage/hour and safety/health regulations

Tax Credits

There are a number of federal and state tax credits available to businesses who hire qualified individuals, which can offer substantial savings to your business:

- The **Work Opportunity Tax Credit (WOTC)** is a federal tax credit to promote hiring individuals from target groups, like veterans and youth.
- The **Workers with Disabilities Tax Credit (WETC)** is a New York State tax credit that offers savings for hiring individuals with disabilities.
- **Excelsior Jobs Program** provides tax credits for job creation in targeted industries, such as biotechnology, pharmaceutical, high-tech, clean-technology, green technology, financial services, agriculture and manufacturing.



Training

If you need to upgrade the skills of your workers, we can refer you to certified training providers or help you set up an in-house training program. In some cases, there is funding available to help you train your workers.

Programs include:

- **On-the-Job Training (OJT)** - Specialized training that you develop and conduct to bridge skill gaps.
- **Apprenticeship Training** - A combination of hands-on work experience and classroom instruction to produce a skilled worker.

Labor Market Information (LMI)

Looking to locate or expand your existing operations? We have the most current and accurate labor market information available, including data on labor supply, wages, occupational projections, commuting patterns and the latest job figures.

Shared Work

During temporary downturns, the Shared Work program is an ideal alternative to layoffs. You can reduce the hours your employees work and they can collect partial Unemployment Insurance benefits to offset the loss in income. It helps you retain your skilled workforce and ramp up faster once the economy rebounds.

To learn more about any of these programs and services, contact a Business Services Representative.

Capital Region

Brian Suedkamp
W.A. Harriman State Office Campus
Building 12, Room 412
Albany, NY 12240
518-457-2483
brian.suedkamp@labor.ny.gov

Central New York

Roy Jewell
450 South Salina Street, Room 302
Syracuse, NY 13202
315-479-3362
roy.jewell@labor.ny.gov

Finger Lakes

Brendalyn Bynoe
276 Waring Road
Rochester, NY 14609
585-258-8875
brendalyn.bynoe@labor.ny.gov

Hudson Valley

Sherry Young
3 Washington Center, 4th Floor
Newburgh, NY 12550
845-568-5371
sherry.young@labor.ny.gov

Long Island (Suffolk)

Pamela Bedford
303 West Old Country Road
Hicksville, NY 11801
516-934-8521
pamela.bedford@labor.ny.gov

Mohawk Valley

Maria Abraham
207 Genesee Street
Utica, NY 13501
315-793-2271
maria.abraham@labor.ny.gov

New York City

Jennifer Oh
9 Bond Street
Brooklyn, NY 12201
718-613-3413
jennifer.oh@labor.ny.gov

North Country

Melissa Johnston
194 US Oval
Plattsburgh, NY 12903
518-561-8308, Ext. 3028
melissa.johnston@labor.ny.gov

Southern Tier

David Croston
2001 Perimeter Road, Suite 3
Endicott, NY 13760
607-741-4518
david.croston@labor.ny.gov

Western New York

Deb Arbutina
284 Main Street, Floor Mezzanine
Buffalo, NY 14202
(716) 851-2653
deborah.arbutina@labor.ny.gov

New York State Department of Labor

Wage Theft Prevention Act

A law passed in 2010 gives more protection to workers in New York State. This law, the Wage Theft Prevention Act (WTPA), took effect on April 9, 2011. Here are some key provisions of the law that employers need to know.

What is New?

Public Notice of Violations

If an employer breaks certain parts of the law, the New York State Department of Labor (DOL) may post the violation in a place where employees can see it for up to a year.

For a willful failure to pay all wages under this law, DOL may post a summary of violations in a place where the public can see it, for up to 90 days. *It is a misdemeanor to remove or tamper with this notice without permission.*

What are Changes to Existing Law?

Enhanced Rules against Retaliation

The WTPA extends the protections under Labor Law Section 215. It also gives DOL more power to enforce this law.

- It was always illegal to discharge, penalize and/or discriminate against an employee who makes a complaint. **Threats are now included as a form of retaliation.**
- In the past, we could only cite employers for retaliation. **Now, it is illegal for any person to retaliate.**
- In the past, penalties for breaking this rule meant we could fine an employer up to \$10,000. **Now, DOL can order the employer or the person who acted against the employee to pay liquidated damages. The payment can be up to \$20,000.**
- DOL may order the employer to reinstate the worker's job. **Or the employer may have to pay the person for lost salary or pay a lump sum in lieu of reinstatement.**
- **Retaliation carries criminal penalties for employee complaints about any section of the labor law.**
- The protection applies to any worker who alleges that the employer has done something that the employee thinks breaks a labor law or an Order issued by the Commissioner. **This applies even if the employee is mistaken about the law, if they acted in good faith. It applies even if the employee does not cite a specific part of the labor law.**
- **This law protects employees even if the employer incorrectly believes they made a complaint.**

Written Notice

- The law already required employers to give notice to employees of their wage rates at the time of hire. **Now, the WTPA requires employers to give a written notice to each new hire.** 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 (tip, meal and lodging deductions)**
- In the past, the notices were in English. **Now, the notice must appear both in English and in the employee’s primary language (if DOL offers a translation).**
- Employers must have each employee sign and date the completed notice. Employers must provide a copy to each employee.
- If any data in the notice changes, the employer must tell employees at least a week before it happens unless they issue a new paystub that carries the notice. The employer must notify an employee in writing before they reduce the employee’s wage rate. Employers in the hospitality industry must give notice every time a wage rate changes.
- Employers that do not give notice may have to pay damages of up to \$50 per day, per employee, unless they paid employees all wages required by law. (This stops at \$5,000 per employee in civil lawsuits filed by workers.)

