



**Immigrant Policies
and Affairs**

Services and Protections for Farmworkers



A Division of the New York State Department of Labor

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Services And Protections For Farmworkers

This booklet has been created to help you understand some of the services available to workers in the State of New York including your rights under the labor law.

Abbreviations used in this document

NYS = New York State

NYS DOL = New York State Department of Labor

US = United States

USDOL = United States Department of Labor

MSFW = Migrant and Seasonal Farmworkers

AgLS = Agriculture Labor Specialist

Important Information

Discrimination – It is against the law for an employer to discriminate against workers because of:

- Age
- Race
- Creed
- Color
- Gender
- National origin
- Disability
- Marital status
- Military status
- Arrest or conviction record
- Sexual orientation
- Domestic violence victim status
- Predisposing genetic characteristics

For more information, contact the New York State Division of Human Rights. Phone numbers are located in the **Contacts** section, in the back of this booklet.

Under Section 215 of the New York State Labor Law, it is illegal for an employer to discriminate, fire, or punish a worker because the worker has filed a complaint or exercised his or her rights under NYS Labor Law. For more information, contact the Division of Labor Standards at any of the offices listed under **Contacts**.

The Division of Labor Standards will also investigate any complaints regarding wages and/or work hours.

Right to Receive Visitors – The New York State Attorney General says that you have the right to receive, in the labor camp where you live (including employer-provided housing), visits by:

- Doctors
- Lawyers
- Labor union representatives
- Clergy
- Persons working for any government or private agencies who care about your health or welfare
- You can have guests and visitors at the camp where you live, when you are not working, without asking permission of your employer or the owners of the labor camp / housing.

Child Care – In New York State, the Agri-Business Child Development program (ABCD) offers day care for the children of seasonal agricultural workers so that the parents can work. For more information, see the list of ABCD centers under **Contacts**.

Social Security – In most jobs, the employer must take contributions for Social Security out of your wages. Your wage statement will show you how much has been taken out.

Taxes – State and Federal income taxes come out of every paycheck. Your wage statement will show how much has been taken out. You may be able to get a full refund of the income tax taken from your paycheck. To find out if you qualify for a refund, you must file State and Federal income tax forms. If you are not a resident of New York State, there is a special tax form that you must complete. Please call (800) 462-8100 and request an out-of-state resident tax form.

Veterans – There are special programs for veterans. If you served in the military, please contact the state Department of Labor. Some employers give preference to people who have been in the armed forces. For more information, call the New York State Department of Labor's Veterans Employment Hotline at (800) 342-3358 or visit www.labor.ny.gov/vets/vetintropage.shtm.

Services to Migrant and Seasonal Farmworkers (MSFWs)

New York State Department of Labor staff provides the same range of services to Migrant and Seasonal Farmworkers as are provided to non-MSFW job seekers. New York State is required to deliver all workforce development-related services, benefits, protections, career guidance/counseling, testing, job development, job training, and job referral services to MSFWs on an equal and non-discriminatory basis.

New York State Career Centers

The state Department of Labor offers many types of help to people who are out of work or who are looking for another job. The network of New York State Career Centers offers a wide array of services to people, whether they live in the area or are migrant workers. These centers also have information about many programs other government agencies provide to people who have lost their jobs. Many other types of aid are offered on a walk-in, self-serve basis. If you visit a Career Center, you may be required to fill out certain paperwork.

Career Center services are free of charge. Here are some of the ways the New York State Department of Labor (NYSDOL) can help:

- Language assistance is available for those who are not fluent in English.
- Help you explore vocational interests and develop career goals so that you may find work you would be good at and enjoy.
- Prepare you for a job search with resume and interview skills assistance to help you get or keep a job.
- Staff will interview you in order to gain understanding of your experience and job needs. This is done to help match you to existing job openings.
- Assist you in computer job searches for openings locally, around the state, and throughout the country.
- Test for the job you want, such as clerk or mechanic.
- Keep your name and information on file so we can look for jobs for you. If an employer seeks an employee with your experience, we will notify you.
- Refer you to community-based organizations and human services agencies for relief, assistance, training programs, etc.
- Help in finding schools, day care centers, or other children's programs.

Please tell us if you are a veteran as you may receive preference for openings and special assistance if you are qualified. Call (800) 447-3992 to find the New York State Career Center nearest to you. For the complete list of New York State Career Centers, visit www.labor.ny.gov/career-center-locator.

Career Centers also offer specialized services to youth, those with certain disabilities, economically disadvantaged individuals, displaced homemakers, immigrant workers, ex-offenders, **and those interested in apprenticeship opportunities. We can also help to** determine a worker's eligibility for Trade Adjustment Assistance, **Work Opportunity Tax Credit, the Federal Bonding Program, and other hiring incentives for employers.**

Employment Service

Employment Service and Employment Service Complaint System

According to federal regulations, the State's Employment Service operates the Employment Service Complaint System for filing and processing customer complaints related to alleged violations of state and/or federal employment laws. Employment Service Complaint Specialists may be contacted at New York State Career Centers throughout the state. Copies of complaints filed by Migrant Seasonal Farmworkers are also sent to the State Monitor Advocate, who ensures follow up of these complaints. To reach the State Monitor Advocate, see **Contacts**.

Division of Immigrant Policies & Affairs

The Division of Immigrant Policies and Affairs (DIPA) works inside and outside of the Department of Labor to serve the needs of immigrants. We make sure the Department's protections, services, and programs are available to everyone, including people with limited English proficiency.

New York State Monitor Advocate

Agriculture is one of the leading industries in New York State. It employs thousands of farmworkers every year including domestic, guest worker, year-round, Migrant and Seasonal Farmworkers. Farmworkers, including immigrant farmworkers, cultivate and harvest a full range of agricultural products, including fruits, vegetables, greenhouse plants, trees, and much more. New York State farmworkers also process fruits and vegetables and work on dairy farms across the state.

The New York State Monitor Advocate monitors the NYS DOL's employment services to Migrant and Seasonal Farmworkers to ensure compliance with US Department of Labor regulations.

