

# Worker Rights Handbook



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# Introduction

This handbook provides basic information on the rights of workers in New York State, sources for more in depth information and assistance, and suggestions for how you can best voice your concerns and assert your rights in the workplace. We've done our best to give you useful and accurate information in this book, but laws and procedures change frequently. The information is based on both state and federal law, and is current as of October 2017.

The Western New York Council on Occupational Safety and Health (WNYCOSH) Worker Center provides workers with information, technical assistance, workers' rights education, health and safety training, leadership development, worker advocacy and coalition/movement building.

WNYCOSH was founded in 1979 by labor, environmental, and public health activists. The founding conference was organized to raise public awareness about toxic exposures and illnesses at Love Canal and at the Goodyear plant in Niagara Falls, NY. For over 30 years, WNYCOSH has built a membership base of labor unions, health and safety activists, public health advocates and individuals. WNYCOSH has empowered over 50,000 workers through direct training to identify, evaluate and control hazards, and to create a safer work environment.

In dealing with thousands of aggrieved, angry and frightened workers in the last thirty-eight years, we have been struck by how little public awareness there is of the rights of workers, alarmed at how regularly employers treat employees disrespectfully and unfairly, and surprised that workers do not have access to a single handbook or booklet providing a summary of workplace rights in Western New York. We hope we have succeeded in producing such a handbook.

By far the best defense against employers who are driven to trade worker rights for profit, or who have low ethical standards or bad intentions, is to organize a union at your workplace, which will help greatly to ensure dignity and rights at work.

If you don't have a union, there are still things you can do to assert your right to be treated fairly. You can gather information on your rights and the laws governing your employer's actions; assess the best way to respond; document the problem; get referrals to appropriate governmental and non-governmental agencies for help; and get community and labor support to advocate your case.

While this handbook can assist you in this process, it provides general information and is to be used as a guide only. It is not meant to give legal advice concerning specific conduct of an employer or the actions of any public or private agency. A detailed description of every provision or interpretation of the laws and policies outlined in these pages is beyond the scope of this book. You should consult an attorney or call the Worker Center if you have any questions about your particular situation.

# Wages and Hours

## What is the Minimum Wage I Must Be Paid?

You must be paid at least \$10.40 per hour (as of December 31<sup>st</sup>, 2017), \$11.10 per hour beginning December 31<sup>st</sup>, 2018, and \$11.80 per hour beginning December 31<sup>st</sup>, 2019 for any work you do up to 40 hours in a week<sup>1</sup>. Generally, even if you are paid on a piece rate basis, your pay must average at least the minimum wage for all hours worked in a given week. There are a few exceptions to this requirement. Part-time babysitters and camp counselors are exempted, and restaurant and hotel food service workers who earn tips may be paid a lower wage (specifically, \$7.50 per hour as of December 31<sup>st</sup>, 2016; and \$7.85 per hour as of December 31<sup>st</sup>, 2019), as long as the total of their tips and wages is at least equal to the minimum wage.

For more detailed wage information about hospitality industry workers, go [here](#).

Note: Tipped hotel workers other than those engaged in food service are subject to varying amounts of tip allowances.

Farm workers in general are covered by the same minimum wage standards stated above. There are some exceptions to the rule, and some things employers are allowed to deduct from paychecks, including meals and lodging. This is a complex area of labor regulation; for a complete description of farm labor rules, go [here](#).

## What is Overtime and How Much Must I Be Paid?

If you work over 40 hours in a week, you must be paid 1 ½ times your regular rate for each overtime hour. For example, if your regular rate is \$10/hour, you must be paid \$15 for each overtime hour. Certain employees, such as some salaried employees and professionals, are exempt from the overtime pay requirement. Many salaried employees, however, are entitled to overtime pay for working more than 40 hours in a week, if they are not typically involved in running the enterprise or determining its overall course or policies. Other employees, such as home health aides and live-in domestic workers, are entitled only to 1 ½ times the state minimum wage, not their regular rate, for overtime. Live-in workers also are not eligible for overtime pay until they have worked at least 44 hour in a week.

## What is “Comp Time?” Can My Employer Use It Instead of Paying Me Overtime?

Comp time (or “compensatory time”) is time off from work that is given instead of paying overtime wages. For most hourly employees working in the private sector, the granting of comp time in lieu of overtime pay (even at the employee’s request) is illegal. There are exceptions for public employees, subject to certain conditions. An excellent discussion of this subject may be found [here](#).

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<sup>1</sup> These wage increases apply only to workers outside of the New York City Metropolitan area. Workers in or around New York City have a different minimum wage schedule, which can be found [here](#).

### **When Must I Be Paid?**

Workers must be paid promptly. In most cases, this means every one or two weeks. Your pay must be for all time worked, including activities which employers sometimes claim is “off the clock” like cashing out after your shift ends, setting up machinery, learning jobs, or giving reports to workers on the next shift. Commission salespersons must be paid at least monthly, and not later than the last day of the month following the month in which their commissions were earned.

### **How Can I Tell If I Am Being Paid What I Was Promised**

NYS Labor Law requires that you be given written notice of your straight time wage rate, overtime wage rate (if applicable) and regular payday when you are first hired at any new job, in a language that you understand.

You must be given the notice before you start working on the job and you must sign a statement that you received the notice.

### **What Can and Cannot Be Deducted From My Paycheck?**

Most paychecks have some money deducted, and your employer must give you a written statement that tells you what’s been taken out. Social Security, taxes (an amount based on information you provided the employer on your tax withholding forms), and any wage garnishments or court-ordered payments like child support, may be deducted. Other payments, for example, health or disability insurance, union dues, pension, United Way, or 401(k) contributions, may be deducted but only if you have first authorized this in writing. In some cases (mainly hotel, restaurant and farm workers), employers may also deduct money from your wages for meals or lodging; however, the value of such allowances plus your hourly pay must equal or exceed the minimum wage. It is unlawful for your employer to demand kickbacks, to deduct payments for stolen or damaged property, deficient work or cash register shortages. You cannot be required to pay the cost of buying or cleaning uniforms if doing so lowers your hourly rate below the minimum wage.

### **Independent Contractors**

Employers sometimes misclassify employees as independent contractors, when in fact they are regular employees entitled to overtime, workers’ compensation, unemployment insurance and available benefits. As a rule, you are an independent contractor **only** if you meet all the following qualifications:

- 1) work without regular direction
- 2) are free to provide similar services to other clients
- 3) work on a temporary basis
- 4) are involved in an independent business, profession or occupation

### **Can My Boss Make Me Work Weekends and Night Shift?**

Yes, you may be required to work hours that are inconvenient. If you are over 18, there are generally no restrictions on how many hours you may work in a day or week, or which days you may or may not work. Most workers, however, are entitled to at least one day off (24 consecutive hours) each week.

### **What About Breaks?**

There is no requirement that you be given a break or rest period. However, if an employer provides rest periods for short durations, they must be counted as working time. You must, however, receive an uninterrupted meal period of at least one-half hour if you work a shift of more than six hours. There is no legal requirement for the employer to pay for meal periods.

### **How Much Vacation or Sick Leave is Required?**

There is no requirement to pay sick days, vacation, personal leave or holidays. Employers may provide these or they may be provided through a union contract. Employers must notify employees in writing, or post the policies regarding these benefits in the workplace.

### **I Am An Immigrant/Refugee Worker. Do These Laws and Regulations Apply To Me?**

In a word, yes! All workers, whether immigrant, refugee, or U.S. national, documented or not, are covered by the same statutes. The NYS Department of Labor's Division of Immigrant Policies and Affairs (877-466-9757) can help with immigrant worker issues, and the [New York Immigration Coalition](#) has useful information related to employment.

### **What Can I Do If I Have Not Been Paid What I Am Owed?**

Contact the Western New York Workers' Center as the issue of wage theft is an ongoing campaign. You can also file an unpaid wage complaint with the NYS Department of Labor Division of Labor Standards. Call one of the phone numbers listed below for assistance, or visit the DOL website [here](#). From that page you can download and print the official complaint form.

## **Resources**

### *Getting Help*

NYS Department of Labor

[www.labor.state.ny.us](http://www.labor.state.ny.us)

1(888) 469-7365

US Department of Labor

[www.dol.gov](http://www.dol.gov)

1(866) 487-2365

### *For Information*

Workplace Fairness

<https://www.workplacefairness.org/payhours>

# Termination

## **I Just Got Fired. Do I Have Any Rights to Fight the Termination?**

Yes and no. Union and many public-sector employees are protected by contracts or policies that prohibit discharge without just cause. Unionized workers should immediately seek the assistance of a union representative in the event of termination. Most non-union federal, state and local government employees are covered by a variety of civil service laws that deal with the issue of unfair discharge. Private sector, non-union jobs are different. New York is an “employment at will” state, meaning that a private sector employer can pretty much discharge you for a good reason, a bad reason, or no reason at all, without you having any legal recourse against this. You can be fired even if you are the most senior employee, your performance is outstanding and your attendance perfect. It may seem terribly unfair ... and it is!

## **But They Violated the Procedures in the Employee Handbook!**

Discharge in violation of either a written or implied contract of employment might entitle an employee to sue his employer for reinstatement and lost wages. In a few cases, employee manuals have been found to create an implied contract of employment. If your discharge violates the conditions cited in the manual, call the Worker Center.