Payroll Records

Under prior law, some of the recordkeeping requirements were in the statute, while others were in the regulations. Now, the requirements are part of the law, which makes it easier for employers to understand their obligations. However, industry-specific regulations will still have some additional requirements. Employers must:

- Keep records for six years. Records include the new notice and acknowledgment and payroll records.
- Keep accurate records of hours worked by employees and wages paid. **Now, the law clarifies that employers must keep the records on an ongoing basis. The employer may not make up the records after the fact at the end of the week, month or year.**
- For each week an employee works, the payroll records must contain:
 - Hours worked (regular and overtime)
 - Rate or rates of pay (regular/overtime)
 - **How the employee is paid** – by the hour, shift, day, week, commission, etc.
 - **Pay at the piece rate must show what rates apply and the number of pieces at each rate**
 - Employee’s gross and net wages
 - Itemized deductions
 - Itemized allowances and credits claimed by the employer, if any (tip, meal and lodging allowances or credits)

Wage Statements

Under the new law, employers must:

- Give each employee a wage statement or pay stub each payday that lists all of the above payroll data plus:
 - Employee’s name
 - Employer’s name, address and phone number
 - Dates covered by the payment
- Give any employee who asks a written explanation of how they computed wages

Employers that do not give wage statements may have to pay damages of up to \$250 per day, per employee, unless they paid employees all wages required by law. (This stops at \$5,000 per employee in civil lawsuits filed by employees.)

Damages and Other Penalties

The WTPA provides for higher penalties when an employer fails to pay the wages required by law:

- Under prior law, liquidated damages only covered up to 25% of the unpaid wages. **Now, the law provides for liquidated damages on up to 100% of the unpaid wages. Once DOL issues an Order to Comply, it includes 100% liquidated damages, as well as other civil penalties and interest.**
- If the violation is for other than wages, benefits or wage supplements, DOL may assess civil penalties for each violation. This means up to \$1,000 for a first violation, \$2,000 for a second, and \$3,000 for third and subsequent violations.
- If the Labor Commissioner has issued an Order to Comply against an employer who does not pay the money owed, then 10 days after the appeal period ends, DOL can require them to post a bond and/or **provide a list of their assets**. If employers fail to do so, the Commissioner may bring a court case against them. **For failure to provide the list of assets, DOL may impose a penalty of up to \$10,000.**
- **The WTPA permits DOL to add 15% in damages to a judgment if the employer fails to pay in full within 90 days of the final Order to Comply.**

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New York State Department of Labor, Division of Labor Standards
Instructions: Templates for Notice of Pay Rates, Pay Days and Employee Acknowledgement
Under Section 195.1 of the NYS Labor Law

The Department of Labor provides templates for several common types of pay agreements including dual language notices and acknowledgements in Chinese, Haitian-Creole, Korean, Polish, Russian and Spanish. Employers may create their own notices, use or adapt the Labor Department forms, as long as the:

- Required information appears in English and the employee's primary language (if template available)
- Employee receives a copy
- Employee signs an acknowledgment of receipt, and identifies their primary language to the employer
- Employer keeps a copy of the notice and acknowledgement for 6 years

Below are instructions for choosing among the templates. For details or help, see the Guidelines (LS 52) or contact the Division of Labor Standards.

LS 54 Notice for Hourly Rate Employees This form is for hourly employees who are not exempt from coverage under the applicable State and Federal overtime provisions. For example, use for an employee whose regular rate of pay is \$10 per hour and overtime rate is \$15 per hour.

LS 55 Notice for Multiple Hourly Rate Employees This form is for employees who are paid more than one rate for different types of work or different shifts. For example, use this form for an employee who is paid \$10 per hour for work as a janitor and \$12 per hour for work as a landscaper, or an employee who is paid one rate for working the day shift and another rate for the night shift.

LS 56 Notice for Employees Paid a Weekly Rate or a Salary for a Fixed Number of Hours (40 or Fewer in a Week)* This form is for employees who receive a weekly rate or a salary for a fixed number of hours (40 or fewer in a workweek).

- The employee's regular rate is the weekly rate or salary divided by the number of hours it intends compensate.
- The overtime rate is 1½ times the regular rate.

Except in very limited circumstances, it is illegal to pay a fixed (unchanging) weekly rate for work weeks that vary over 40 hours. Even where there is a standard work week, there are usually occasions when work hours vary. For this reason, we have not provided a template for weekly rates for workweeks of over 40 hours. To avoid overtime violations, the Department strongly recommends that employers pay an hourly rate to overtime eligible employees whose standard workweek is over 40 hours.

