

Worker Rights Handbook



WNYCOSH Worker Center
2495 Main Street, Suite 438
Buffalo, NY 14214
Phone: (716) 833-5416
www.wnycosh.org
WNYCOSH Worker Center Hotline
(716) 206-3550
info@wnycosh.org

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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 it is current as of April 2025.

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 45 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 45 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?

In Western New York, all workers must be paid at least \$15.50 per hour (as of December 31st, 2024) for any work you do up to 40 hours in a week¹. 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, \$10.35 per hour as of December 31st, 2024), 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, visit the [NYS Department of Labor website](#). Please note that 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, visit the [NYS Department of Labor website](#).

In WNY, home healthcare workers have a minimum wage of \$18.10 per hour as of December 31st, 2024. For more information on specific home healthcare standards, visit the [NYS Department of Labor website](#).

What is Overtime and How Much Must I Be Paid?

If you work over 40 hours in a week, you must be paid 1½ times your regular rate for each overtime hour. For example, if your regular rate is \$20/hour, you must be paid \$30 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 1½ 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 hours in a week.

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

Compensatory time (or “comp 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 on the [Workplace Fairness website](#).

¹ 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. Commissioned 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 this 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.

What is an Independent Contractor?

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

Independent contractors are exempted from some of the protections of regular workers. If you are unsure if you are an independent contractor or you think your employer has misclassified you, please reach out to the Worker Center.

Can My Boss Make Me Work Weekends and Night Shifts?

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?

You must receive an uninterrupted meal period of at least 30 minutes if you work a shift of more than 6 hours. There is no legal requirement for employers to pay for meal periods, unless you were required to work during that time. There is no requirement that you be given other breaks or rest periods. However, if an employer provides rest periods for short durations, they must be counted as working time.

How Much Vacation or Sick Leave is Required?

New York has a Paid Sick Leave Law, along with Paid Family Leave and Paid Prenatal Leave. More information on these laws can be found in each of their sections. There is no requirement to provide paid vacation, holidays, or personal leaves beyond those laid out in the law. 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. WNYCOSH’s page for immigrant workers may answer further questions and includes more information that can be found in the Resources section.

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

Contact the WNYCOSH Workers’ Center for assistance. 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.

ResourcesGetting Help

NYS Department of Labor

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

1(888) 469-7365

U.S. Department of Labor

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?

The answer may be “Yes” or “No” depending on the situation. 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 WNYCOSH 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/sex, gender identity or expression, sexual orientation, national origin, age, arrest record, citizenship or immigration status, conviction record, marital status, military status, familial status, domestic violence victim status, pregnancy or disability. If you feel your termination was a discriminatory act as defined above, report it to the NYS Division of Human Rights or the U.S. Equal Employment Opportunity Commission. You might also be able to initiate a private lawsuit.

You may also be protected if you were discriminated against based on your relationship or association with people who are members of one or more of the categories listed above.

Employers are generally prohibited from discrimination based on political/recreational activities outside of work, as long as they do not interfere with your job duties or conflict with your employer’s business.

Discrimination based on membership in a union or organizing activity is also protected, but as part of your right to concerted activity. If you are a member of a union, consult with your steward or local union if you feel you are being discriminated against by your employer for your membership or lack thereof. If you are being discriminated against for organizing activities, you may file a complaint with the National Labor Relations Board or contact the Worker Center for help with next steps.

Labor Law Section 215-A outlaws discrimination against employees for failure to meet certain ticket quotas. The law covers parking enforcement officers, police officers, and other employees that issue tickets for violating laws. Read more 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-worker(s), you should file a complaint with the Equal Employment Opportunity Commission (EEOC) (<http://www.eeoc.gov/employees/charge.cfm>), the NYS Department of Human Rights (<https://dhr.ny.gov/complaint>) 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 17 for more information. You may be fired for other reasons that could be considered a wrongful termination. The WNYCOSH Worker 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 Was Offered a Severance Agreement; Do I Have to Sign It?

No, you are not obligated to sign a severance agreement, and you should not sign one without speaking with a lawyer. In New York State, workers have up to 21 days to review a severance agreement before signing and have 7 days after signing to revoke their signature. While that may seem like a lot of time, it is important to seek assistance quickly, in case you need to follow-up with additional questions or concerns. It is important to understand what you are getting in severance agreement, and what you are giving up. If you think your termination was due to discrimination or harassment, it is particularly important to speak with an attorney.