In New York, employment services are provided through the Division of Employment and Workforce Solutions (DEWS) and the Agriculture Labor Program (AgLP) within the Department of Labor. Some of the responsibilities of the State Monitor Advocate are:

1. Monitoring New York State Career Centers to ensure equity of services.
2. Monitoring outreach performed by the AgLP field staff throughout the state.
3. Ensuring that complaints submitted through the Employment Service Complaint System are addressed or referred to other agencies (i.e. Wage & Hour, OSHA, Human Rights, etc.) and following up on the referred complaints.
4. Working with the Foreign Labor Certification Unit (FLCU) to ensure that domestic workers that qualify for H-2A jobs are given every opportunity to obtain those jobs.

Agriculture Labor Program

The New York State Department of Labor has Agriculture Labor Specialists (AgLS) located across the state. They can assist you and your employer with many labor-related matters. If you have questions about the labor regulations in New York or have concerns about your working conditions, housing conditions, or how and how much you are being paid, you may want to contact the Department of Labor at (877) 466-9757 and get a message to the Agriculture Labor Specialist in your area. The Agriculture Labor Specialist can communicate with you by phone, e-mail, text message, or in person, at your place of employment or at a labor camp. All Agriculture Labor Specialists speak both English and Spanish. The AgLS also provides education to agricultural employers (growers) to promote compliance with state and federal laws. Their goal is to make sure that New York's large and diverse agriculture industry thrives as it follows rules that protect worker rights and safety.

Farmworker Outreach*

Federal regulations require that states conduct outreach to Migrant and Seasonal Farmworkers who are not being reached by typical employment service activities conducted by New York State Career Center offices that operate exclusively during normal business hours. AgLS may contact MSFWs any day of the week or time of day, in their living, working or gathering areas. They provide information to MSFWs about services available from the local Career Center office, including the availability of agricultural and non-agricultural employment and training opportunities, referrals to support services, testing, counseling, and other job development services.

*Agriculture Labor Specialists also provide services to agricultural employers.

Human Trafficking

Human trafficking is modern-day slavery and a serious crime. Anyone can be a victim; many may not realize that what is happening to them is a crime. Human trafficking is happening across the globe and in all 50 states. Human trafficking occurs when a group of people or an individual obtains or holds another person(s) in compelled service (sex or labor). The Department of Labor (DOL) receives and investigates tips of possible human trafficking. DOL refers possible victims for New York State Confirmation, which provides the victim with access to free government benefits. If you or someone you know is being forced to work or have sex for profit against his or her will, can get help by contacting the Counsel to DIPA at (877) 466-9757 or by Email: trafficking@labor.ny.gov. You also can call the National Human Trafficking Resource Center at (888)373-7888.

The Law

Farmworkers: There are federal and state employment laws which provide important protections for you. These laws cover housing, pay, transportation, working conditions, and complaints.

Migrant And Seasonal Farmworkers

The federal Migrant and Seasonal Farmworker Protection Act and other federal laws provide certain protections and other services for Migrant and Seasonal Farmworkers.

Who is a Migrant and Seasonal Farmworker?

A worker can be a migrant farmworker, a seasonal farmworker, or a migrant food processing worker:

Seasonal Farmworker – is a person who, during the preceding 12 months, worked at least a total of 25 or more days or parts of days doing farm work and earned at least half of his or her earned income from farm work. Someone who was employed on a farm, year-round, by the same employer, is not a seasonal farmworker.

A seasonal farmworker can be a *migrant* or *non-migrant* farmworker. This means that a seasonal farmworker is someone who works on a farm on a temporary basis and at least half of his or her earnings came from farm work, whether or not the worker lives near the employer or far away from the employer. The total number of days worked in the last 12 months must add up to at least 25 work days.

Migrant Seasonal Farmworker – is a seasonal farmworker who had to travel to the farm and was unable to reasonably return to his or her permanent residence within the same day. This means that the seasonal farmworker has temporarily relocated from his or her permanent residence for the purpose of working on this job.

Migrant Food Processing Worker – is a person who, during the preceding 12 months:

- Worked at least a total of 25 or more days or parts of days in which some work was performed in food processing (Animal Slaughtering; Fruit and Vegetable Canning; Prepared Sauce Manufacturing; Frozen Fruit, Juice, and Vegetable Manufacturing) for food processing establishments,
- Earned at least half of his or her income from processing work and was not employed in food processing year-round by the same employer, and
- The food processing required travel because the worker could not reasonably return to his or her permanent residence in the same day.

For more information about federal programs and protections for Migrant and Seasonal Farmworkers, visit www.doleta.gov/MSFW.

Minimum Wage Law

What is the minimum wage that I must be paid?

You must be paid at least the federal minimum wage or the state minimum wage, whichever is higher, per hour for the time you work, no less. If you are paid on a piece rate basis (by the basket or bushel), the piece rate must result in the minimum hourly wage rate or higher. If you are not earning this rate, you can call (888) 525-2267 to file a complaint or contact the Agriculture Labor Specialist in your area listed at the end of this booklet.

New York State Minimum Wage

Historically, the New York State minimum wage has been the same as or higher than the federal minimum wage. The minimum wage in New York is as follows:

- \$8.75 on and after December 31, 2014
- \$9.00 on and after December 31, 2015

What must I get paid if I work on a farm with H-2A workers?

If you perform a different job from the H-2A workers, you must be paid at least the state minimum wage for the time you work. If you perform the same duties as the H-2A workers, you must be paid the higher of the Adverse Effect Wage Rate or the Prevailing Wage, which are set by the US Department of Labor. If you want to obtain information about the Adverse Effect Wage or the Prevailing Wage for your occupation, or you are concerned that the wage rate you are receiving is not correct, contact your Agriculture Labor Specialist listed in the back of this booklet or the nearest USDOL Wage & Hour office. See the listing under **Contacts**.

Can minors be paid less than the Minimum Wage?

No.

What if my employer pays a piece rate?

If the employer pays on a piece rate basis, the piece rate must yield a wage equal to or greater than the minimum wage, even when the employee is a minor. For more information about the types of work minors can perform, see the Child Labor section later in this booklet.

Can my employer charge me for meals?

Yes. If your employer gives you meals, the employer is allowed to deduct \$1.70 from your wages for each meal. But if you are a migrant seasonal farmworker who earns less than \$254 every two weeks (unless you choose not to work), your employer is not allowed to take money out for meals.

Can my employer charge me for housing?

If you are a migrant farmworker, **no**. Your employer cannot charge you for housing or utilities, from your wages or by a separate fee.