## **I Think There is An Issue of Discrimination Here...**

Employers may not discharge an employee because of his or her race, color, creed, religion, gender, sexual orientation, national origin, age, marital status, military status, familial status, domestic violence victim status, pregnancy, political/recreational activities outside of work, disability or union membership. If you feel your termination was a discriminatory act as defined above, report it to the NYS Division of Human Rights or the US Equal Employment Opportunity Commission. You might also be able to initiate a private lawsuit.

Labor Law Section 215-A outlaws discrimination against employees for failure to meet certain ticket quotas. The law covers metermaids, parking enforcement, police officers, and other employees that issue tickets for violating laws. Read about it [here](#).

## **What Other Circumstances Might Make the Termination Illegal?**

If your firing was retaliation for your being a whistleblower – that is, for reporting to a supervisor or to a public agency some violation of law which creates and presents a substantial and specific danger to public health or safety (or refusing to participate in such illegal conduct), you should consult an attorney or contact the appropriate agency. Examples include reporting your employer to the Environmental Protection Agency for illegal dumping of toxic waste, filing a complaint with OSHA or raising safety concerns in the workplace.

If your firing was a result of your participation in any anti-discrimination claim, of yours or a co-workers, you should file a complaint with the EEOC (<http://www.eeoc.gov/employees/charge.cfm>), the NYS Department of Human Rights ([http://www.dhr.ny.gov/how\\_to\\_file\\_a\\_complaint.html](http://www.dhr.ny.gov/how_to_file_a_complaint.html)) and consult an attorney.

If your firing was a result of your participation, on your own time, in lawful political or recreational activities, consult an attorney.

If your termination related to taking time off for medical or family reasons, the time you took off might be protected under the Family and Medical Leave Act (FMLA). See page 15 for more information.

You may be fired for other reasons that could be considered a wrongful termination. The Workers' Center can help in assessing your particular circumstances and refer you to a competent employment attorney if appropriate.

### **I Was Fired While on Disability or Workers' Compensation Leave!**

Your employer cannot fire you because you filed a claim for disability or workers' compensation benefits, but can replace you if you are unable to work. Your job does not have to be held for you until you are able to return to work, unless your leave is covered under the FMLA, or you are covered by a union contract that may provide recall rights while you are on disability or workers' compensation leave. Some public employees also have limited recall rights.

### **OK, My Termination was Legal, but Still Unfair. What Can I Do?**

Unionized employees clearly have an advantage in dealing with any termination – a just cause requirement, contractual rights, a grievance process, union representatives to assist, and the possibility of arbitration by a neutral third party. If you do not have a union, you may have to figure it out yourself and go it alone. In seeking to be reinstated, take a deep breath and remember to always keep your cool. Angry letters or outbursts will only confirm for the employer that they were justified in letting you go. You also need to make the appropriate response at the earliest possible moment – as soon as you receive notification of the termination.

First, go to the personnel or human resource department to find out the employer's policy for handling employee complaints (grievances). Information on your employer's complaint policy may also be found in your employee handbook. Follow this procedure and file a written complaint about the termination. Be brief and factual; avoid critical or harsh language.

Second, if there is no complaint policy, all is not lost. Find out who has the power to reinstate you, and go as high up in the chain of command as is reasonably possible. Request a private meeting to explain why you want to keep your job and why the employer needs you, and see if they can help. Be prepared to be flexible as well as confident. You may have to accept a transfer to another department (particularly if the termination was related to difficulties with a supervisor), a pay cut, or agree to return to work on a probationary basis (if alleged poor performance was the basis for termination).

### **Are Any "Fringe Benefits" Payable Upon Termination?**

Yes. You must be paid for any accrued vacation pay, unless your employer states, in writing (usually in your employee handbook or a separate policy letter or bulletin board posting), that accrued vacation pay will be forfeited upon termination of employment. You can download and print a "Claim for Unpaid Wage Supplements" [here](#).



### **I'm Undocumented, Can I Still File a Claim?**

Yes. The biggest risk for undocumented workers when filing a claim about termination or other workplace issues is retaliation from your employer. Retaliation is illegal, but it does happen, and for undocumented workers the risks can include employers threatening to report or reporting your immigration status to Immigration and Customs Enforcement. The New York State Department of Labor will not report immigration status if you file a claim with them. If you are thinking about reporting your employer for unsafe working conditions, wage theft, discrimination, or any other issue, contact the WNYCOSH Worker Center for assistance.

### **Resources**

#### *Getting Help*

NYS Division of Human Rights

716-847-7632

<https://dhr.ny.gov/how-file-complaint>

US Equal Employment Opportunity Commission

800-669-4000

<http://www.eeoc.gov/employees/charge.cfm>

NYS DOL Division of Immigrant Policies and Affairs

877-466-9757

<https://labor.ny.gov/immigrants/index.shtm>

#### *For Information*

Workplace Fairness

<https://www.workplacefairness.org/terminationunemployment>

# Health and Safety

## **Are There Any Laws Relating to Safety and Health on the Job?**

Yes, OSHA (Occupational Safety and Health Administration) and PESH (NYS Public Employee Safety and Health) protect workers' rights to a safe and healthful workplace. Your employer must provide a place of employment that is free of recognized hazards, and must obey safety standards and regulations. These standards:

- limit the amount of hazardous chemicals workers can be exposed to
- mandate the use of certain safety practices and equipment
- guarantee you the right to file a complaint and get an OSHA inspection
- require employers to train workers about chemical and other hazards
- protect workers against retaliation for raising safety concerns

## **Am I Entitled to Any Information About Chemicals I Work With?**

Yes, OSHA's Hazard Communication Standard (HazComm) says your employer must train you before you work with or are exposed to any chemical product. The training should inform you of the hazards, let you know how you can tell if you are being overexposed, and tell you how you can protect yourself. Employers must also give you access to chemical information sheets, called Material Safety Data Sheets (MSDS), in a language that you understand. All products must be clearly and properly labeled as well.

## **Am I Entitled to Any Other Health and Safety Information?**

Yes, if your employer, OSHA or someone hired by your employer conducts any workplace monitoring (testing the air for chemicals, testing noise levels, or measuring radiation), you have the right to get the results of such tests upon request. You also have the right to get any of your medical records kept by your employer, including all medical exams. Finally, OSHA requires most employers to post OSHA citations in the workplace and keep a yearly log of all reported work-related injuries and illnesses (OSHA 300 Log). You have a right to receive a copy of this log. To get any of this information, give your employer a dated, written request (keep a copy). If it is not provided within 15 days, you can file a complaint with OSHA.

## **What Should I Do If I am Concerned About a Safety Hazard?**

Speak to your supervisor or employer about the situation, and ask them to rectify the hazard. If you have a Union, contact your Union steward. You can also request an OSHA inspector to come to your workplace if you believe hazardous conditions or violations exist. You can file a complaint online [here](#), write a letter to the area OSHA office or call (130 S. Elmwood Avenue, Suite 500, Buffalo, NY 14202-2465 phone: 716-551-3053) identifying the problems and including your name and the name of your employer. OSHA will keep your name confidential if you request them to do so. Your letter should include a detailed list of all of the hazards that you know or think exist at your workplace. This will help the inspector know what to look for and will make the inspection more effective. You are able to file OSHA complaints anonymously or WNYCOSH can file a complaint for you.

### **Can My Employer Retaliate Against Me?**

You have a right to demand a safe work environment without fear of punishment. It is illegal for an employer to punish, discriminate or discipline any worker for raising or reporting health and safety problems, or for participating in safety and health committees or OSHA inspections. If you feel there has been retaliation, file a complaint with OSHA within 30 days from the time of your employer's action.

### **Can I Refuse Work That Might Put Me in Serious Danger?**

OSHA does not sufficiently protect workers for refusing dangerous work. The required conditions to justify a refusal to work are rarely met and workers can face a difficult decision – to work in a dangerous situation or to refuse to work and risk termination or discipline. The best thing to do if you face a serious safety hazard is to call the OSHA Imminent Danger Hotline at 800-321-OSHA (6742). Specify where you are working, the hazard, and your name and telephone number. If OSHA agrees that an imminent danger does exist (a danger involving a risk of death or serious physical harm immediately, such as working on unsafe scaffolding), they will send an inspector to the worksite immediately.

### **Is My Workplace Safe If We Are Meeting OSHA Standards?**

Possibly not. For example, your employer may be meeting OSHA's chemical exposure limits, but many chemicals have been proven to have health effects at or below the legal limits set by OSHA. Also, new chemicals are developed all the time for which no OSHA limits have been set. And OSHA does not cover all workplace hazards that exist, particularly ergonomic dangers such as back and repetitive strain injuries.

### **What Can I Do If I Think The Air In My Workplace Is Making Me Sick?**

Inadequate or poorly maintained ventilation systems in many modern, highly-insulated buildings (with windows that don't open!) may cause a host of respiratory ailments (like asthma) due to smoke, mold, and airborne viruses. Other indoor air quality (IAQ) hazards include asbestos, carbon monoxide, diesel exhaust, ozone, radon gas, and volatile organic compounds (VOCs). Unfortunately, OSHA has no published standards governing indoor air quality, only general guidelines that are not enforceable unless they rise to the level of violating the OSHA "general duty clause." It is up to workers, individually and collectively (through their union, if they have one) to attempt to resolve IAQ problems by working with management to eliminate the source of contamination. You should inform your supervisor and union steward as soon as you suspect that you may be suffering from an air quality related illness. Such an illness may be obvious if you feel better away from the workplace. Keep records—good documentation is important should your illness progress to the point where you may be forced out of work and you need to file a workers' compensation claim. Good sources of information on this subject include:

<http://www.osha.gov/SLTC/indoorairquality/index.html>

[www.epa.gov/iaq](http://www.epa.gov/iaq)

Specific information for school workers (but useful for others) may be found at:

[www.epa.gov/iaq/schools](http://www.epa.gov/iaq/schools).