LS 57 Notice for Employees Paid a Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate, or Other Non-Hourly Basis* This form is for non-exempt employees who are paid a salary for varying hours of work, a daily rate, piece rates, flat rates, or any other pay that is not based on actual hours worked. In each overtime week, the employer must:

- Calculate the regular rate (total regular pay divided by total hours worked)
- Calculate the overtime premium (1/2 the regular rate)
- Multiply the overtime premium by the number of overtime hours, and
- Pay the overtime premium in addition to the salary, day rate, piece rate, flat rate, or other pay.

LS 58 Notice for Prevailing Rate and Other Jobs Use this form when the employee:

- Works on public work projects (i.e., projects covered by the prevailing wage provisions in State and Federal Law) or
- Does mixed prevailing rate and non-prevailing rate work.

There is space on the form for the employer to enter the regular and overtime rates to be paid for the other (non-prevailing wage) work. The form explains to the employee that any premium pay received on prevailing wage jobs in a week will be credited toward any overtime premium due for working over 40 hours in the week.

LS 59 Notice for Exempt Employees Use this form for employees who are exempt from premium overtime pay under either State regulations or the Federal Fair Labor Standards Act. The employer should identify the overtime exemption or, if an employee is outside of the definition of the term "employee" in Article 19 of the New York State Labor Law, the employer should identify the minimum wage exemption.

LS 309 Notice and Work Agreement for Farm Workers This form will comply with the pay notice requirements of Section 195.1 and the work agreement requirements of the Minimum Wage Order for Farm Workers.

* Employers in the Hospitality Industry may not pay a non-exempt employee a non-hourly rate, except for commissioned salespeople.

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New York State Department of Labor
Division of Labor Standards

Deductions from Wages

Section 193 of the New York State Labor Law

§ 193. Deductions from wages.

* 1. No employer shall make any deduction from the wages of an employee, except deductions which:

- a) are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency including regulations promulgated under paragraph c and paragraph d of this subdivision; or
- b) are expressly authorized in writing by the employee and are for the benefit of the employee, provided that such authorization is voluntary and only given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made. Whenever there is a substantial change in the terms or conditions of the payment, including but not limited to, any change in the amount of the deduction, or a substantial change in the benefits of the deduction or the details in the manner in which deductions shall be made, the employer shall, as soon as practicable, but in each case before any increased deduction is made on the employee's behalf, notify the employee prior to the implementation of the change. Such authorization shall be kept on file on the employer's premises for the period during which the employee is employed by the employer and for six years after such employment ends. Notwithstanding the foregoing, employee authorization for deductions under this section may also be provided to the employer pursuant to the terms of a collective bargaining agreement. Such authorized deductions shall be limited to payments for:
 - (i) insurance premiums and prepaid legal plans;
 - (ii) pension or health and welfare benefits;
 - (iii) contributions to a bona fide charitable organization;
 - (iv) purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least twenty percent of the profits from such event are being contributed to a bona fide charitable organization;
 - (v) United States bonds;
 - (vi) dues or assessments to a labor organization;
 - (vii) discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit;
 - (viii) fitness center, health club, and/or gym membership dues;
 - (ix) cafeteria and vending machine purchases made at the employer's place of business and purchases made at gift shops operated by the employer, where the employer is a hospital, college, or university;
 - (x) pharmacy purchases made at the employer's place of business;
 - (xi) tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions;
 - (xii) day care, before-school and after-school care expenses;
 - (xiii) payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and
 - (xiv) similar payments for the benefit of the employee.

- c) are related to recovery of an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer. In making such recoveries, the employer shall comply with regulations promulgated by the commissioner for this purpose, which regulations shall include, but not be limited to, provisions governing: the size of overpayments that may be covered by this section; the timing, frequency, duration, and method of such recovery; limitations on the periodic amount of such recovery; a requirement that notice be provided to the employee prior to the commencement of such recovery; a requirement that the employer implement a procedure for disputing the amount of such overpayment or seeking to delay commencement of such recovery; the terms and content of such a procedure and a requirement that notice of the procedure for disputing the overpayment or seeking to delay commencement of such recovery be provided to the employee prior to the commencement of such recovery.
- d) repayment of advances of salary or wages made by the employer to the employee. Deductions to cover such repayments shall be made in accordance with regulations promulgated by the commissioner for this purpose, which regulations shall include, but not be limited to, provisions governing: the timing, frequency, duration, and method of such repayment; limitations on the periodic amount of such repayment; a requirement that notice be provided to the employee prior to the commencement of such repayment; a requirement that the employer implement a procedure for disputing the amount of such repayment or seeking to delay commencement of such repayment; the terms and content of such a procedure and a requirement that notice of the procedure for disputing the repayment or seeking to delay commencement of such repayment be provided to the employee at the time the loan is made.