If you are a seasonal or year-round worker, **yes**. When housing is provided by your employer, your employer is allowed to deduct these amounts from your wages:

- \$18.95 per week for a one-person room
- \$12.65 per week for a shared room
- \$ 5.00 per day for a house or apartment with utilities for one person
- \$ 8.00 per day for a house or apartment with utilities, if you live with your family (if other members of your family live with you or work for the same employer, you still pay only \$8.00 per day)

The employer may take from your wages only the deductions listed later in this booklet under the heading "Deductions from Wages".

Am I considered a farmworker if I work in a packing house?

A person working in a packing house is a farmworker only if all of the produce handled in the packing house is grown:

- on the same farm
and
- by the same grower/processor who owns the packing house and the farm.

If you are handling goods from another farm, that work is not farm work.

Am I considered a farmworker if I work in a roadside farm stand?

Under New York State law, you are a farmworker only if at least 95% of the items for sale at the stand are produced on the employer's farm. Federal regulations may set a higher standard. For more information, please contact the nearest USDOL Wage and Hour Division office listed under the **Contacts** section.

Where can I find out the basic standards that migrant farmworker housing must meet?

If you are a migrant seasonal farmworker, you should call the New York State Department of Health's Bureau of Community Environmental Health and Food Protection at (518) 402-7600 or toll-free at (800) 458-1158. You can also contact any of the USDOL Wage and Hour offices listed under the **Contacts** section.

Can my employer pay me with products from the farm (milk, vegetables, fruit or eggs)?

Yes, but only if you have agreed to this form of payment. The employer must value the products at the price the stores pay the farmer for them, NOT the price the stores charge their customers.

If I am covered by federal law, does the state law apply to me?

Yes. You are always fully protected by the state labor laws. The strongest law applies, whether it is state or federal. Your employer must comply with the law that gives the greatest advantage to the worker. For example, if the state minimum wage is higher than the federal minimum wage, your employer must pay the higher rate. For more information about the federal wage law, contact the nearest USDOL Wage and Hour Division office, listed under **Contacts**.

How many hours can I work?

If you are at least 14 years old, there are no restrictions on how many hours you may work on a farm when you are not required to be in school. The employer must count travel time between fields or required waiting time as work time and must pay you for all of it. Your employer must tell you in writing in your work agreement how many hours you have to work each day and each week.

Must I receive a higher rate for overtime hours?

A higher rate for “overtime” is not required for farm work. However the employer may decide to pay overtime as an additional benefit. This benefit, if offered, must be stated in your signed work agreement and must be honored by your employer.

What about workers in the packing house or processing plant?

Farmworkers in packing and processing plants **may** be entitled to overtime if they pack or process food that was not grown on the employer’s farm. For more information, you may contact Department of Labor’s Division of Labor Standards listed under the **Contacts** section or the Agriculture Labor Specialist in your area.

What about workers in a retail farm stand?

Workers in retail farm stands **may** be entitled to overtime if the stand sells goods not grown or produced on the farm.

If my employer owes me wages, how do I collect this money?

The law says that you must receive all of your wages on the regular designated payday. The Division of Labor Standards can help you collect money that may be due to you if you have been underpaid and you may file a wage claim by contacting the nearest office of the Division of Labor Standards listed under the **Contacts** section or call (888) 525-2267. Another option is to file claim with Small Claims Court for a fee. But you may not pursue both a claim with the Division of Labor Standards and a claim with Small Claims Court at the same time and for the same owed wages . You may choose only one of these remedies. To file a claim with Small Claims Court, contact your local County Clerk’s Office for information.

To view the Minimum Wage Order for Farmworkers, visit our web site at www.labor.ny.gov/formsdocs/wp/cr190.pdf

Payment Of Wages

Wage Theft Prevention Act (WTPA)

New York has enacted the Wage Theft Prevention Act, which expanded the rights of employees in all industries, to assist with the recovery of unpaid or underpaid wages, and to increase penalties for employers who fail to follow labor laws.

The WTPA updated the following requirements:

- **Record-keeping:** Requires more stringent record-keeping and employee-notification requirements for employers
- **Collection:** Increases the amount of additional monetary penalties, known as “liquidated damages”, which can be applied to 25% to 100% of lost wages
- **Penalties:** Increased criminal penalties for failure to pay minimum wage to up to a year in prison and increased civil penalties for non-compliance to up to \$10,000
- **Whistleblowers:** Provides the NYSDOL with the power to protect individuals who report workplace concerns against retaliation in cases of labor law violations

Am I required to have a work agreement?

Your employer is required to provide you with a Pay Notice and Work Agreement, which you must sign, in order to work for that employer. Every employer must inform workers (including minors), in writing, of their conditions of employment (the work agreement) when they are hired. This contract must list the pay rate, hours of work, and benefits, if any. Every employer must post a copy of the farm minimum wage poster where employees can see it easily, along with a copy of a general work agreement that applies to all workers. We have blank work agreements on our Services for Agricultural Employers page on our web site: www.labor.ny.gov/immigrants/agriculture-labor-program/services-for-agriculture-employers.shtm.

What should my pay be?

You must receive the rate of pay your employer agreed to pay, which should never be less than the minimum wage. Your employer must tell you the wage rate, in writing, in your work agreement and must pay you for all hours you work, including travel time and waiting time once you have reported to work for the day.

How much is the pay for a youth under age 18?

A young worker must be paid at least the minimum wage.

When does my employer have to pay me?

Your employer must pay manual laborers every week on the regularly designated pay day. You can be paid every two weeks only if you are paid up-to-date for the full two weeks.

Does my employer have to tell me what day I will be paid?

Yes. When you are hired, the employer must notify you, in writing, of the amount you will be paid and what day is the regular pay day each week. The employer must list the regular pay day in the work agreement. You must be informed ahead of time if the pay day will change.

How do I know if I am getting the right amount?

Every time you get paid your employer must give you a wage statement (paystub) showing how he or she calculated your pay. If other members of your family work for the same employer, you must each be provided with your own wage statement.

What information should be included on my paystub?

You must receive a wage statement (printed or written paystub) every time you are paid. The paystub must show:

- The employer's full name and address, and telephone number.
- Your name.
- The total number of hours you worked.
- If you are paid by piece work:
 - the size/weight of the basket, pail, bin, or other container and
 - the number of these containers you produced during the time you worked (pay period).
- Rates paid.
- Gross wages.
- Legal allowances or deductions, and
- The total money you received (net wages).

