

Employee Work Schedules Break and Meal Period Compliance NYS Budget Update

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Working to create economic growth, good jobs and strong communities across New York State.



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Independent Contractor vs. Employee

- No Single Factor – The “Common Law Test”
 - Is the worker subject to the control and supervision of the employer in performing the job?
 - Is the work performed part of the usual work of the employer’s business?
 - Does the worker have an independently established business offering similar services to the public?
- NYS Department of Labor’s “17 Questions”



1. Provided a copy of any contracts, or substance of oral agreement
2. Describe the services performed
3. Are these individuals in an independently established business?
4. Can similar services be performed for others in a competitive business?
5. Can work assignments be refused?
6. Is there a requirement to devote a specific amount of time to the services performed?
7. Are they covered under your insurances?
8. Are deductions made?
9. Who provides tools or supplies, materials or equipment?
10. When services are not performed (illness), who furnishes a replacement?
11. Who sets the rate of pay and what is the basis of compensation?
12. How are services obtained?
13. Where are services performed?
14. Is there a requirement to report at established times?
15. Do you supervise or review their work?
16. Do you provide reimbursement of expenses? Fringe benefits?
17. Do you provide training or require attendance at training sessions?



Exempt vs. Non-exempt

- Duties Test
 - Executive, Administrative, Professional, etc.
- Salary Basis Test
- Salary Level Test
- Federal Minimum Salary Level = \$455 per week
- NY Minimum Salary Level for Executive and Administrative =



NYS Exempt Salary Levels Executive and Administrative

Date	Upstate Employers	Large NYC Employers	Small NYC Employers	Nassau, Suffolk, Westchester
12/31/16	\$727.50	\$825	\$787.50	\$750
12/31/17	\$780 \$40,560	\$975 \$50,700	\$900 \$46,800	\$825 \$42,900
12/31/18	\$832	\$1,125	\$1,012.50	\$900
12/31/19	\$885	\$1,125	\$1,125	\$975
12/31/20	\$937	\$1,125	\$1,125	\$1,050
12/31/21	\$937	\$1,125	\$1,125	\$1,125



Meal and Rest Periods

- Labor Law Section 162 – All private and public employers and their employees who work in NYS.
- Meal Periods
 - **Factory Workers** are entitled to a 60-minute lunch break between 11:00 a.m. and 2:00 p.m. and a 60-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m. and lasting more than six hours.
 - **Non-Factory Workers** are entitled to a 30-minute lunch break between 11:00 a.m. and 2:00 p.m. for shifts six hours or longer that extend over that period and a 45-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m.



Meal and Rest Periods

- **All Workers** are entitled to an additional 20-minute meal break between 5:00 p.m. and 7:00 p.m. for workdays that extend from before 11:00 a.m. to after 7:00 p.m.
- Not required to be counted as “hours worked” and not required to be paid for that time.
- Employee may not waive right to take a meal break.
- Remain at workstation
- Shorter meal breaks
- Additional breaks
- Exchange lunch for leaving early



Employee Scheduling Regulations

- Continue the current call-in pay practice of paying a minimum of four hours pay for employees who report to work and for whom no work is available.
- Require that employers pay workers who come to work for a shift not scheduled at least 14 days in advance an additional 2 hours of call-in pay
- Require employers to pay workers who have a shift cancelled less than 72 hours prior to the start of that shift an additional 4 hours of call-in pay
- Require employers who ask workers to call within 72 hours of the start of the shift to confirm whether to report to work or not to pay an additional 4 hours of call-in pay



Employee Scheduling Regulations

- Employees during work weeks when their weekly wages exceed 40 times the applicable minimum wage (For Upstate employees in 2018 that would be in excess of \$416 per week; 40 x \$10.40)
- Employees covered by a collective bargaining agreement that expressly provides for call-in pay
- New employees during their first two weeks of employment
- Regularly scheduled employees who “volunteer to cover” for a shift scheduled to be worked by another employee
- Certain provisions for shifts cancelled due to an act of God



Budget Update – Sexual Harassment

- State Contractors
- Public Employees
- Arbitration Clauses
- Nondisclosure Agreements
- Non-Employees
- Model Sexual Harassment Policy
- Model Sexual Harassment Training



New York State – What's Next?

- “Women’s Agenda”
 - Executive Order #162
 - Sexual harassment
 - Executive Order #177
 - Comparable Worth
 - Salary History Prohibitions
- Criminal justice reform
 - Ban the Box
 - Article 23-A
- Secure Choice
- Elimination of tipped wage
- Method of payment of wages
- Prevailing wage
- Public sector union dues
- Paid sick leave
- Non-compete agreements
- Scaffold law



Next Webinar

End of Session Preview/PFL Update/Obesity in the Workplace

The end of the 2018 legislative session will no doubt be a flurry of activity involving labor and human resources law. We'll catch up on what's happening and identify areas that may require advocacy by Business Council members. In addition...a guest speaker on the impact of obesity in the workplace.

Thursday, May 17, 2018

11:00 am – 12:00 pm

Register at www.bcnys.org



Spring 2018 Webinars

- May 17 - End of Session Preview/PFL Update/Obesity in the Workplace
- June 26 - Legislative Update/End of Session Review



PFL Updates

- April 26
- May 24
- June 14

Thursdays @ 11:00 am



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