* NB Effective until November 6, 2015

- * 1. No employer shall make any deduction from the wages of an employee, except deductions which:
 - a) are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or
 - b) are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.

* NB Effective November 6, 2015

- * 2. Deductions made in conjunction with an employer sponsored pre-tax contribution plan approved by the IRS or other local taxing authority, including those falling within one or more of the categories set forth in paragraph b of subdivision one of this section, shall be considered to have been made in accordance with paragraph a of subdivision one of this section.

* NB Effective until November 6, 2015

- * 2. No employer shall 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 under the provisions of subdivision one of this section.

* NB Effective November 6, 2015

- * 3. a. No employer shall 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 under the provisions of subdivision one of this section or is permitted or required under any provision of a current collective bargaining agreement.
- b. Notwithstanding the existence of employee authorization to make deductions in accordance with subparagraphs (iv), (ix), and (x) of paragraph b of subdivision one of this section and deductions determined by the commissioner to be similar to such deductions in accordance with subparagraph (xiv) of paragraph b of subdivision one of this section, the total aggregate amount of such deductions for each pay period shall be subject to the following limitations: (i) such aggregate amount shall not exceed

a maximum aggregate limit established by the employer for each pay period; (ii) such aggregate amount shall not exceed a maximum aggregate limit established by the employee, which limit may be for any amount (in ten dollar increments) up to the maximum amount established by the employer under subparagraph (i) of this paragraph; (iii) the employer shall not permit any purchases within these categories of deduction by the employee that exceed the aggregate limit established by the employee or, if no limit has been set by the employee, the limit set by the employer; (iv) the employee shall have access within the workplace to current account information detailing individual expenditures within these categories of deduction and a running total of the amount that will be deducted from the employee's pay during the next applicable pay period. Information shall be available in printed form or capable of being printed should the employee wish to obtain a listing. No employee may be charged any fee, directly or indirectly, for access to, or printing of, such account information.

- c. With the exception of wage deductions required or authorized in a current existing collective bargaining agreement, an employee's authorization for any and all wage deductions may be revoked in writing at any time. The employer must cease the wage deduction for which the employee has revoked authorization as soon as practicable, and, in no event more than four pay periods or eight weeks after the authorization has been withdrawn, whichever is sooner.

* NB Effective until November 6, 2015

- * 3. Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, nor with any other law applicable to deductions from wages.

* NB Effective November 6, 2015

- * 4. Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, with section two hundred twenty-one of this chapter relating to company stores or with any other law applicable to deductions from wages.

* NB Effective until November 6, 2015

For more information, call or write the nearest office of the Division of Labor Standards:

Albany District
State Office Campus
Bldg. 12, Rm. 185A
Albany, NY 12240
(518) 457-2730

Binghamton District
Sub-District
44 Hawley St., Rm. 909
Binghamton, NY 13901
(607) 721-8014

New York City District
75 Varick St., 7th Floor
New York, NY 10013
(212) 775-3880

Garden City
400 Oak St., Suite 101
Garden City, NY 11530
(516) 794-8195

Buffalo District
65 Court St., Rm. 202
Buffalo, NY 14202
(716) 847-7141

Rochester
Sub-District
109 S. Union St., Rm. 318
Rochester, NY 14607
(585) 258-4550

Syracuse District
333 E. Washington St., Rm. 121
Syracuse, NY 13202
(315) 428-4057

White Plains District
120 Bloomingdale Rd.
White Plains, NY 10605
(914) 997-9521

www.labor.ny.gov

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Tax Incentives for Businesses

Lower Your Labor Costs

Employers that do business in New York State can trim their labor costs through several workforce and economic development programs. Employment-based tax credits may save your business money by cutting federal or state tax liability.

Work Opportunity Tax Credit

The Work Opportunity Tax Credit (WOTC) offers employers up to \$2,400 in federal tax savings for hiring low-income individuals with barriers to employment. Qualified individuals must complete at least 120 hours of work to qualify for the partial WOTC credit of \$1,500, and over 400 hours for the full \$2,400 credit. To qualify employers for the credit, individuals must be verified as members of a targeted group. The groups include:

- People who receive Temporary Assistance for Needy Families (TANF)
- Veterans who:
 - receive Supplemental Nutrition Assistance Program (SNAP) benefits or
 - have a service-related disability
- Ex-felons
- People (age 18-39) who live in a federal empowerment zone or rural county
- Disabled persons receiving rehabilitation services
- Youth (age 16-17) who live in a federal empowerment zone (summer employment only)

- People (age 18-39) who receive Supplemental Nutrition Assistance Program (SNAP) benefits
- People who receive Supplemental Security Income (SSI)
- People who receive Long-Term Family Assistance

Workers Employment Tax Credit (WETC)

Businesses that employ people with disabilities who currently receive vocational rehabilitation services (or people who received them up to two years prior to hire) may earn \$2,100 more in state tax credits. You get the credit during the second year of employment and can combine it with the WOTC credit.