If you do not agree with your wage statement, contact the nearest office of the Division of Labor Standards listed under **Contacts** or contact the Agriculture Labor Specialist in your area.

Can my pay be either cash or a check?

Yes. Employers can pay farmworkers either in cash or by check. You should be able to cash your paycheck for the full amount, on pay day and without having to pay any fee to the bank or to anyone else. The employer does not have to give you extra time to cash your paycheck.

For more information about the Wage Theft Prevention Act, visit our web site at www.labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm

Deductions From Wages

What deductions can be taken from my wages?

The only deductions that can be taken from your pay are:

1. Those required by law, such as social security, income tax, and court-ordered garnishments.
2. Those that benefit you and that you have authorized in writing, such as insurance premiums, savings, or allowances for meals or lodging, if permitted by law.

If you are a non-migrant worker, your employer can make deductions of limited amounts for meals, lodging, and utilities provided to you. See Page 8 for the amounts allowed.

If you are a migrant worker, your employer cannot make any deductions for lodging and utilities provided to you.

Can my employer demand a kickback of part of my wages?

No. It is against the law for your employer, your farm labor contractor, or any person to demand or accept part of your wages in return for getting you a job or keeping you in that job.

If someone tries to do this, you can report it to the nearest office of the Division of Labor Standards listed under **Contacts**.

Can my employer make deductions for transportation?

If you are a domestic worker, **yes**, but only for the first trip “in”, when you arrive at the workplace, and for the last trip “out”, when you leave the workplace for the season. You must authorize this deduction in writing. Under New York State law, the employer cannot charge you more than 10% of your total weekly pay.

H-2A workers may not be charged for transportation from their place of origin to the workplace or to return from the workplace to their home country.

To learn more, contact the nearest USDOL Wage and Hour Division office listed under **Contacts**.

Can my employer make deductions for daily commuting to and from work?

No. The employer or the farm labor contractor cannot charge you for daily transportation to and from work or between worksites.

Can my employer make deductions for clothing, footwear, or tools provided to me?

No. Additionally, your employer may not make deductions for the maintenance of your clothing, footwear or tools.

Can my employer make deductions for wage advances or loans?

In limited circumstances, this practice may be acceptable.

Meal Periods And Other Breaks

Must I get fifteen-minute breaks?

No. Breaks are offered only if your employer has agreed to do so. Breaks or rest periods are not required by law, but your employer may decide to provide them. A break is a benefit that must appear in your work agreement if the employer agrees to provide them.

Am I entitled to a meal period during my work day?

The law entitles most workers to meal breaks. If your shift is longer than six hours, then the law requires you to have a 30-minute, uninterrupted meal period. However, your employer is not required to pay you for this time. If you are required to work during a break, you must be paid for it. The law does **not** require employers to grant any other breaks. But if your meal period is shorter than 20 minutes, it must be a paid break. In some instances, the New York State Commissioner of Labor allows certain employers to shorten the meal periods to 20 minutes if they have obtained a special permit.

Do I get more than one meal break for a longer shift?

Generally speaking, if you work a shift of six hours or more, you must receive an uninterrupted meal period that lasts 30 minutes. This meal break may be unpaid. If you work more than eight hours, you must get an additional 20-minute meal break. This 20 minute meal break must be paid.

New York Labor regulations provide for the following.

If:	Then you are entitled to a meal break of:
Your shift is more than 6 hours, starts before 11 AM and lasts past 2 PM	30 minutes between 11 AM and 2 PM
Your shift starts before 11 AM and lasts past 7 PM	30 minutes between 11 AM and 2 PM and an additional 20 minutes between 5 PM and 7 PM
Your shift is more than 6 hours and starts between 1 PM and 6 AM	30 minutes, in the middle of the shift

The law does not require employers to grant other breaks. But if there is a break shorter than 20 minutes, it must be a paid break.

For more information about breaks and meal periods, contact the New York State Department of Labor at (800) 662-1220 or visit www.labor.state.ny.us/workerprotection/laborstandards/employer/meals.shtm.

Source: www.ag.ny.gov/labor/workers-rights-faqs

Do I get one day of rest every week?

Only if your employer has agreed to it. Your employer can decide to give you one day of rest, but it is not required by law. This benefit, if offered, must appear in your work agreement and must be honored.

Other Compensation (Benefits / Wage Enhancements)

Should I get paid for holidays, sick days or vacations?

You get paid for these benefits **only** if your employer has agreed to pay them. The employer can decide to pay for such benefits as vacation, sick leave, or holidays, but it is not a requirement. This is a benefit that must appear in your work agreement if the employer agrees to give it and must be honored.

What kind of coverage is my employer required to provide?

Unemployment Insurance and Workers' Compensation. The law requires employers to provide both, at the employer's expense. However, some farmers operating small farms are not required to provide Unemployment Insurance coverage.

Safety And Health-Related Regulations

Drinking Water

Must my employer provide drinking water near my work place?

Yes. An employer who uses paid farmworkers or food-processing workers must provide safe drinking water close to your work location and at no cost to the employees.

Field Sanitation

Must my employer provide toilet facilities in the field?

Yes. By New York State law the employer must provide toilet and hand-washing facilities and, if necessary, transportation to them. If there are five or more workers at the same location, the employer must provide at least one toilet and hand-washing facility for every 20 workers. Both units shall be:

- located together **and**
- within one quarter-mile walking distance
- or**
- if the terrain is impassable, at the closest point reachable by motor vehicle.

If half or more of the 20 workers are women, there must be one toilet designated for men and one for women. Each one must be marked with an appropriate sign.

If your employer is not providing drinking water close to your work location or toilet and hand-washing facilities, call the nearest office of the Division of Labor Standards listed under **Contacts** or contact the Agriculture Labor Specialist in your area.

Pesticide Usage

Under state law, you have the right to know about the health effect of any poisons in your work site. Your employer must set up an education and training program for you if they use dangerous materials near you.

Under federal law, employers must tell workers about the dangers from chemicals in the workplace. People who use pesticides on the job must be certified or supervised by a certified applicator.