## **I Am an Immigrant/Refugee Worker - Do I Have the Same Workplace Health and Safety Protections?**

Yes! Immigrant and refugee workers often face a higher risk of workplace injury and illness. All workers have an equal right to a safe and healthy workplace regardless of their immigration status.

## **Are There Any Medical Facilities That Can Help Determine If My Injury or Illness is Work-Related?**

Yes, the Central New York Occupational Health Clinical Center specializes in diagnosing and treating workplace medical conditions, including those that may be related to indoor air quality. See “Getting Help” below for contact information.

## **Resources**

### Getting Help

WNYCOSH

716-833-5416

2495 Main Street, Suite 438

Buffalo, NY 14214

<https://www.wnycosh.org/>

OSHA

716-551-3053

[www.osha.gov/workers.html](http://www.osha.gov/workers.html)

NYS Public Employee Safety & Health

716-847-7133

CNY Occupational Health Clinical Center

315-432-8899

<http://ohccupstate.org/>

### For Information

NYS Dept. of Labor Division of Safety and Health

[http://www.labor.ny.gov/workerprotection/safetyhealth/DOSH\\_PROGRAMS.shtm](http://www.labor.ny.gov/workerprotection/safetyhealth/DOSH_PROGRAMS.shtm)

Workplace Fairness

<https://www.workplacefairness.org/healthsafetyinjury>

# **Your Right to Form a Union**

## **How Can A Union Help Me?**

Working people in all walks of life join together in unions to gain rights, benefits and a voice at work. Unions negotiate and usually obtain better pay, benefits, working conditions and a say in how workers' jobs get done. Almost all union contracts end the "employment at will" status for employees by requiring that "just cause" be proven before a termination can be effective, thus lessening the insecurity, stress and fear for workers.

## **What is a Union Contract?**

The members of the union, usually with help from a union staff-person, sit down with management to negotiate a legally binding contract. The contract sets the terms and conditions of your employment. It typically contains provisions relating to pay and benefits, discipline (prohibiting termination without just cause and establishing procedures for other disciplinary matters) and establishing a formal grievance-arbitration procedure for resolving complaints.

## **Am I Eligible to Join a Union?**

Federal and state laws guarantee most employees the right to join together with other employees for the purpose of collective bargaining, negotiating their terms and conditions of employment and, in the private sector, engaging in other concerted activities for mutual aid and protection. This includes the right to organize, join and support a union of their own choosing. In the private sector, supervisors, managers and a few other kinds of employees are excluded from these protections. Farm workers are not able to form a union in New York State.

## **What Are "Concerted Activities?"**

The National Labor Relations Act gives workers the right to engage in "concerted activities" without the protection of an organized union. Concerted activities occur anytime two or more workers join together in an effort to improve working conditions. Examples might include two workers speaking to the boss about higher wages, or one worker speaking on behalf of him or herself and others about more vacation time. You can file an unfair labor practice complaint with the National Labor Relations Board (NLRB) if an employer violates your right to concerted activity. While such activity is technically protected, without a formally recognized union and collective bargaining agreement you are still considered an at-will employee, subject to your employer's whims and on your own if you need to prove to the NLRB that your concerted activity rights have been violated. Forming a union can give you and your fellow workers the full measure of legal protection.

## **How Do I Go About Forming a Union at My Workplace?**

An employer must recognize and bargain with a union chosen by a majority of the employees. To form a union, you need the backup and hands-on help from the union you are seeking to join. This is typically a national union that has local affiliates or units.

### **Who Should I Contact To Get Help Forming A Union?**

There are many labor unions that can help. Most of them focus on a particular kind of industry or type of service, so contacting someone who understands your workplace is a good start. Calling the baker's union to help organize lumberjacks might not be the best choice! Contact the Workers' Center or Area Labor Federation (phone numbers below) for guidance on this important first step. They will be happy to steer you in the right direction.

### **What If My Employer Opposes Our Effort to Organize a Union?**

The law says your employer cannot punish or discriminate against any worker because of union activity. The employer cannot fire, lay off, discipline, transfer or reassign employees because of their union support, nor even threaten to do any of those things. The employer cannot favor employees who don't support the union over those who do in promotions, job assignments, wages and other working conditions.

The employer cannot lay off employees or take away benefits or privileges employees already have in order to discourage union activity. You have the right to:

- Attend meetings to discuss joining a union
- Read, distribute and discuss union literature as long as you do this in non-work areas during non-work times, such as breaks or lunch hours (Note: the rules are more restrictive in health care institutions)
- Wear union buttons, T-shirts, stickers, hats or other items on the job at most worksites
- Sign a card asking your employer to recognize and bargain with the union
- Sign petitions or file grievances related to wages, hours, working conditions and other job issues (in the public sector, this activity must be part of an attempt to form a union)
- Ask other employees to support the union, to sign union cards or petition or to file grievances

### **Who Will Help If I Am Discriminated Against for Union Activity?**

In spite of your legally-protected right to form a union, some employers go to great lengths to prevent workers from organizing, including engaging in conduct that is in clear violation of labor law. If you think your employer has violated your right to join or support a union or to have a voice on the job, you can file charges with the NLRB (National Labor Relations Board) or PERB (Public Employment Relations Board). Also contact your Union or the Union you are trying to join. Charges with the NLRB must be filed within six months of the illegal action or conduct against you (within four months for PERB). To help your case, keep notes of any incidents such as employer threats, harassment or punishment of workers trying to form a union. Include the time, date, place, a description of the incident, who was involved and the names of any witnesses. The NLRB and PERB can order your employer to stop interfering with employee rights and to provide back pay or reverse any action against workers for their union activity.

## Resources

### Getting Help

WNY Area Labor Federation  
716-852-0375

National Labor Relations Board  
[www.nlr.gov](http://www.nlr.gov)  
Buffalo Office  
716-551-4931

Public Employment Relations Board, Buffalo Office  
716-847-3449

### For Information About Individual Unions

AFL-CIO  
<https://aflcio.org/>

Change to Win Coalition  
<http://www.changetowin.org>

# Family and Medical Leave

The Family and Medical Leave Act (FMLA) is a federal law that gives many workers the right to take up to 12 workweeks of unpaid leave each year for illness, to care for family members, or for the birth or adoption of a child. Employers cannot prevent eligible employees from using the FMLA, nor can they penalize them in any way for missing work for FMLA-acceptable reasons.

## **What is FMLA Leave?**

FMLA leave is when you have to be away from work to care for a child, spouse or parent with a serious health condition or to care for your own serious health condition. It also entitles you to take leave for childbirth, adoption, care for a newborn or recently adopted child or care for a child placed in foster care with you.

## **Am I Eligible for FMLA Leave?**

You are entitled to this unpaid leave if you work for a public or private employer, or a non-profit organization, with 50 or more employees and have been employed there for at least 12 months, and worked at least 1,250 hours (about half-time) in the 12 months before the leave.

## **What if My Child or I Has a Sore Throat and Has to Stay Home?**

You are only entitled to FMLA leave if you, your child, spouse or parent has a serious health condition. Under the FMLA, a serious health condition is any illness, injury, impairment, or physical or mental condition which involves one or more of the following:

- a period of incapacity of more than 3 consecutive calendar days, also involving continuing treatment by a health care provider
- an overnight stay in a hospital and/or any follow up treatment
- any period of incapacity because of pregnancy, or for prenatal care
- any period of incapacity due to a chronic serious health condition, permanently disabling condition or treatment for either
- a condition requiring multiple treatments to prevent a period of incapacity that would last more than three days

## **Can My Request to Go on FMLA Leave Be Denied?**

If the reason for the leave qualifies under the FMLA, and you are an eligible employee, your boss cannot deny it for any reason (production, your importance to the operation, etc.). Nor can you be told to perform light-duty work in lieu of medical leave. You can take the 12 weeks at one time, or at different times during the year, or even take it as partial days (say 1/2 day each week, or 1 day one week and 2 days the next week, say for treatment of a chronic condition).

## **What Do I Need to Do to Get My FMLA Leave?**

You should provide at least 30 days' notice if your need for FMLA leave is foreseeable. If it is not foreseeable, give notice as soon as possible. You are required to inform your employer of the reason for the



leave and may be required to provide certification from a health care provider if the leave is due to a serious health condition. Give your employer enough information so they know it is FMLA leave.

### **I Didn't Know About My Rights to FMLA Leave Until After I Was Out of Work!**

Unfortunately, you may be out of luck. Your entitlement to FMLA leave may be denied if you fail to give proper notice. An exception: covered employers are required to notify employees in writing of FMLA benefits, rights and obligations. A bulletin board poster and description of the FMLA in an employee handbook are typical examples of sufficient notice. Failure by your employer to do the above would entitle you to protection under the FMLA even if you didn't give timely notice of your leave. The best protection against FMLA denial is to know your rights—read the bulletin board at work and study your employee handbook.

### **If I Am Out for a Long Time, Can I Lose My Job and Benefits?**

Whether you are out for a week or 12 weeks, upon your return, you must be restored to your former position (or to an equivalent position) with no loss of seniority or benefits. An “equivalent” position means that it must offer virtually identical pay, benefits, skills and responsibilities. Your employer must also continue all your health benefits while you are out on leave.