Workers with Disabilities Tax Credit (WDTC)

For-profit businesses and organizations that hire individuals with developmental disabilities may earn up to \$5,000 for full-time employment (30 hours or more per week), and up to \$2,500 for part-time employment (between 8 hours and 30 hours per week). The period of employment must be no less than six months. If the amount of the credit exceeds the entity's tax liability, then the tax credit may be carried over for the following three years. Note: Businesses cannot claim this tax credit for an individual they hire if they are already claiming another tax credit for that individual.



Urban Youth Jobs Program

The Urban Youth Jobs Program encourages the hire of unemployed, disadvantaged youth, ages 16 to 24, who live in one of 13 designated target areas in New York State. Businesses may earn tax credits of up to \$5,000 for hiring youth full-time, and up to \$2,500 for hiring youth part-time. To qualify, both businesses and youth must be certified by the New York State Department of Labor. Businesses may be eligible for certification if they are in good legal standing, are located within reasonable commuting distance of one or more of the target areas and have available job openings. Youth may be eligible for certification if they are 16 to 24 years of age, live within one of the target areas and meet one of the designated risk factors.

Hire-a-Vet Credit

The Hire-a-Vet Credit encourages the hire of qualified veterans. Businesses must employ a qualified veteran for no less than 35 hours per week for one full year. A qualified veteran is someone who served on active duty in the US Army, Navy, Air Force, Marine Corps, Coast Guard, Reserves, National Guard, New York Guard or New York Naval Militia, and was released from active duty by general or honorable discharge after September 11, 2001. Qualified veterans must attest that they were not employed for 35 or more hours in the previous 180 days. Businesses may earn up to \$5,000 for hiring a qualified veteran and up to \$15,000 for hiring one who is disabled.

Minimum Wage Reimbursement Credit

The Minimum Wage Reimbursement Credit helps businesses adjust to the rise in the minimum wage rate of pay. Businesses may earn a credit of \$1.35 per hour for all hours worked by an eligible employee. An eligible employee is a student who is 16 to 19 years of age at the time of employment at the minimum wage rate.

Work For Success

The Work for Success Program helps businesses earn up to \$2,400 in federal tax credits (WOTC) for each formerly incarcerated person they hire. This helps to reduce recidivism, promote economic development and improve public safety throughout New York State. Work for Success sends businesses only the most qualified and appropriately trained applicants for open jobs.

How to Apply for Credits

Call the New York State Labor Department at 1-888-4-NYSDOL or go to our website at www.labor.ny.gov.

Minimum Wage Reimbursement Credit

Under New York State Tax Law (Article 1, Section 38), all eligible New York State employers may receive a minimum wage reimbursement tax credit. This credit will be applied against tax owed under:

- Article 9: Section 187-s
- Article 9-A: Section 210, subdivision 46
- Article 22: Section 606, subsection (aaa)
- Article 32: Section 1456, subsection (z)
- Article 33: Section 1511, subdivision (cc)

If the amount of the credit exceeds the taxpayer's liability for the year, it will be treated as an overpayment and will be refunded. If there is a fixed or minimum tax amount indicated in any of the above articles, then the non-deductible amount of the credit will be refunded.

Eligible Employers are:

- Corporations
- Sole proprietorships
- Limited liability companies, or
- Partnerships

Eligible Employees are:

- Employed by an eligible employer in New York State
- Receiving the minimum wage rate of pay
- Between the ages of 16 – 19 when receiving the minimum wage rate
- A student when receiving the minimum wage rate

Employer Prohibition

The employer must not:

- Discharge one employee and hire another for the sole purpose of gaining an eligible employee to qualify for this tax credit
- Use an eligible employee in the calculations of this tax credit AND in the basis for any other credit allowed in this chapter

Tax Credit Calculation

Taxable Year 2014 – 2015 = combined number of hours worked by eligible employees x \$.75

Taxable Year 2015 – 2016 = combined number of hours worked by eligible employees x \$1.31

Taxable Year 2016 – 2019 = combined number of hours worked by eligible employees x \$1.35

- *Note: If the federal minimum wage increases above 85% of the current New York State minimum wage, these dollar amounts will reduce by the difference between the two. This would take effect on the same date as the federal minimum wage.*

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OSHA[®] FactSheet

Updates to OSHA's Recordkeeping Rule: Reporting Fatalities and Severe Injuries

OSHA's updated recordkeeping rule expands the list of severe injuries that all employers must report to OSHA. Establishments located in states under Federal OSHA jurisdiction must begin to comply with the new requirements on January 1, 2015. Establishments located in states that operate their own safety and health programs should check with their state plan for the implementation date of the new requirements.

What am I required to report under the new rule?

Previously, employers had to report the following to OSHA:

- All work-related fatalities
- Work-related hospitalizations of three or more employees

Starting in 2015, employers will have to report the following to OSHA:

- All work-related fatalities
- All work-related inpatient hospitalizations of one or more employees
- All work-related amputations
- All work-related losses of an eye

Who is covered under the new rule?

All employers under OSHA jurisdiction must report all work-related fatalities, hospitalizations, amputations and losses of an eye to OSHA, even employers who are exempt from routinely keeping OSHA injury and illness records due to company size or industry.