For more information, call the NYS Department of Environmental Conservation at (518) 457-7842 or the nearest federal OSHA office toll free at (800) 321-6742.

New York's Migrant Registration Law

Certificate of Registration (Grower / Processor)

A Grower or Processor who hires five or more out-of-state migrants, not including H-2A workers, must get a Certificate of Registration, even if he or she uses a Farm Labor Contractor for recruiting and hiring.

Certificate of Registration (Farm Labor Contractor)

A Farm Labor Contractor that places five or more out-of-state migrants to work on farms must obtain a Certificate of Registration. Each application for a Certificate must be signed by the grower after the Farm Labor Contractor signs it.

What is a Farm Labor Contractor?

A Farm Labor Contractor is a person or business that charges a fee to recruit, transport, supply, or hire migrant seasonal farmworkers to work for a farm or food-processing business. The Farm Labor Contractor may be a crew leader who supervises the workers or may be a distant company with no representative on site. The Farm Labor Contractor must register with the NYS Department of Labor, which issues a Certificate of Registration.

What is a Certificate of Registration?

A Certificate of Registration is an official card that allows a Farm Labor Contractor to provide migrant seasonal farmworkers to the employer whose name is on the card. The Farm Labor Contractor must have one certificate for each farm or food processing business he or she serves. To apply for this certificate, the Farm Labor Contractor must give information about the working and living conditions of the workers to the NYS DOL.

Who pays the Farm Labor Contractor?

The employer pays the Farm Labor Contractor's fees at the employer's own expense. It is against the law for workers to pay an employer or a Farm Labor Contractor to get a job or to keep one. The farmer cannot take money from your wages to pay the Farm Labor Contractor.

Can the Farm Labor Contractor charge me for services that he or she provides?

No. The Farm Labor Contractor cannot charge for:

- Check cashing
- Transportation
- Housing
- Finding you the job

Child Labor

There are many types of “employment certificates” or “work permits” for minors under the age of 18 (commonly referred to as “working papers”) to work in a variety of industries. In this booklet, only Farmwork Permits will be discussed.

Can children aged 12 or 13 do farm work?

Yes. They may only be employed in:

- Hand-harvesting of berries, fruits, and vegetables, and **must** have a farm work permit,
- Working for parents or guardians, at times when school is not in session, on the home farm or at other outdoor work that is **not part of a trade, business, or service** (this type of job **does not** require a work permit),
- Assisting a parent, aunt, uncle, grandparent or guardian selling produce from his or her own farm at a farm stand he/she owns or leases during time when school is not in session. (The minor **must be with the parent or guardian or have his or her written permission** to do this. This type of job **does not** require a work permit.)

What kinds of working papers are required for farm work?

Workers **younger than 16** years of age must obtain one of the following Farm Work Permits:

1. Farmwork Permit **AT-24**: a **yellow** permit for **14 and 15 year-olds**. This permit allows these minors to work before and after school, on weekends and during vacations. There is no limit on the hours they can work.
2. Farmwork Permit **AT-25**: a **white** permit for **12 and 13 year-olds**. This permit allows these minors to work in the hand-harvesting of fruits, berries and vegetables. They can work only 4 hours a day as follows:
 - From Labor Day to June 20th between 9 AM and 4 PM
 - From June 21st to Labor Day between 7 AM and 7 PM

The minor (**age 12-15**) must be with a parent or guardian or give the employer written consent from the parent to the employer.

Can minors aged 14 or 15 do farm work?

Yes. Minors 14 and 15 years of age can do farm work that is not forbidden by regulation for children below the age of 16. There is no restriction on the hours they may work, except that they may not work during school hours. A Farm Work Permit issued by the school and signed by each employer **is required**.

Can minors 16 or 17 do farm work?

Yes. Minors 16 and 17 years of age can do any type of farm work not forbidden by regulation for children younger than 18. There is no restriction on the hours they may work, except that they may not work during school hours. A farm work permit is **not required** for this age group.

Are minors allowed to perform all kinds of farm work?

No. New York State and Federal regulations prohibit work that is dangerous or could cause injury to minors under 18 (State) and under 16 (Federal). There are some exceptions to this rule (see below).

NYS Prohibited Occupations *

No one **under the age of 18** may work or assist in the following:

- Construction work, including wrecking, demolition, roofing, or excavating operations and the painting or exterior cleaning of a building structure from an elevated surface
- The operation of circular saws, band saws, and guillotine shears
- In or about a slaughtering and meat-packing establishment or rendering plant
- The operation of power-driven woodworking, metal-forming, metal-punching, metal-shearing, bakery, or paper products machines
- The operation of power-driven hoisting apparatus
- The manufacture of brick, tile, and like products
- Exposure to radioactive substances or ionizing radiation, or exposure to silica or other harmful dust
- Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill
- In mining or in connection with a mine or quarry
- As a helper on a motor vehicle
- In the care or operation of a freight or passenger elevator, except that a minor over 16 may operate automatic, push-button control elevators
- In manufacturing, packing, or storing of explosives, or in the use or delivery of explosives
- Operating or using any emery, tripoli, rouge, corundum, stone, silicon carbide, or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or iridium are manufactured
- Adjusting belts to machinery or cleaning, oiling, or wiping machinery
- Packing paints, dry colors, or red or white leads
- Preparing any composition in which dangerous or poisonous acids are used
- Operating steam boilers subject to section 204 of the Labor Law
- In penal or correctional institutions, if the job relates to the custody or care of prisoners or inmates

Exceptions

These rules do not apply to:

- Workers younger than 18 who are apprentices individually registered in DOL registered apprenticeship programs.
- Student-learners enrolled in recognized cooperative vocational training programs.
- Trainees in approved on-the-job training programs.
- Workers 16 or 17 years old who have completed training as a student learner or trainee in an approved on-the-job training program.
- Workers 16 or 17 years old who have completed a training program given by a public school or a non-profit institution that includes DOL approved safety instruction.

* Source Part 190 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the state of New York (Cited as 12 NYCRR 190) July 24, 2009 (www.labor.ny.gov/formsdocs/wp/cr190.pdf)

Farm Labor (Under 16 Years of Age)

In addition, there is a Federal Hazardous Occupations Order covering minors less than 16 years of age engaged in farm work. The order lists 16 forbidden jobs for minors less than 16 years of age, including working with certain power-driven farm machinery, operating a tractor with over 20 PTO horsepower, and working with explosives or certain chemicals.