### **Can I Be Penalized for Using FMLA Leave?**

You cannot in any way be penalized or discriminated against for missing work if the leave is covered by the FMLA. Absences under the FMLA, therefore, cannot be used as points under an attendance policy, as a reason for denying a pay increase or promotion, as the basis for a poor evaluation, or in any other negative manner. The New York State Paid Family Leave Act also protects employees from any retaliation or discrimination for taking leave for businesses of all sizes.

## **Resources**

### Getting Help

US Department of Labor (FMLA administration)

<http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>

Buffalo 716-842-2950

### For Information

Workplace Fairness

[www.workplacefairness.org/familyleave](http://www.workplacefairness.org/familyleave)

# New York State Paid Family Leave

In January 2018, New York State's Paid Family Leave policy went into effect. The policy covers most private employees in New York State and provides protected and paid time off to bond with new children, care for relatives with serious health conditions, or assist when family members are deployed/on active military service.

## Who is covered?

You are covered by the policy if you are a:

- Full-time private employee who works more than 20 hours per week (after 26 consecutive weeks at work)
- Part-time private employee who works less than 20 hours per week (after 175 non-consecutive days of work)

## Does my immigration/citizenship status matter?

No. All employees listed above are covered regardless of citizenship or immigration status.

## What can I use the leave for?

### *New child*

You can use the leave to bond with a new child, whether that child is born, adopted, or fostered. The leave begins only after the birth/arrival of a child (unless an absence from work is required for the adoption to proceed). Parents are able to take the leave any time during the first 12 months following the birth and/or arrival of a child.

### *Care for relatives*

Leave is available to care for close relatives with serious health conditions. Close relatives include:

- spouses
- domestic partners
- children
- step-children
- parents
- step-parents
- parents-in-law
- grandparents
- grandchildren

Serious health conditions are defined as illnesses, injuries, impairments, and physical or mental conditions that involve inpatient care in a healthcare facility or continuing treatment/supervision by a healthcare provider. Examples include cancer treatments, intense therapy, or surgery and recuperation.

### *Military duty and service*

If a spouse, domestic partner, child, or parent is deployed abroad or has been notified of an impending deployment, you are eligible to use paid family leave to assist with situations that arise from their deployment.

## How long is the leave?

You can take your leave in full-day increments or all at once. The amount of leave you can take resets every year from the day on which you first take leave. For example, if you first take leave on May 7th, 2018, your leave amount would reset on May 7th, 2019.

- In **2018**, you can take up to 8 weeks of leave and receive 50% of your average weekly salary.
- In **2019**, you can take up to 10 weeks of leave and receive 55% of your average weekly salary.
- In **2020**, you can take up to 10 weeks of leave and receive 60% of your average weekly salary.
- In **2021**, you can take up to 12 weeks of leave and receive 67% of your average weekly salary.

### **Who pays for this?**

Paid Family Leave is funded by employees through payroll contributions.

### **How do I apply for leave?**

If you know ahead of time that you will need family leave, you should notify your employer at least 30 days before your leave will start. If that is not possible, tell your employer as soon as possible. You will need to fill out forms to submit. There are separate forms for each type of leave: [bonding](#), [family care](#) and [military deployment](#).

For help filing a claim, including questions about how your claim may affect other benefits you receive, contact the free NYS Paid Family Leave hotline at (844) 337-6303.

### **What about the Family and Medical Leave Act?**

If your leave qualifies under both the NYS Paid Family Leave and the Family Medical Leave Act, you should take the leaves at the same time. You can take leave under the FMLA and Paid Family Leave at different times if you have different events that qualify.

### **Can I be discriminated against or fired for taking leave?**

No. Employers are not allowed to discriminate, discipline, reduce pay or benefits, or fire you for requesting or taking Paid Family Leave. Your employer has to reinstate you to the same or comparable position at the end of your leave. If you think that you have been discriminated or retaliated against, please contact the WNYCOSH Worker Center.

## **Resources**

### *Getting Help*

New York State Paid Family Leave Hotline  
1 (844) 337-6303

Leave Forms

<https://goo.gl/mf8jQL>

### *For Information*

Information for Employees

<https://goo.gl/mVmKfk>

Frequently Asked Questions

<https://goo.gl/zfKHv1>

Paid Family Leave Deduction Calculator

<https://www.ny.gov/paid-family-leave-calculator>

# Discrimination

## What is Discrimination?

Discrimination means you, as an employee or job applicant, are treated worse than someone else because you belong to a protected class. Federal law covers employers with 15 or more employees and prohibits discrimination based on:

- Age
- Pregnancy
- Disability
- Race
- Color
- Religion
- National origin
- Sex
- Genetic information
- Retaliation

New York State law covers employers with 4 or more employees and additionally prohibits discrimination based on:

- Sexual orientation
- Marital status
- Military status
- Domestic violence victim status

## What Does Discrimination Look Like?

Discrimination could result in a direct employment action, such as firing, demotion, failure to promote, reassignment, pay, hours, or other terms/conditions of employment. It is illegal for employers to make these decisions based on any of the factors listed above.

Discrimination could also be in the form of harassment. This could include offensive comments, stereotyping, unwelcome jokes, bullying, physical harassment, or using derogatory name-calling, based on one of the factors listed above. One isolated comment is usually not enough to be considered harassment, unless it is extremely severe or offensive. However, if it is re-occurring and it negatively affects your work, it may be discrimination. If a coworker is harassing you and you report the discrimination, but nothing is done to stop it, the employer may still be responsible. Additionally, discrimination may occur if the employer makes a policy that disproportionately affects people in one of these protected groups.

Furthermore, an employer may also be required to accommodate an employee's sincerely held religious beliefs, such as allowances for special clothing, holidays, grooming practices, or food, unless doing so would impose an undue hardship. An accommodation may be considered *unreasonable* if it would cause an undue hardship on the employer. This is determined on a case-by-case basis.

## Does This Apply to Immigrant/Refugee Workers?

Federal discrimination laws protect all employees in the U.S. regardless of their citizenship or work eligibility. Employers may no more discriminate against an "undocumented" worker than they may discriminate against any other employee. An employee born in a foreign country, appearing to be foreign, or having a foreign name or accent may not be treated differently than other employees.

## Does This Apply to Pregnancy Too?

Yes, the Federal Pregnancy Discrimination Act prohibits employers from terminating, demoting or disciplining a worker because of her pregnancy, childbirth or related medical condition. As long as a

pregnant woman can perform her job functions, an employer cannot refuse to hire her or prohibit her from working. If a worker is unable to perform a job because of the pregnancy, the employer must treat her the same as any other temporarily disabled worker, for example, by providing modified tasks, alternative assignments, disability leave and return to work options.

### **Are There Questions in an Interview or Application That I Don't Have to Answer?**

Questions concerning age, race, religion, marital status, national origin, disability and other personal characteristics are illegal. You cannot, for example, be asked:

- Are you a United States citizen? (*OK question: Are you authorized to work in the U.S.?*)
- Where were you born? Where were your parents born?
- What is your native language? (*OK: What languages do you read, speak or write?*)
- How old are you? (*OK: Are you over 18?*)
- When did you graduate from college? (*OK: What level of education have you completed?*)
- What is your marital status?
- Who lives with you? Do you plan to have a family?
- How many children do you have? What do you do for child-care?
- What social organizations do you belong to? (*OK: Do you belong to any groups that are relevant to your ability to perform this job?*)

### **Can my Employer Retaliate if I File a Claim?**

If you believe discrimination is occurring at your workplace, you have a right to file a claim. It is illegal for an employer to fire, demote, harass, or otherwise retaliate against an employee because he/she engaged in protected activity.

Protected activity includes:

- filing a charge of discrimination
- complaining to his/her employer about discrimination occurring in the workplace
- refusing to participate in discriminatory actions
- participating in a discrimination investigation

### **If I Think Discrimination is Occurring, What Should I Do?**

- Keep a journal that includes incidents, dates, witnesses and evidence
- Talk with co-workers about the discrimination—you may not be alone.
- Explain to your employer why you feel that you are being treated unfairly. If your employer has a complaint procedure, use it.
- If you are a union member, contact your steward or officer.

## **Resources**

### *Getting Help*

Equal Employment Opportunity Commission

[www.eeoc.gov](http://www.eeoc.gov)

1-800-669-4000

NYS Division of Human Rights

<https://dhr.ny.gov/>

1-888-392-3644

### *For Information*

Workplace Fairness

[www.workplacefairness.org/discrimination](http://www.workplacefairness.org/discrimination)

# Sexual Harassment

## **What is Sexual Harassment?**

Sexual harassment is unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- Your submission to or rejection of this conduct may affect whether you keep your job or get a promotion, a good job assignment or some other job benefit; or
- This behavior unreasonably interferes with your work performance or creates an intimidating, hostile or offensive working environment.

The sexual harassment offender can be a man or a woman, a member of the opposite sex or a member of the same sex.

## **Can You Give Me Some Examples of Sexual Harassment?**

Examples of behavior that may constitute sexual harassment include pressure for sexual favors; pornographic material left on your desk or work area; touching, “goosing,” patting, hugging; leering, whistling, catcalls or howling; using demeaning terms such as “sweetheart,” “babe” or “honey;” sexual teasing and jokes; posting cartoons, posters or drawings of a sexual or insulting nature; asking personal questions, telling lies or spreading rumors about your social or sex life; making sexual remarks or gestures and actual or attempted sexual assault. The harasser’s behavior must be unwelcome for the conduct to be considered harassment.