An amputation is defined as the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached.

How soon must I report a fatality or severe injury or illness?

Employers must report work-related fatalities within **8 hours of finding out about them**.

Employers only have to report fatalities that occurred within 30 days of a work-related incident.

For any inpatient hospitalization, amputation, or eye loss **employers must report the incident within 24 hours of learning about it**. Employers only have to report an inpatient hospitalization, amputation or loss of an eye that occurs within 24 hours of a work-related incident.



How do I report an event to OSHA?

Employers have three options for reporting the event:

- By telephone to the [nearest OSHA Area Office during normal business hours](#).
- By telephone to the 24-hour OSHA hotline at 1-800-321-OSHA (6742).
- OSHA is developing a new means of reporting events electronically, which will be available soon at www.osha.gov.

What information do I need to report?

For any fatality that occurs within 30 days of a work-related incident, employers must report the event **within 8 hours** of finding out about it.

For any inpatient hospitalization, amputation, or eye loss that occurs within 24 hours of a work-related incident, employers must report the event within 24 hours of learning about it.

Employers reporting a fatality, inpatient hospitalization, amputation or loss of an eye to OSHA must report the following information:

- Establishment name
- Location of the work-related incident
- Time of the work-related incident
- Type of reportable event (i.e., fatality, inpatient hospitalization, amputation or loss of an eye)
- Number of employees who suffered the event
- Names of the employees who suffered the event
- Contact person and his or her phone number
- Brief description of the work-related incident

Employers do not have to report an event if it:

- Resulted from a motor vehicle accident on a public street or highway. Employers must report the event if it happened in a construction work zone.

- Occurred on a commercial or public transportation system (airplane, subway, bus, ferry, streetcar, light rail, train).
- Occurred more than 30 days after the work-related incident in the case of a fatality or more than 24 hours after the work-related incident in the case of an inpatient hospitalization, amputation, or loss of an eye.

Employers do not have to report an inpatient hospitalization if it was for diagnostic testing or observation only. An inpatient hospitalization is defined as a formal admission to the inpatient service of a hospital or clinic for care or treatment.

Employers do have to report an inpatient hospitalization due to a heart attack, if the heart attack resulted from a work-related incident.

Where can I find more information?

For more information about the updated reporting requirements, visit OSHA's webpage on the revised recordkeeping rule at www.osha.gov/recordkeeping2014.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



www.osha.gov (800) 321-OSHA (6742)



U.S. Department of Labor



Sample H-2A Wage Statement

This is a sample H-2A Wage Statement. You may use this form or provide your own version. Any wage statement that you create must have at least all of the information included here.

Start and End Dates of Pay Period _____

Employee _____

Employee Home Address _____

Employer _____

Employer Address _____

Phone Number of Employer _____

Federal Employment Identification Number (FEIN) _____

Hours Offered to Worker in Pay Period* _____

Hours Worked _____ Rate _____

Units Produced _____ Rate _____

Piece Rate _____

Deductions (if applicable)

Employer Provided Meals _____ Social Security _____

Income Tax _____ Other Withholdings (specify) _____

Gross Wages ** _____ Net Wages _____

*Hours Offered to Worker in Pay Period must be in accordance with the ¾ guarantee, separate from any hours offered above and beyond the guarantee.

**Total Wages divided by Hours Worked must equal or exceed the highest of the current Federal or State minimum wage, the Adverse Effect Wage Rate (AEWR), the prevailing hourly or piece rate, or the agreed upon collective bargaining wage.

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Introduction to the H-2A Temporary Agricultural Worker Program

The New York State Department of Labor (NYSDOL) created this document to provide general information and resources about the H-2A program. The H-2A program is sponsored by the United States Department of Labor (USDOL). This program is used to bring temporary, nonimmigrant foreign workers into the U.S. To qualify to bring the foreign workers to the U.S., employers must prove there are not enough U.S. workers available to perform the work. For more detailed information, please visit these websites:

- NYSDOL, which is the State Workforce Agency (SWA):
 - <http://labor.ny.gov/immigrants/foreign-labor-certification-unit.shtm>
- United States Department of Labor (USDOL):
 - <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>
- United States Citizenship & Immigration Services (USCIS):
 - <http://www.uscis.gov/working-united-states/temporary-workers/h-2a-agricultural-workers/h-2a-temporary-agricultural-workers>

Required Forms:

- USDOL Employment and Training Administration (ETA) *Agricultural and Food Processing Clearance Order ETA*, Form 790:*
 - http://www.doleta.gov/programs/pdf/ETA_Form_790.pdf
- *Instructions for the ETA-790 form*:
 - http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_790_AG_JobOrder_General_Instructions_FINAL.pdf
- NYSDOL *Attachment Terms and Conditions/Clarifications and Assurances/Additional Information, Form ETA 790*.*
 - <http://labor.ny.gov/immigrants/foreign-labor-certification-unit/attachments-eta-790.pdf>
- *USDOL H-2A Application for Temporary Employment Certification, ETA Form 9142A*:
 - http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142A.pdf
 - ETA form 9142A may be filed electronically through the iCERT Portal at: <https://icert.doleta.gov/>
- *Recruitment Report* (record of domestic applicants and/or interviews):
 - <http://labor.ny.gov/immigrants/agriculture-labor-program/services-for-agriculture-employers.shtm>
- NYSDOL Recruitment Report template, AL 156:
 - <http://labor.ny.gov/formsdocs/dipa/AL156.pdf> (or an employer provided equivalent may be used)
- AL 156 Instructions:
 - <http://labor.ny.gov/immigrants/agriculture-labor-program/services-for-agriculture-employers/h2a-referral-tool-description.pdf>
- Department of Homeland Security, USCIS, *Petition for a Nonimmigrant Worker*, Form I-129:
 - <http://www.uscis.gov/i-129>

***Note:** Both the ETA 790 and the ETA 790 Attachment (or employer provided equivalent) must be:

- Filled out for each new timeframe workers will be hired (worker arrival cannot be staggered.)
- Submitted no more than 75 days and no fewer than 60 days prior to the employer's date of need
- Sent together by email to H2A@labor.ny.gov, by fax to (716) 541-9615, or by mail to the address above (The NYSDOL Foreign Labor Certification Unit pre-approves the job order.)

Associated Costs:

- ETA Form 9142A filing fee: \$1,000 plus \$100 per worker, up to 10 workers (flat fee for workers over 10)
- I-129 Form filing fee: \$325 per application (multiple workers can be entered on one application)
- Employer provided housing, including all necessary utilities, and daily transportation to and from the worksite(s) free to workers
- Transportation and Subsistence (payment of transportation is "most economical and reasonable," not necessarily the full payment for the method the workers use)
- Wages - Adverse Effect Wage Rate (AEWR) or piece rates (Payment over AEWR may be made to supervisory positions. These positions need to be posted in their own separate job order.)

Employer Responsibilities: These benefits must be provided to all foreign and domestic workers hired under the contract:

- Free housing: must meet the appropriate federal, state, or local housing regulations
 - Payment of inbound transportation, including daily subsistence rate
 - Payment of outbound transportation, including daily subsistence rate, for those who work beyond the 50% date
 - 3/4 guarantee: Workers must be guaranteed employment/payment for work hours equal to 3/4 of the workdays of the contract. This begins the first workday after the worker arrives or the advertised start date, whichever is later, and ends on the end date of the contract.
Example: The work contract is 10 weeks and the normal workweek is 6 days and 8 hours per day. The worker must be guaranteed 360 hours (10 weeks x 48 hours/week = 480 hours x 75% = 360).
 - 50% Rule: The employer must provide employment to any qualified, eligible U.S. domestic worker, including those from Puerto Rico, who applies until 50% of the contract period elapses.
 - Non-discriminatory hiring of domestic workers: The job must first be open to all qualified U.S. workers. Rejections of those workers must only be for lawful, job-related reasons and may not include that H-2A workers were already hired.
 - Payment of wages* (highest of the following):
 - Adverse Effect Wage Rate (AEWR)
 - State or Federal Minimum Wage
 - Prevailing Wage
 - Collective Bargaining Agreement
- *Piece Rates may also be paid as long as the wage does not fall below any of the four wages listed above, and are listed on the approved contract.

Experience/Skills Requirements: Depending on the duties described, H-2A job orders may include the following requirements:

- Farm work experience (typically 0-3 months for crop workers; 6 months for equipment operators)
- Lifting requirements (for example “workers must be able to lift up to 40 pounds”)
- Motion related requirements (bending, stooping, standing for long periods, twisting, climbing ladders)
- Driving requirements (cannot be required of all workers, and domestic workers cannot be turned away for lack of a driver’s license)

Housing Inspections: H-2A employers must provide free housing to all H-2A workers and those domestic workers hired under the contract that are not able to return home each day. The housing must adhere to the following regulations:

- Housing for four or less workers and built prior to April 3, 1980
 - Employment & Training Administration (ETA) Regulations
 - Inspection conducted by NYSDOL Agriculture Labor Specialist
- Housing for four or less workers and built or substantially renovated after April 3, 1980
 - Occupational Safety & Health Administration (OSHA) Regulations
 - Inspection conducted by NYSDOL Agriculture Labor Specialist
- Housing for five or more migrant workers and/or family members
 - Part 15 of the State Sanitary Code, Migrant Farmworker Housing
 - Inspection conducted by New York State Department of Health (NYSDOH)/County Health Department
- Rental properties
 - Owner must attest that housing meets state or local code and submit a notarized letter

During the H-2A Program Contract Period:

- For those employers with housing for five or more workers and whose pre-occupancy inspection was conducted by the NYSDOH, an occupancy inspection will be conducted at some point during the season. The inspection will be set up between the county/district inspector and the employer.
- NYSDOL staff will conduct an unannounced field check during the season, likely prior to the 50% date. Field checks ensure the following:
 - Work conditions listed on the job order are accurate
 - Housing conditions are as they were during the pre-occupancy inspection
 - Workers receive the correct wages
 - Domestic workers receive the correct wages if they do the same work as the H-2A workers
 - Required posters are found on the premises
 - All questions from the employer and workers are answered

Your Rights as a H-2A Worker

If you know your rights under the federal Labor Law and the New York State Labor Law, you can protect yourself in the workplace. Here are some facts and tips to keep in mind for H-2A workers and other workers employed on the H-2A job order.