These rules on child labor on farms **do not** apply to minors who work on a farm owned or run by their parents or to students in a recognized vocational education training program. In addition, there are exemptions for 4-H members who have completed certain training programs and students in other approved farm training and education programs.

If the federal regulations are stronger or more protective than the state regulations, then the federal rules apply.

Who can provide working papers?

Schools supply working papers to their students upon request. Your child can find out about getting working papers at the school office. If your child does not go to school, you or your child can contact any high school within New York State.

Are working papers required for out-of-state minors?

Yes. All minors 12 to 15 years old who want to do farm work in New York State, no matter where they are from, **must** get working papers in order to work. The minor may obtain working papers from the school closest to the farm or place of employment.

Do you have to obtain a Farm Work Permit for each job?

No. A Farm Work Permit can be used for more than one job in the same type of work, but each employer must sign it. The permit remains valid so long as the minor is in the covered age group.

Posting Provisions

The employer must make a schedule for all minors and post it in a conspicuous place. The schedule shows the hours that minors start and end work. The hours of work can be changed, as long as the changes are posted on the schedule.

How can a minor get help with a workplace problem?

The minor, or a parent or guardian on his or her behalf, can get advice or file a complaint by contacting the nearest office of the US Department of Labor, Wage and Hour Division or the NYS Department of Labor, Division of Labor Standards, both listed under the **Contacts**.

More information?

For more information about employment certificates including Farmwork Permits, contact a local high school or visit the state Education Department's web site at www.p12.nysed.gov/sss/pps/workingpapers.

Unemployment Insurance

Unemployment Insurance (UI) is a cash benefit provided by law to workers who have lost their jobs through no fault of their own. To qualify, the unemployed person must be ready, willing and able to work. The payments help the unemployed person with his or her financial obligations while he or she searches for another job.

Are farmworkers covered by Unemployment Insurance?

Under certain conditions, your farm work may be covered by Unemployment Insurance. You may be eligible, even if you have worked in more than one state. Unemployment Insurance is not available for H-2A workers.

How do I know if I am covered?

If you lose your job and want to know if you qualify for unemployment insurance benefits, call our toll-free line at (888) 209-8124. Follow the voice instructions to apply. We offer services in many languages through the telephone service. You may also apply on our web site: www.labor.ny.gov.

Do I have to pay unemployment insurance contributions?

No, not in New York State. In New York, employers pay unemployment insurance contributions at their sole expense, according to a formula determined by the NYS Department of Labor. This is a cost of doing business for employers. They are not allowed to take this money out of your pay.

How do I apply for unemployment insurance?

Online – If you have internet access, you can apply online on our web site: www.labor.ny.gov.

By phone – The NYS Department of Labor has a telephone claim system that will help you file for unemployment insurance benefits. You **cannot** use a rotary dial phone. You must use:

- a touch-tone phone,
- a phone with a pulse-tone switch, or
- a mobile phone or other mobile device.

Before placing the call or logging in, you should have the following information available:

- Your Social Security Number
- Your New York State driver's license or Motor Vehicle ID card number (if you have one)
- Your mailing address and zip code
- A telephone number where you can be contacted during business hours
- Your alien registration card number (if you have one)
- The names and addresses of all employers for whom you have worked within the last 18 months, including those in another state
- Your total gross earnings (wage statements / pay stubs, W2 forms, etc.) for each of your employers during the last 18 months
- A copy of your most recent separation form DD 214 (if you are an ex-service member claiming benefits based on your military service)

However, you should apply for Unemployment Insurance benefits as soon as possible after you stop working, even if you do not have all of this information.

If you have a speech or hearing impairment or certain other disabilities, you may ask a friend or relative to help in the telephone claim process. You must be present when that person makes the call for you. The toll-free number for all of New York State is (888) 209-8124.

How will I receive my UI benefits?

Direct Deposit – You can sign up for Direct Deposit of UI benefits into a bank account if you file your claim on the web.

Debit Card – If you do not sign up for direct deposit, you will receive payments through a direct payment card. The card is mailed to you after you are approved to receive benefits. You can use the card at all Chase/Allpoint ATMs and any bank that honors MasterCard, as well as at any merchant that accepts debit cards.

How long will I receive benefits?

The Unemployment Insurance benefit is calculated based on your earnings at jobs that you held during the previous 18 months. If you collect the full benefit each week, the basic unemployment benefits will last 26 weeks. If you work part time, you may be eligible for partial benefits. If you collect only partial benefits and still qualify, the funds will remain available for a longer period of time, up to 52 weeks when the claim expires. There are extensions of benefits for certain workers. You can find out the details on our web site www.labor.ny.gov/unemploymentassistance.shtm, through the Telephone Claims Center at (888) 209-8124, or you can ask for details at your local Department of Labor office or New York State Career Center.

Workers' Compensation

Workers' Compensation is a form of insurance which provides medical care and lost wages due to a work related injury or condition. This benefit is payable once a claim is accepted by the Workers' Compensation Board and/or your employer's insurance company. The process starts upon receipt of the injured worker's claim form **and** proper medical documentation from a treating doctor.

Employers in NYS are required to obtain a Workers' Compensation insurance policy (some exceptions apply) and if an injury or illness occurs, their insurance company will provide the benefits to you. If a death is a result of work, then your family can file a claim and may be eligible to receive Workers' Compensation benefits in accordance with the law. For further information you may call the NYS Workers' Compensation Board toll-free at (877) 632-4996.

Can farmworkers get Workers' Compensation?

Yes, in most cases. If you believe that you have an illness or injury caused by your job, you should file a claim.

What should I do if I have an accident on the job?

If you were injured on the job, you must report the injury to your supervisor or your employer **in writing within thirty days**. Then you must file a Form C-3 with the Workers' Compensation Board as soon as possible, but you have up to two years to do so. You must also see a doctor that is authorized by the Workers' Compensation Board. This doctor should then file proper medical documentation with both the Workers' Compensation Board and the employer's Workers' Compensation insurance company.

What should I do if I have a work related illness or disease?

If you have an illness or disease which you believe is caused by your work or working conditions, you should file a claim as well. You must notify your employer, in writing, within thirty days from the time you were diagnosed with a work related illness/condition or from the time you knew or should have known that it was caused by work. Again, you have up to two years from this date to file a claim with the Workers' Compensation Board.