The harasser may be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee. The victim and the harasser can be of either gender. The harasser could be the same or opposite sex as the victim, and the harassment does not necessarily have to be motivated by sexual desire. A victim does not have to be the person harassed, but could be anyone affected by the offensive conduct.

## **What Must My Employer Do If I Am Being Sexually Harassed?**

Sexual harassment is illegal, and no worker should be forced to tolerate it. An employer must investigate sexual harassment complaints and take appropriate action to end the harassment. Prevention is the best policy: employers should clearly communicate to employees that sexual harassment will not be tolerated, should have an effective complaint process, and take immediate and appropriate action when an employee complains.

## **What Should I Do If I Am Being Sexually Harassed?**

You are not required to directly inform the harasser that the conduct is unwelcome, but you should make sure that you, your union if you have one, or someone you designate lets management know about your complaint. You also should keep a written record of the harassment incidents. If your employer has a complaint procedure, you are *required* to use it.

## **I Filed a Complaint With My Employer, But Nothing Happened**

Sexual harassment is an illegal form of sex discrimination, and you may file employment discrimination charges with the EEOC (Equal Employment Opportunity Commission) or the NYS Division of Human Rights (DHR). EEOC charges must be filed within 300 days, though it's preferable to file within 240 days. DHR charges must be filed within one year. You may file a charge as an individual or as part of a group (known as "class action"). You can also file a lawsuit in State Court for a violation of New York's Human Rights Law. The lawsuit must be filed within three years.

## **Resources**

### *Getting Help*

Equal Employment Opportunity Commission

[www.eeoc.gov](http://www.eeoc.gov)

1-800-669-4000

NYS Division of Human Rights

<https://dhr.ny.gov/>

1-888-392-3644

### *For Information*

Workplace Fairness

[www.workplacefairness.org/sexual-harassment-legal-rights](http://www.workplacefairness.org/sexual-harassment-legal-rights)



# **Disability and Accommodation**

The Americans With Disabilities Act (ADA) and the New York State Human Rights Law (HRL) protect persons with disabilities against discrimination in employment.

## **What is a Disability?**

Under the ADA you have a disability if you have a physical or mental impairment that substantially limits you in one or more of your major life activities, such as hearing, speaking, walking, breathing, performing manual tasks, lifting, working, and caring for yourself. You are also covered if you have a record of a disability or are regarded by others as having a disability, even if you do not actually have one. Under the HRL, the definition of disability is broader, and you may be covered for a condition not covered by the ADA.

## **What Protection Does the ADA Provide Me, If I Have a Disability?**

Both laws prohibit discrimination against individuals with disabilities – in job application procedures, hiring, firing, advancement, compensation, training and other terms, conditions and privileges of employment. In addition, both laws require employers to provide a reasonable accommodation so that the employee can perform the essential functions of the job (ADA) or perform the job in a reasonable manner (HRL).

## **Are All Employers Covered By These Laws?**

The ADA covers private sector employers with 15 or more employees and all state and local governments and employment agencies. The HRL covers employers with 4 or more employees.

## **What is the Reasonable Accommodation Requirement?**

If you are or become disabled, your employer is required to make accommodations (changes to the work environment or the way jobs are done) so that you can still work. The accommodation must be reasonable and not impose an undue hardship on the employer (meaning requiring significant difficulty or expense). Employers, especially larger ones, typically have a hard time proving “undue hardship” since most accommodations are not expensive relative to their resources. Though the employer is required to provide the accommodation, you, the worker with a disability, must take the initiative in suggesting what change would make it possible to do the job or in getting the employer to help you figure out the appropriate accommodation.

## **Can You Give Some Examples of Reasonable Accommodations?**

Each disabled worker and the employer can use their creativity or get outside help (see below) to figure out what is best, but here are a few examples:

- Making existing equipment usable—modifying the height of equipment or desks, installing telecommunications for the deaf or computer screen magnifiers
- Restructuring jobs—changing assignments, modifying work schedules so regular medical treatment is possible, or permitting telecommuting for workers who may be homebound
- Providing a reader or interpreter

### **Can An Employer Ask About My Disability in a Job Interview?**

If you are applying for a job, an employer cannot ask you if you are disabled, about the nature or severity of your disability or require you to take a medical exam. If an employer is aware of your disability, you may be asked to describe how you can perform the duties of the job and whether an accommodation would be needed. You may be required to take a medical exam after a job offer.

### **I Think I Am a Victim of Discrimination. What Should I Do?**

Your right to be protected from disability discrimination is enforced by the US Equal Employment Opportunity Commission (EEOC) and the NYS Division of Human Rights. It is always a good idea to keep a written record of all incidents, including a description of the discrimination – what was said, time and place, and witnesses. Be as factual and specific as possible.

## **Resources**

### Getting Help

Equal Employment Opportunity Commission

[www.eeoc.gov](http://www.eeoc.gov)

1-800-669-4000

NYS Division of Human Rights

<https://dhr.ny.gov/>

1-888-392-3644

US Department of Justice, ADA Enforcement

[www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)

1-800-514-0301

Job Accommodation Network

<http://janweb.icdi.wvu.edu>

1-800-232-9675

### For Information on Workstation Accommodation Modifications

WNYCOSH

716-833-5416

2495 Main Street, Suite 438

Buffalo, NY 14214

# Bullying

## **What is Bullying or Harassment?**

Bullying is persistent, abusive behavior designed to make the target feel upset, humiliated, or threatened. The workplace bully may be a boss who constantly criticizes, demeans and undermines employees; a supervisor who delights in overworking and exploiting those beneath him; or a co-worker. Bullying is psychological violence. Bullying tactics include:

- Unfairly blaming others for errors
- Unjustified criticism and trivial fault-finding of work performance
- Making unreasonable demands or denying needed information and resources
- Yelling and screaming insults, put-downs (humiliation) or threats of job loss
- Inconsistent enforcement of arbitrary rules
- Social exclusion
- Stealing credit for another's work

## **How Common is Bullying in the Workplace?**

One study estimates that 1 in 5 American workers has experienced destructive bullying in the past year. Women are more likely to be bullied by their boss, whether male or female, than men. Bullying is much more common than sexual harassment or racially discriminatory behavior.

## **Is Bullying Harmful?**

Bullying affects both job performance and health. Stress, anxiety and anger can build up in the bullied worker resulting in stress-related illness, sick time, and a negative impact on family and marital life. Bullied employees can end up spending between 10 and 50 percent of their time at work defending themselves, networking for support, thinking about the situation, being demotivated and working less efficiently. The workplace and profits can suffer too, from the low morale, fear, anger and stress which poisons the work environment, diminishes productivity and increases absenteeism, staff turnover, workers' compensation claims, and even lawsuits.

## **Is Bullying Illegal?**

Bullying is illegal if it is based on an unlawful reason (see below) or if it crosses the line into criminal behavior. It may also be a violation of a union contract that has a "respect and dignity" clause. Beyond this, the law does not require your employer, boss or supervisor to be nice to you, to be fair or to be kind. However unpleasant or unfair, it is not illegal to have a tyrant or a bully for a boss.

## **How Does Bullying Differ From Illegal Discrimination?**

The law does require that your boss not harass or discriminate against you, or treat you differently, because of your age, race, color, sex, sexual orientation, national origin, creed, religion or disability. If the bully is targeting you for one or more of these reasons, it may be illegal (see section on discrimination). But bullying typically is not directed at a person because of one of these factors; it is typically about taking advantage of someone in a vulnerable position. It is more often about the bully's own inadequacy, insecurity and poor

social skills, and desire to attack and diminish, and thereby control, the perceived threat that someone competent, dedicated and popular represents. It is an exercise of power by humiliating the target.

### **Responding to Bullying Behavior**

Experts recommend the following steps if you are the target of workplace bullying:

- Talk with family and friends to get support
- Report the incident to your supervisor if the bully is a co-worker
- Seek professional help for stress-related health problems
- Keep a journal and get statements from witnesses
- Develop a case against the bully, identifying possible violations of union contract language or internal policies, and identifying higher-ups who may be supportive
- Clarify what you want (a transfer, damages, severance package, or something else)
- Meet with senior management (as high up as possible)
- You might also consider consulting an attorney

### **Resources**

#### *Getting Help*

Workplace Bullying and Trauma Institute

[www.bullybusters.org](http://www.bullybusters.org)

UK Workplace Bullying Site

[www.workplacebullying.co.uk](http://www.workplacebullying.co.uk)

# Teen Workers

There are both federal and state laws to protect young workers under 18 years old.

## What Work Restrictions Apply to Teenagers?

If you are under 18, your boss cannot ask you to do the following:

- Use electric woodworking, lifting, slicing or baking machines, or almost any power-driven machine
- Work in construction, including wrecking, demolition, roofing, excavation or exterior painting from an elevated surface
- Work as a helper on a motor vehicle
- Work in any logging or mining operation
- Many other tasks that are restricted—contact one of the resources listed at the bottom for more information

If you are under 16, in addition to the jobs listed above, your boss cannot ask you to do the following:

- Work in a factory (except clerical in an enclosed office)
- Work with washing, grinding, cutting, slicing, pressing or mixing machinery
- Clean, oil, wipe or adjust belts to machinery

If you are under 14, all employment (including babysitting) is generally restricted, except for certain tasks like newspaper delivery and fruit or vegetable harvesting on a part-time, irregular basis. There are a few other exceptions as well.