H-2A Workers

The H-2A visa program allows foreign workers to enter into contracts with employers and come to the US to do farm work. After the contract is over, H-2A workers must go back to their home country or they can be moved to another, approved H-2A job order. Also, H-2A workers must only work:

- For the employer listed on the contract
- At the location(s) stated on the contract
- For the specific period of time contracted
- On the crop activity stated on the contract
- At the rates of pay stated on the contract (hourly, piece rate, etc.)

Disclosure

Every year upon hire, you must be given a copy of your work contract, the ETA790, which states:

- The start and end dates of the contract
- The significant conditions of employment (transportation, housing, meals, etc.)
- The days that workers are not required to work (Sundays, federal holidays, etc.)
- The hours per day and the days per week a worker is expected to work
- The crop and area to be worked
- The rate of pay for each job
- That the employer will provide and pay for all required tools
- That the employer will provide workers' compensation insurance for workers.

Deductions

You must also be notified in writing of all deductions that are not already required by law, such as health insurance premiums, or any other

benefits that your employer may provide. An employer is prohibited from deducting money from your wages for the cost of new or broken tools, spoiled products, cleaning, transportation, laundry, or any other expense that goes with running a business.

Wages

You must be paid for all of the hours you work. If you earn a piece rate, you must earn the correct amount per unit produced, as long as your rate of pay does not go below the hourly rate listed on the work contract. You must also be paid on the same day every week (or every two weeks as long as the employer pays up to the same day as pay day) at the rate stated in your work contract.

Wage Statements

With each paycheck, employers must give every worker a wage statement that shows:

- The employer's name, address, and telephone number
- The hours worked
- The hours refused
- The pay for each type of crop
- The pay rate (per hour, piece rate, etc.)
- The total earnings for the pay period
- All deductions from wages (with each deduction labeled separately)

Guarantee

In the ETA790 work contract, the employer must offer a certain number of work hours. Even if the employer does not offer the required hours, or if it is impossible to fulfill the remainder of the contract and it is not the employer's fault, the employer must pay the workers three-fourths (3/4 or 75%) of the total hours stated, for the full period of the contract.

Transportation

Your employer must either provide or pay for inbound transportation to the place of employment



and daily meals while you are travelling or reimburse you for reasonable costs once you complete 50% of the work contract. Once you complete the work contract or if the contract cannot be fulfilled by the employer, your employer must provide or pay for your return transportation to your home country or to your next job and daily meals while you are travelling.

Housing and Daily Transportation

If you cannot return to your permanent residence within the same day, your employer must provide safe housing at no cost and daily transportation to and from the worksite at no cost.

Drinking Water

Employers must provide workers with safe, clean, cool drinking water in portable containers, at the worksite and at no cost to the workers.

Toilets and Hand Washing

If the workers will be in the fields for more than three hours (including travel time to and from the fields), employers must provide one toilet and one hand washing station for every 20 workers. If there are 21 workers or more, they must provide two toilets and two hand washing stations. Toilets must be close to where the employees work. They must be clean, free of pests, and have self-closing doors that lock from the inside. There must be enough toilet paper for all workers for the entire day. Hand washing stations must be near the toilets. They must be stocked with clean water and enough soap and clean towels for every use, and provide a place to dispose of used towels. Employers must tell employees where they can get drinking water, use the toilet, and wash their hands.

Workers' Compensation

Your employer must provide Workers' Compensation insurance and any required tools, supplies, and equipment at no cost to you. Employers are also required to have a Worker's Compensation poster, showing the name of their insurance company, policy number, and coverage period, clearly displayed in an area visible to workers.

Meal Periods

If your work day or shift is more than six hours, you must receive at least one 30-minute meal period. These meal periods do not have to be paid but must be provided. If you work a long shift that begins before 11am and goes past 7pm, your employer must provide an additional 20-minute meal period for dinner, between 5-7pm, in addition to the 30-minute lunch period that must be provided between 11am and 2pm.

Other Protections

Your employer may not require you to pay, either directly or indirectly, for any employer costs related to obtaining the H-2A labor certification, including the employer's attorney or agent fees, the application fees, or the recruitment costs.

For questions or assistance: 877-466-9757

To contact bi-lingual field staff in your area, call or text one of the numbers below.

Long Island: **631-560-3706**

Hudson Valley: **845-701-0432** or **845-772-1828**

Capital Region & North Country: **607-205-5489**

Central New York: **315-877-7996**

Southern Tier: **518-728-2743**

Rochester area: **585-402-4344**

Western New York: **585-815-5113**

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Immigrant Policies and Affairs

A Division of the New York State Department of Labor