If you die from this illness or disease, your family can file a claim and may be eligible for compensation.

How do I file a Workers Compensation claim?

File an Employee's Claim for Compensation (Board form C-3) with the NYS Workers' Compensation Board. This form can be obtained by calling the Workers' Compensation Board at (877) 632-4996. This form is also available for completion online or by phone.

Can my employer fire me for filing for Workers' Compensation?

No. An employer may not fire or discriminate against an employee who files a Workers' Compensation claim. The law also protects employees who testify in a Workers' Compensation hearing.

Do I pay out of pocket for anything related to a work injury/condition?

No, you do not pay out of pocket for an office visit or an attorney. Simply provide the doctor's office with the employer and/or employers' insurance company's information so that the doctor's office can bill the insurance company. No co-pays can be charged. Attorneys are paid out of any awards you receive.

For more information about the Workers' Compensation claims process, call the toll-free number at (877) 632-4996 or visit www.wcb.ny.gov.

Contacts

New York State Department of Labor

New York State Department of Labor Division of Immigrant Policies and Affairs

(877) 466-9757

www.labor.ny.gov/immigrants/index.shtml

Director of the Division of Immigrant Policies and Affairs and the Agriculture Labor Program

Jeanette Lazelle

Office phone: (716) 851-2755

Mobile phone: (518) 461-2599

E-Mail: Jeanette.Lazelle@labor.ny.gov

Fax: (716) 851-2607

Mailing address: 290 Main Street, Room 213, Buffalo, NY 14202

New York State Monitor Advocate

Laura Tramontana

290 Main Street, Room 213

Buffalo, NY 14202

Office Phone: (716) 851-2762

Mobile Phone: (315) 601-5971

Fax: (716) 851-2607

E-mail: SMA@labor.ny.gov

Web site: www.labor.ny.gov/immigrants/state-monitor-advocate.shtml

Counsel, Division of Immigrant Policies and Affairs

Estelle Davis

NYS Department of Labor

75 Varick Street, 7th Floor

New York, NY 10013

Office phone: (212) 775-3785

Hotline: (877) 466-9757

Fax: (212) 775-3389

E-Mail: trafficking@labor.ny.gov

New York State Department of Labor

Agriculture Labor Program

To contact an Agriculture Labor Specialist you may do one of the following.

- Visit www.labor.ny.gov/immigrants/agriculture-labor-program.shtml
- E-Mail: dipa@labor.ny.gov
- Call (877) 466-9757

Foreign Labor Certification Unit

Melissa Buckley

Foreign Labor Certification Specialist

Office phone: (716) 851-2609

Mobile phone: (518) 728-2780

E-Mail: ForeignLaborCert@labor.ny.gov

Fax: (716) 851-2607

Mailing address: 290 Main Street, Room 213 Buffalo NY 14202

Communications and Education

Eric Denk

Agriculture Labor Program and Communications Specialist

Mobile phone: (607) 205-5491

E-Mail: DIPA@labor.ny.gov

Fax: (212) 775-3389

Mailing address: State Office Campus, Building 12, Room 570, Albany NY 12240

Community Relations Officers

Western New York

Jeanette Lazelle

Office phone: (716) 851-2755

Mobile phone: (518) 461-2599

E-Mail: Jeanette.Lazelle@labor.ny.gov

Eastern New York

Geovanny Trivino

Mobile phone: (518) 421-5247

E-Mail: Geovanny.Trivino@labor.ny.gov

New York Metropolitan Area and Long Island

Carmen Calderon

Office phone: (212) 775-3680

Mobile phone: (646) 300-3495

E-Mail: Carmen.Calderon@labor.ny.gov

New York State Career Centers

(800) 447-3992

www.labor.ny.gov/career-center-locator/

New York State Department of Labor Division of Labor Standards

(888) 4-NYSDOL [888-469-7365]

www.labor.ny.gov/workerprotection/laborstandards/labor_standards.shtm

Division of Labor Standards Offices

Albany District (*Albany, Clinton, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, and Washington counties*)

State Office Campus
Building 12, Room 185A
Albany NY 12240

Phone: (518) 457-2730

Fax: (518) 457-8452

Binghamton Sub-District (*serving Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Steuben, Sullivan, Tioga, Tompkins, and Yates counties*)

44 Hawley Street
Binghamton NY 13901

Phone: (607) 721-8014

Fax: (607) 721-8013

Buffalo District (*Allegany, Cattaraugus, Chautauqua, Erie, Niagara, Ontario, Seneca, Steuben, Wayne, and Yates counties*)

65 Court Street, Room 202
Buffalo NY 14202

Phone: (716) 847-7141

Fax: (716) 847-7140

Long Island District (*Nassau and Suffolk counties*)

400 Oak Street, Suite 101
Garden City NY 11530-6551

Phone: (516) 794-8195

Fax: (516) 794-1046

New York City District (*Bronx, Kings, New York, Queens, and Richmond counties*)

75 Varick Street
New York NY 10013

Phone: (212) 775-3880

Fax: (212) 775-3714

Rochester Sub-District (*Genesee, Livingston, Monroe, Orleans, and Wyoming counties*)

109 South Union Street, Room 318
Rochester NY 14607

Phone: (585) 258-4550

Fax: (585) 258-4556

Syracuse District (*Cayuga, Herkimer, Lewis, Madison, Oneida, Jefferson, Onondaga, Ontario, Oswego, Saint Lawrence, Seneca, and Wayne counties*)
333 East Washington Street
Syracuse NY 13202
Phone: (315) 428-4057
Fax: (315) 428-4001

White Plains District (*Orange, Putnam, Rockland, and Westchester counties*)
120 Bloomingdale Road
White Plains NY 10605
Phone: (914) 997-9521
Fax: (914) 997-8780

Labor Standards (*all of New York State*)
State Office Campus
Building 12, Room 185B
Albany NY 12240
Phone: (518) 485-0307
Fax: (518) 457-8452

New York State Department of Labor – Unemployment Insurance Division
Filing a claim for unemployment insurance benefits:
Web service: www.labor.ny.gov
Phone service: (888) 209-8124, Monday-Friday, 8 AM to 5 PM Eastern Time