## What Restrictions as to Hours of Work Apply to Teenagers?

If you are 14 or 15, your boss cannot have you work:

- During school hours
- More than 3 hours on a school day or 8 hours on other days
- After 7 pm when school is in session
- After 9 pm in the summer
- More than 18 hours in a school week or 40 hours in a non-school week

If you are 16 or 17, your boss cannot have you work:

- More than 4 hours Monday through Thursday during school
- More than 8 hours on Friday, Saturday, Sunday or holidays
- More than 28 hours in a school week or 48 hours when school is not in session
- Later than 10 pm when school is in session or later than midnight when school is out

If you are 16 or 17 years old, not in school and have a full-time employment certificate, you may work the same number of hours as an adult worker. However, until you turn 18, you are subject to the same restrictions that are listed above as to the kinds of work you are allowed to do.

**What Wage Regulations Apply to Teenagers?**

Like all workers, youths must be paid at least the minimum wage, currently (2017) \$9.70/hour. Youths must be paid for all the hours or parts of an hour they work, and are entitled to overtime pay (one and one-half times their regular rate) for all hours worked over 40 per week.

**Do Teenagers Have the Right to Join a Union?**

Yes, there is no distinction between teenagers and any other worker when it comes to union rights. Teens have the right, as all workers do, to join together with other workers in concerted action in unions or otherwise to talk about and seek to improve their working conditions.

**What Are Working Papers?**

All young people under 18, including high school graduates and those who have left school, must obtain working papers (also called employment certificates or permits) before they may begin work. There are a few exceptions, including caddies, babysitters and college students 16 years of age or over who are employed by a non-profit college. Working papers are issued by the local school system.

**What Can I Do to Protect My Health and Safety on the Job?**

To start with, remember that the legal restrictions on hours of work and the kind of work you are allowed to do are designed to help protect you from being hurt. Don't do any potentially dangerous work that is prohibited by law, or work long hours that will lead to fatigue—tired workers get injured! Be aware of your surroundings and identify hazards that may cause injury or illness, things like unguarded meat slicers or chemicals with hard-to-pronounce names. Your employer is required to provide training about any health or safety hazard you may encounter; make sure you are getting that training. If you have any questions or concerns, stop what you are doing and ask your supervisor. For more information, see "Health And Safety" on page 9 of this booklet.

## Resources

### Getting Help

Teen workers should be encouraged to contact an adult, such as a family member or teacher, if they are concerned about their safety at work, feel uncomfortable about anything happening at work (for example, sexual harassment or racial discrimination) or if they feel that child labor laws are being violated. For more information or help taking action, contact one of the following:

NYS Department of Labor  
716-847-7141

<http://labor.ny.gov/workerprotection/laborstandards/workprot/minors.shtm>

US Department of Labor  
716-842-2950

[www.dol.gov/dol/topic/youthlabor/Kidspages.htm](http://www.dol.gov/dol/topic/youthlabor/Kidspages.htm)

WNYCOSH  
716-833-5416  
2495 Main Street, Suite 438  
Buffalo, NY 14214

# **Workers' Compensation**

## **New York State Workers' Compensation**

Workers' Compensation is provided for disability or death as a result of a work related injury or disease, without regard to who may be at fault.

## **Rights and Responsibilities Under the Workers' Compensation Act**

### **Medical Care**

You have the right to reasonable and proper medical care to cure or relieve the effects of rehabilitative injuries or diseases. This includes medical, surgical, nursing, and hospital services. You are also entitled to be reimbursed for any reasonable transportation costs incurred in obtaining medical treatment.

### **Wage Loss Benefits**

You have a right to weekly compensation benefits, which may be claimed as long as a disability and wage loss continue. These compensation benefits may be paid at a total or partial disability rate depending upon the extent of your disability. You may also be entitled to a schedule or lump sum award for permanent disability.

### **Prompt Payment**

Prompt payment of benefits is required by law. In cases no in dispute in which lost time from employment exceeds seven (7) days, the first payment is due within eighteen (18) days after the employer receives notice of the injury, whichever is greater.

### **Prompt Reporting**

Details of work-related accident or disease must be reported as soon as possible to your employer, supervisor, or other person in charge, as well as to your union representative if you belong to a union.

### **Right to Hearing**

If you feel that you are being denied rights provided by law, you are entitled to a hearing before an administrative law judge, and you have a right to be represented by legal counsel at all hearings.

### **Vocational Rehabilitation**

If you are unable to perform work for which you had previous training or experience, you are entitled to vocational rehabilitation, including counseling, guidance, specialized job placement, and short-term retraining.



## **Legal Protection**

The law protects an injured worker who seeks to claim compensation for disability resulting from an on-the-job injury. It is unlawful for an employer to discriminate against a worker who has or aids in a claim for compensation.

## **What to Do in the Event of an On-the-Job Injury**

### **Step 1: Medical Care**

Obtain first-aid or other necessary medical treatment as soon as possible. You have a right to choose your own physician, podiatrist, or chiropractor to treat you, provided that he or she is authorized by the Workers' Compensation Board to treat the type of injury incurred. Necessary treatment will be paid directly by your employer, or your employer's insurance company if the case is not disputed. If the case is disputed, hearings will be held to determine, among other things, the responsibility for medical bills.

### **Step 2: Union Representative**

Contact your union steward and union hall as soon as possible. They will be sure to protect your rights, as well as assist you in obtaining medical help, sickness and health benefits, and legal advice.

### **Step 3: Accident Report**

After conferring with your union representative, or an attorney, you must notify your supervisor or foreman of the injury as soon as possible. If you fail to inform your employer, in writing, within thirty (30) days after the date of the accident or within ninety (90) days after your disablement from an occupational disease or after you learn that such a disease may be due to the nature of your work, you may lose your right to Workers' Compensation benefits. Be careful in filing an accident report. This report should clearly state how the accident happened and what unsafe conditions existed. This report should list each and every part of your body that was injured, even if you believe the injury to be slight.

### **Step 4: Statements**

You are required to complete a claim for Workers' Compensation on Form C-3. This C-3 Form should be provided to your employer and mailed to the nearest office of the Workers' Compensation Board (a list of Board Offices is contained herein). If this is not done within two (2) years from the date of the accident causing the injury, or from the date of disablement from an occupational disease, you may lose your right to benefits (if Form C-3 is not available from your union hall or employer, it may be obtained by writing to or calling the nearest office of the Workers' Compensation Board).

You are not required and should not give a statement to any person representing an employer, contractor, or their insurance representatives without first obtaining legal advice. The simplest advice is: never give a statement. In the event that you choose to do so, it should only be done in the presence of your union representative or your attorney. Once tape-recorded or signed, that statement

can be used against you at a later date. Therefore, a statement should not be given except after consultation with your union representative or attorney.

### **Step 5: Keep Records**

It is important that an injured worker keep accurate records of any out-of-pocket expenses incurred as a result of an injury. Dates, times, medical treatment, or hospitalization, transportation costs and mileage, names of witnesses and a general outline of the ongoing disability, pain and suffering and change in lifestyle that has resulted from the injury are important to record. This handbook and daily log can prove effective in meeting these needs.

### **Third-Party Legal Action: An Additional Right**

Besides Workers' Compensation coverage, an injured worker has the right to bring a lawsuit against any third-party whose carelessness contributed to the work injury. Please consult an attorney to review your possible third-party lawsuit rights after a work accident. The Legislature of the State of New York has even enacted legislation to protect construction workers from bodily harm and to eradicate dangerous conditions from the work site. Through the efforts of organized labor, the first "construction site" laws were enacted in 1885 and have been continually amended and strengthened. These laws now require construction site owners and general contractors to provide all workers on a site with a safe place in which to work. A worker who is injured on a construction site may now institute a civil lawsuit against the site owner and general contractor and be entitled to recover full monetary damages from the site owner and general contractor in addition to the receipt of Workers' Compensation coverage. These civil damages are not limited or restricted in amount (as are Workers' Compensation benefits) and may include monetary awards for pain and suffering, permanent injury, full loss of earnings and fringe benefits, and any resulting changes in lifestyle due to disability.

### **Do I Need a Lawyer?**

Once an injury has occurred and after receiving medical attention, the question always arises: "Do I need an attorney?" You should always seek the advice of an experienced attorney since such advice is available free of charge. As outlined above, you need not settle for the limited benefits provided by the Workers' Compensation system. The Legislature of the State of New York has provided you with an additional comprehensive civil remedy under the New York State Labor law to recover full damages for work site injury.

### **Other Sources of Income**

#### **Disability**

If your compensation claim is contested by the insurance carrier or if you are disabled by an off-the-job injury or illness you may be eligible for disability benefits. This system provides less money for more limited periods than the Workers' Compensation system.

### **Social Security Disability Insurance**

This is part of the Federal Social Security system. You must have made payments through your job. It is intended for people with long-term total disability or permanent disability. To be eligible, if you are thirty-one (31) or older, you must have contributed to Social Security for at least ten (10) years. The necessary time in this system is reduced for workers under thirty-one (31). The disability requirements are very stringent. You must be able to document that you are unable to work. Benefits are based on your average earnings over a period of time. If you then receive Workers' Compensation benefits, your federal disability payments may be reduced.

### **Medicaid**

Workers' Compensation includes medical care cost, but the disability system does not. If your bills are very high and your family income very low, you might be eligible for Medicaid, a state program for people unable to pay doctor bills. Even if you are receiving medical care through the compensation system, your drop in earnings might make other members of your family eligible for Medicaid. Check with your city or county Department of Social Services.

### **Supplemental Nutrition Assistance Program**

If you and your family are trying to live on only cash benefits, your income might be low enough to qualify you for the Supplemental Nutrition Assistance Program (SNAP). You can apply for SNAP benefits online [here](#).

### **Union Benefits**

Check with your local union to see if you are entitled to any union-related sickness and health welfare benefits.

### **Resources**

#### Getting Help

New York State Workers Compensation Board  
(877) 632-4996

*District offices are located throughout the state. A comprehensive list and map can be found [here](#).*

Claimant Information Packets, C-3 Forms (and other claim forms), online claim processing, and general information can be found at: [www.wcb.ny.gov](http://www.wcb.ny.gov)

# **NYS Disability**

## **What is NYS Disability?**

New York State Disability benefits are cash payments made to workers who suffer an off-the-job injury or illness. Covered employers are required to carry insurance that will provide a weekly benefit to temporarily disabled workers.

## **Do I Work For a Covered Employer?**

Yes, in most cases, if you've been on the job for at least four weeks. Some exceptions include farmworkers, government employees, railroad or maritime workers and certain employees of religious organizations.

## **Is There Any Cost to Employees for NYS Disability Insurance?**

Maybe. Employers are not required to charge employees for a share of NYS disability insurance costs, but may deduct no more than 60¢ a week to offset the cost of providing this benefit. Some employers also offer supplemental disability benefits (AFLAC is one example) at additional cost. Such plans in conjunction with NYS Disability often replace all or nearly all of a worker's lost wages.

## **What Benefits Will I Receive Under NYS Disability?**

NYS Disability pays 50% of your average weekly wage, up to a maximum of \$170/week. After a seven-day waiting period, benefits are paid for a maximum of twenty-six weeks. Unlike Workers' Compensation, medical expenses are the responsibility of the claimant.

## **Can I Collect NYS Disability Benefits if I Am On Pregnancy or Maternity Leave?**

In many cases, yes. If you experience complications from your pregnancy and/or maternity leave and have medical certification that you are unable to work, you would be eligible.

## **I Am On FMLA Leave. Am I Eligible For NYS Disability?**

Definitely! In fact, being on FMLA leave means your employer is obligated to maintain his share of the cost of your medical insurance, so your liability for medical expenses related to your disabling condition will be less. If you suffer an off-the-job injury or illness and expect to miss significant time from work, you should apply for FMLA leave if you are eligible, as well as submitting a claim for NYS Disability. See "Family & Medical Leave," page 15.

## **I Got Laid Off Last Month and Then Broke My Leg. Am I Still Eligible For NYS Disability?**

Yes. You are eligible as long as you are collecting unemployment compensation, up to twenty-six weeks. Of course, you could not collect both unemployment and disability benefits at the same time.

**Can My Employer Make Me Get a Medical Examination?**

Yes, by the employer's choice of medical provider, but not more than once a week and at the employer's expense.

**OK, I Think I Am Eligible. How Do I File A Claim?**

If you are presently employed or have been unemployed four weeks or less, file a DB-450 claim form with your current or last employer. If you've been out of work more than four weeks, file a DB-300 claim form and mail it to the address on the form. In either case, your health care provider must complete Part B of the form. The Workers' Compensation Board administers NYS Disability claims, and forms are available online at their [website](#), or by calling one of the district offices listed below.

**Resources***Getting Help*

NYS Workers' Compensation Board District Offices

877-632-4996

<http://www.wcb.ny.gov/content/main/Contact.jsp>

# Unemployment Insurance

Unemployment Insurance is an area of interest to workers that undergoes occasional alteration. Some information in this section—mostly about official contact numbers and amount and duration of benefits—is subject to change. The best source of up-to-date information is the New York State Department of Labor (NYSDOL) [website](#).

## **I Just Lost My Job. Can I Receive Unemployment Benefits?**

Yes, in most cases. Some exceptions are undocumented immigrants employed in any occupation, babysitters, certain employees of religious organizations, caddies, some government employees, independent contractors, railroad workers, some commission salespeople and generally, anyone whose earnings are not taxable. If you worked for a covered employer, meet certain earnings and work criteria for the previous 15 months, and were laid off from your job or fired for any reason except misconduct or committing a felony related to your employment, you are eligible for benefits. For example, you are entitled to benefits if you were fired for poor performance, attendance problems because of illness, or even just because your boss didn't like you or wanted to hire his nephew. Benefits may be denied if you quit your last job without good cause. Benefits will be delayed for seven weeks if you are on strike or have been locked out.

## **I Had Good Cause To Quit My Job. Can I Still Receive Benefits?**

Maybe. If you quit for a good reason, for example, not receiving wages or being a victim of sexual harassment or illegal discrimination, you may be entitled to benefits. Each case is judged on its own merits, and it is likely that initially your claim would be denied. You would have to request a hearing to plead your case—see the last paragraph of this section for further information.

## **How Do I File a Claim for Benefits?**

You can get information at the NYSDOL Telephone Claims Center (see below), but you must apply by phone (call 888-209-8124 toll-free from a touch-tone phone) or online at [www.labor.state.ny.us](http://www.labor.state.ny.us). File your claim in the first week that you have become unemployed. Information you will need includes your social security number, driver's license number or other positive identification, your home address and phone number, and the names and addresses of all employers in the last 18 months. Be completely truthful in your application because a false statement may result in a denial of benefits. Once your claim is processed and approved, you will call a different number (currently 888- 581-5812) or go online to the DOL website to claim benefits each week you are unemployed.

## **How Long Can I Receive Benefits?**

This is a question that has become much more difficult to answer due to the various benefit extensions that have been introduced as a result of today's high unemployment rates. Depending on the date you file (or filed) your original claim, between "regular," "emergency," and "extended" unemployment benefits you could receive benefits for as many as 99 weeks. However, the emergency and extended benefit programs will eventually expire when the economy returns to a more "normal" condition. When that happens, you can receive benefits for up to 26 weeks (longer if you find part-time employment and receive only a partial benefit). Under some circumstances, full benefits may be payable for more than 26 weeks - for example, if

you are enrolled in an approved training program. The best way to determine how long you will be eligible for benefits is to use the Benefits Calculator on the NYSDOL website, [www.labor.state.ny.us](http://www.labor.state.ny.us). Simply enter the date of your original claim filing and the calculator will tell you how many weeks of benefits you are entitled to.

### **How Much Will I Receive?**

For each full week's unemployment, you will receive approximately one-half of your average gross weekly wages during the period used to calculate your benefit rate, up to a maximum benefit of \$435.

### **Can My Benefits Be Cut or Stopped Once I Start Receiving Them?**

Yes, if you do not do what is expected of you. What is expected is that you will actively look for work and keep a record of that search. You cannot refuse a job offer if it is for work you are trained to do and which pays the prevailing wage for that kind of work in your area. You may be required to travel a longer distance to get to a new job. You may not, however, be required to accept a job if travel involves an unreasonable distance or cost. You must be available and ready to work. For example, if you are sick or injured, caring for a sick relative, or otherwise unavailable, your benefits may be suspended or reduced.

### **Can I Get Help Looking For Work or Job Training?**

Your local Department of Labor Community Service Center is the place to go to get answers to these questions. There you will find information and help with evaluating your job skills and interests, preparing resumes, tracking down job leads and using the internet and other resources to find employment. They can also help get you connected to a wide variety of state and federal job training programs and other educational opportunities.

### **I Complied With All the Requirements and My Benefit Claim Was Still Denied. Now What?**

If you disagree with any ruling, you have 30 days after the determination is mailed to you to notify that office that you want a hearing before an administrative law judge (ALJ). You should request a hearing (in writing) if your claim is denied or your benefit is reduced, if you think your boss is wrong about why you left employment, or there is a dispute about your length of employment, wage rate, or any other matter. Generally, the first hearing in the appeal process is held by telephone, in the form of a conference call between the ALJ, your employer, and yourself. At the hearing, you and the employer may present evidence and have witnesses testify. You can also request the ALJ to subpoena necessary documents or witnesses. If you feel uncomfortable handling the case yourself, you may wish to retain a lawyer with experience in such cases. The lawyer only gets paid if you win the case, and the Appeal Board must approve the fee.

Based on the evidence presented, the ALJ will decide whether you are entitled to benefits. If you disagree with the decision, you can appeal to the Appeal Board. You have 20 days after the decision is mailed to you to file an appeal.

## **Resources**

### *Getting Help*

NYS Department of Labor Telephone Claims Center  
888-209-8124

NYS DOL Website

[www.labor.state.ny.us](http://www.labor.state.ny.us)

Legal Aid Bureau of Buffalo, Inc.

716-853-9555

<http://www.legalaidbuffalo.org>



## **Prior Record**

### **If I Go for a Job Interview, Can I be Asked Anything About My Arrest Record?**

No. The New York State Human Rights Law makes it illegal for most employers and licensing agencies (one exception: law enforcement jobs) to ask applicants to disclose or discuss any arrest that did not lead to conviction. The same law prohibits public and private employers from denying a job, or in any way discriminating, because of any arrest that did not result in conviction.

### **OK, They Can't Ask About My Arrests. What About Convictions?**

It is legal for employers and licensing agencies to ask individuals about past convictions for criminal offenses. A guilty plea is the same as a conviction.