US Department of Labor Wage and Hour Division Office
(866) 4US-WAGE (866-487-9243) press 2 for Spanish
TTY: (877) 889-5627
Monday-Friday, 8 AM to 8 PM Eastern Time
www.dol.gov/whd

New York State Department of Health
Bureau of Community Environmental Health and Food Protection
(518) 406-7600 or toll-free (800) 458-1158
www.health.ny.gov/environmental/regs

New York State Division of Human Rights
(888) 392-3644
www.dhr.ny.gov

New York State Workers' Compensation Board Offices

328 State Street, Schenectady, NY 12305-2318

(877) 632-4996

Hours: Monday, Thursday, Friday 8:30 AM to 4:30 PM and Tuesday, Wednesday
8:30 AM to 6:00 PM

www.wcb.ny.gov

For questions related to injured workers:

Advocate for Injured Workers: (518) 462-8884 or (800) 580-6665

For questions about Workers' Compensation for on-the-job injuries/claims:
District Offices and Service Centers

Albany: (866) 750-5157

Binghamton: (866) 802-3604

Brooklyn: (800) 877-1373

Buffalo: (866) 211-0645

Long Island: (866) 681-5354

Manhattan: (800) 877-1373

Peekskill: (866) 746-0552

Queens: (800) 877-1373

Rochester: (866) 211-0644

Syracuse: (866) 802-3730

Other Services For Agricultural Workers

Agri-Business Child Development Centers (ABCDs)

These year-round child care centers, operated by New York State Federation of Growers' & Processors' Associations, Inc. and supported by the New York State Department of Agriculture and Markets, offer comprehensive educational, health and social services to eligible families.

Batavia: (585) 343-8160

Florida: (845) 651-2270

Fredonia: (716) 672-5395

Geneva: (315) 781-3267

Goshen: (845) 294-6221

Holley: (585) 638-5932

Kingston: (845) 481-4691

Lake Ontario: (315) 589-7421

Middletown: (845) 956-2270

New Paltz: (845) 255-7571

Newfane: (716) 439-4524

Red Creek: (315) 754-8759

Agri-Business Child Development headquarters

847 Union Street, Schenectady, NY 12308

Phone: (518) 346-6447

Web site: www.abcdny.org

or www.agriculture.ny.gov/programs/childdev.html

PathStone Corporation

PathStone Corporation (formerly Rural Opportunities, Inc.) is a federal grantee agency under contract with the United States Department of Labor, Employment and Training Administration to provide training and other services to migrant and seasonal farmworkers.

PathStone Field Offices:

Albion: (585) 589-7027

Alton: (315) 483-9151

Dunkirk: (716) 366-9015 x-5156

Lockport: (716) 201-1086

Middletown: (845) 343-0771

Riverhead: (631) 727-4866

Wappingers Falls: (845) 298-8998

Corporate Office: (585) 340-3300

Toll Free, 24-hour: (800) 888-6770

Web site: www.pathstone.org

Migrant Education Tutorial and Support Service (METS)

Brockport: (585) 395-2356 (Monroe, Niagara, and Orleans counties)

Cortland: (607) 753-4706 (Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Onondaga, Otsego, Schoharie, Schuyler, Tioga, and Tompkins counties)

Fredonia: (716) 673-3526 (Cattaraugus, Chautauqua, and Erie counties)

Genesee Valley: (585) 658-7960 (Allegany, Genesee, Livingston, Ontario, Seneca, Steuben, Wyoming, and Yates counties)

Mid-Hudson: (845) 257-2950 (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester counties)

Mohawk Regional: (315) 867-2079 (Albany, Columbia, Fulton, Greene, Hamilton, Herkimer, Madison, Montgomery, Oneida, Rensselaer, Saratoga, Schenectady, Warren, and Washington counties)

North Country: (315) 267-2514 (Clinton, Essex, Franklin, Hamilton, and St. Lawrence counties)

Oswego: (315) 963-4291 (Jefferson, Lewis, Oswego, and Wayne counties)

Long Island – Metro: (631) 208-1936 (Nassau and Suffolk and the New York City Boroughs of Bronx, Brooklyn, Manhattan, Queens, and Staten Island counties)

New York State Department of Health

Division of Family Health

Migrant and Seasonal Farmworker Health Program Clinics

Finger Lakes Migrant Health Care Project

165 Main Street, PO Box 423

Penn Yan, New York 14527

Phone: (315) 531-9102

Fax: (315) 531-9103

Hudson River Migrant Health Program

Hudson River Health Care

1037 Main Street

Peekskill, New York 10566

Phone: (914) 734-8503

Fax: (914) 734-8745

Niagara Falls Memorial Medical Center

621 Tenth Street

Niagara Falls, New York 14302

Niagara County Migrant Health Program

Phone: (716) 278-4620

Fax: (716) 285-8992

Oak Orchard Community Health Center

300 West Avenue

Brockport, New York 14420-1118

Phone: (585) 637-5319

Fax: (585) 637-4990

Oswego County Opportunities, Inc

239 Oneida Street

Fulton, New York 13069-1288

Phone: (315) 598-4715

Fax: (315) 598-4733

Suffolk County Health Department

Riverhead Health Center

300 Center Drive

Riverhead, New York 11901

Phone: (631) 852-1819

Fax: (631) 852-3723

Emergency Phone Number (Police, Fire, and Medical):

911 (only to be used for emergencies)

This booklet was originally published on paper and posted to our web site in 2014. The printed book contains the month and year that it was published (05/14) on the back cover. We intend for the printed books to have a shelf life of two to three years. If any parts of the book are updated before the next printing, the update can be found on our web site. If any part of the book is updated, the revision date will be reflected on the online version (MM/YY).

<http://www.labor.ny.gov/immigrants/agriculture-labor-program/services-for-agriculture-workers.shtm>

If you have any questions about anything found in this booklet or anything else regarding farm work in New York, please contact an Agriculture Labor Specialist. See **Contacts**.

This publication was prepared by the Office of Communications of the New York State Department of Labor, State Office Building Campus, Bldg. 12, Albany, N.Y. 12240-0012. It gives general information on some of the laws related to farmworkers in New York State. It is not an official interpretation of the laws.

1-877-466-9757
1-877-IMM-WRKR
www.labor.ny.gov



**Immigrant Policies
and Affairs**

**A Division of
The New York State Department of Labor**