### **Can I Be Denied Employment Because of My Record of Convictions?**

The New York State Corrections Law and the NYS Human Rights Law protect ex-offenders from being unfairly denied jobs or occupational licenses because of their convictions. It is illegal to deny any ex-offender a job or license because of his or her past conviction(s) unless that person's conviction(s) are "directly related" to the job in question, or hiring the person would create an "unreasonable risk" to the safety of people or property. It also makes it illegal for an employer to have a policy of not hiring any person with a criminal history.

### **How Can I Tell If My Conviction is "Directly Related" to the Job?**

An example of "directly related" would be a person who has a conviction for embezzlement and applies for a job as a bank teller. This individual's conviction for embezzlement can be considered to be job-related in this instance but would not be if he/she were applying for a job as a machine operator. In practice, whether or not your conviction is so job-related as to justify a denial of employment must be determined on a case-by-case basis. Beside the relationship between the criminal offense and the job duties, other factors that would be considered include the seriousness of the offenses, the time that has elapsed since the offenses, evidence of rehabilitation and so on.

### **Are There Any Federal Protections for Ex-Offenders?**

Since minorities are arrested and convicted at a greater rate than whites, courts have found that policies that deny jobs on the basis of arrests or criminal record have a racially discriminatory effect. In some cases, therefore, a refusal to hire on the basis of a criminal record may be illegal race discrimination under federal civil rights laws.

### **I Think I've Been Denied My Rights. What Can I Do?**

If you feel you have been asked illegal pre-employment inquiries about arrests that did not result in conviction, or been denied jobs or occupational licenses because of such arrests, or believe you have been denied employment or occupational licenses because of a past criminal conviction(s), contact one of the agencies below. In some cases you may also be entitled to file a lawsuit.

## Resources

### Getting Help

NYS Division of Human Rights

<https://dhr.ny.gov/>

888-392-3644

Legal Aid Bureau of Buffalo, Inc.

716-853-9555

<http://www.legalaidbuffalo.org>

Prisoners are People Too

<http://www.prp2.org>

716-834-8438

Center for Employment Opportunities

<http://ceoworks.org/our-offices/buffalo>

716-842-6320

# Personal Rights

## **I'm Concerned That My Personnel File May Contain a Lot of False Information About Me What Can I Do?**

Your personnel file typically contains information you know about or have given the employer, including some personal information, workplace records like wages and hours, accrued benefits, reprimands if you have them. In fact, however, there is not much control over what information employers can collect and keep about you, if they want. This can include performance evaluations you haven't seen, comments from co-workers or clients, references or any other information your employer has on you.

### **Can I find out what is in my file?**

There are no Federal or NYS laws giving you the right to access, make copies of, or contest what is in your personnel file. (Some other states do provide this right.) You can, and should, ask to see your personnel file, but your employer is not required to comply. You may also want to request in writing that certain information in the file be kept confidential - health information or, perhaps, addresses and phone numbers (for example, if you are concerned about domestic violence). Again, there is no legal requirement that the employer comply with the request.

### **Can My Employer Spy On Me at Work?**

An owner or manager of any premises cannot install or use a mirror, peephole, camera, video recorder, or other viewing device to observe the interior of a fitting room, restroom, toilet, bathroom, washroom, shower, or any room assigned to guests of a hotel or motel. Victims of unlawful observation have been allowed to sue for infliction of emotional distress. There are no laws restricting video surveillance of public places, so an employer can install cameras covering areas of the workplace that are not covered by the above prohibition, such as hallways, lobbies, work areas and parking lots. Employers are not allowed to spy on union activities.

### **Can My Employer Listen In On My Phone Calls or Check Email?**

Under the applicable Federal laws, the Electronic Communications Privacy Act of 1986 and the Stored Communications Act, an employer can monitor your phone conversations with the prior consent of at least one party to the conversation or through an extension phone used in the ordinary course of the employer's business. Your emails can be accessed with the prior consent of at least one party to the communication. Consent can be "express," such as if you signed a form specifically granting consent to monitoring and/or accessing; or it can be "implied" if you have been notified that the employer will monitor and/or access. If the monitoring or accessing is based on consent, it cannot exceed the scope of the consent. Employers who are providers of wire or electronic communications have somewhat greater latitude in monitoring and accessing communications. If you are using an employer provided computer, or email address, they are the property of the employer and can be accessed or monitored without your permission or knowledge.

In New York, it is a felony to monitor or record a telephone call or a personal conversation or to intercept or access an electronic communication without the consent of at least one of the parties to the discussion or communication. It is not clear whether "implied consent" would be sufficient. The authors of this Handbook

are not aware of any employer who has been prosecuted under this law. The two Federal laws allow victims to sue for violations, but New York does not yet allow a victim to sue. Union contracts sometimes establish limits on an employer's right to monitor. Public sector employees might have additional protections under the U.S. and New York constitutions. These laws are extremely complex and you should seek legal advice if you have a concern.

### **Can My Employer Search My Desk or Personal Property?**

Private sector employees in New York generally have no protections against searches of their lockers, desks or work areas. Your employer may notify you that all personal belongings, such as briefcases and hand bags, are subject to search. Your employer cannot open or read a sealed letter or private communication to you. If the search is done in an extremely abusive manner, you might have a claim for intentional infliction of emotional distress. Public sector employees might have additional protections under the U.S. and New York constitutions.

### **Can An Employer Get My Credit History or Get Information about My Lifestyle?**

The Fair Credit Reporting Act (FCRA) does not allow an employer to ask an outside agency, such as a detective agency or credit bureau, to investigate and report on your personal characteristics, lifestyle, character, general reputation or credit standing unless the employer has first notified you in writing that such a report might be obtained and you have given your advance written consent to the investigation. Also, you must be furnished clear written notice of your rights under the FCRA. If an employer intends to take adverse action against you, such as refusing to hire you or firing you, based on the report, the employer must first give you a copy of the report. You have additional rights under the FCRA. The FCRA is enforced by the Federal Trade Commission. Victims of FCRA violations are allowed to file a lawsuit.

### **Can An Employer Conduct Mandatory Drug Testing?**

If you work in the private sector in New York, you have little protection against mandatory, indiscriminate or inaccurate drug tests, even if there is no good reason for your employer to suspect drug usage. In general, the employment-at-will doctrine (see chapter on Termination) is given more weight than your right to privacy. If you work in the public sector, blanket testing of entire workforces is generally not permitted. In certain circumstances, however, such as where the law requires it, or there is an issue of public safety, random drug testing is permissible.

### **Can An Employer Make Me Take a Lie Detector Test?**

For private sector employees, generally no. The Employee Polygraph Protection Act (EPPA) prohibits private sector employers from asking or requiring an employee to take any kind of lie detector test and from taking any adverse action against an employee for refusing to take a lie detector test. Under a limited exception involving investigations of economic loss, an employer may ask, but not require, an employee to take a polygraph. test, and the employer is required to first provide the employee with written notice of his or her rights under the EPPA as well as other information about the examination. There are a few other exceptions under the EPPA regarding the use of polygraphs. Although New York does not have a general law covering lie detectors or polygraphs, the use of "psychological stress evaluators" (PSE's) is strictly prohibited. PSE's are devices that supposedly measure truthfulness based on voice fluctuations or

vocal stress. An employer cannot even request or suggest that an employee or prospective employee undergo a PSE test. An employer who violates the prohibitions regarding PSE's commits a misdemeanor and can be sued by the victim.

### **Can An Employer Find Out My Genetic Information?**

Under New York's Human Rights Law, an employer cannot request, require, or administer a genetic test to a person as a condition of employment, and an employer cannot obtain an individual's genetic test results. However, an employer can require a specific genetic test if it is directly related to an occupational environment where an employee or applicant with a particular genetic abnormality might be at increased risk. Written informed consent must be given before a genetic test can be performed.

### **Can An Employer Make Me Take a “Personality” or “Honesty” Test?**

Most likely, yes. Tests that supposedly measure an applicant's or employee's personality or "honesty" are becoming more common, but there are no specific Federal or New York laws regarding their use. These are usually paper and pencil tests, but sometimes they are given over the internet or by telephone, with responses to be given by touch-tone. If the use of these tests causes a disproportionate number of persons in categories protected by the antidiscrimination laws to be excluded from jobs, their use might be unlawful. See section on Discrimination for a listing of agencies that might be able to provide more information.

### **Can I Be Fired for My Political Activities?**

Under New York law, an employer generally cannot fire or otherwise discriminate against an employee because of the person's legal political activities outside of working hours, off the employer's premises, and when such activities do not involve the use of the employer's equipment or property. Somewhat different rules apply to public sector employees, who also are covered by the free speech provisions of the U.S. and New York Constitutions. Public sector employees may also have additional constitutional and statutory protections.

## **Resources**

### *Getting Help*

NY Civil Liberties Union

[www.nyclu.org](http://www.nyclu.org)

Western New York Regional Office

716-332-4658

Privacy Rights Clearinghouse

[www.privacyrights.org](http://www.privacyrights.org)

National Work Rights Institute

[www.workrights.org](http://www.workrights.org)

This handbook is adapted from the Workers' Rights Handbook of the Tompkins County Workers' Center. Contributors include: Frank J. Dolce Esq., Anna Falicov Esq., Marshall Bertram, Daniel Maguire, Shivali Haribhakti, Lelenia Moutray, Brian Brown-Cashdollar, Joe Hall, Mary Lister and Susanne Donovan.

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