If you sign a severance agreement that includes a lump sum or payments over time, it may affect an unemployment claim. Make sure to accurately include all payments you have received or will receive. You may be denied and need to refile once your severance pay ends. If you are unsure, call the NYS Department of Labor for assistance.

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/complaint>

U.S. 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, the Occupational Safety and Health Administration (OSHA) and the NYS Public Employee Safety and Health (PESH) protect workers' rights to a safe and healthful workplace. Your employer must provide a place of employment that is free of recognized hazards, and they 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 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 Safety Data Sheets (SDS), in a language that you understand. All products must be clearly and properly labelled 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, at no cost. 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 by the end of the next business day, you can file a complaint with OSHA. For unionized workers, a copy of the OSHA 300 Log must be supplied to an authorized representative within 7 calendar days of the request.

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 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 (130 S. Elmwood Avenue, Suite 500, Buffalo, NY 14202-2465) or call (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 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 can file OSHA complaints anonymously or have an organization like WNYCOSH or another person 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. New chemicals can be introduced into the workplace at any time for which no OSHA limits have been set. Remember, OSHA does not cover all workplace hazards that exist, particularly ergonomic dangers such as back and repetitive strain injuries or hazards like heat and cold stress.

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 as 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

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

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 Center for Occupational & Environmental Medicine at Erie County Medical Center specializes in diagnosing and treating workplace medical conditions, including those that may be related to indoor air quality. They are part of a statewide network of similar clinics. 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

NYS Public Employee Safety & Health

716-847-7133

Center for Occupational & Environmental Medicine at Erie County Medical Center

716-898-5858

<https://www.ecmc.edu/health-services-and-doctors/center-for-occupational-environmental-medicine/>

For Information

NYS Dept. of Labor Division of Safety and Health

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 in New York State now have the right to form unions. For more on specific rights and protections for farm workers, see the Farm Laborers Fair Labor Practices Page here: <https://dol.ny.gov/farm-laborers-fair-labor-practices-act>

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 WNYCOSH Worker 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 healthcare 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 or Public Employment Relations Board (PERB). 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

<https://wnyalf.org/>

716-852-0375

National Labor Relations Board

www.nlr.gov

Buffalo Office

716-551-4931

Public Employment Relations Board, Buffalo Office

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

716-847-3449

For Information About Individual Unions

AFL-CIO

<https://aflcio.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, 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 healthcare 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 healthcare 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, so 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.

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

NYS Paid Sick Leave

What is NYS Paid Sick Leave?

NYS Paid Sick Leave was implemented in April 2020, to ensure that all private sector employees have access to time off for illness and injury. How much time and whether you are compensated for that time is dependent on the size of employer.

Who is Covered?

All private-sector employees in New York State are covered, regardless of employer size.

What Can I Use Leave For?

Sick Leave:

- For mental or physical illness, injury, or health condition, regardless of whether it has been diagnosed or requires medical care at the time of the request for leave
- For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or need for medical diagnosis or preventive care

Safe Leave:

Paid Sick Leave time can also be used for absences from work when a worker or family member has been the victim of domestic violence, a family offense, sexual offense, stalking or human trafficking.

Workers can use the time to:

- to obtain services from a domestic violence shelter, rape crisis center, or other services program
- to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members
- to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding
- to file a complaint or domestic incident report with law enforcement
- to meet with a district attorney's office
- to enroll children in a new school
- to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

How Much Sick Leave Do I Have?

The amount of sick leave you have is dependent on the size of your employer. New York State has set a floor, which means that employers may choose to give employees more sick leave than is required, and unionized workers can bargain for more sick leave in a contract.

Sick leave amounts:

- If your employer has 4 or fewer employees AND a net income of \$1 million a year or less, they must provide up to 40 hours of unpaid sick leave
- If your employer has 4 or fewer employees and a net income of \$1 million a year or more, they must provide up to 40 hours of paid sick leave
- If your employer has between 5-99 employees, they must provide up to 40 hours of paid sick leave
- If your employer has 100 or more employees, they must provide up to 56 hours of paid leave

How Many Days Can I Use at a Time?

Your employer can require that your leave is taken in regular increments, but the minimum amount cannot be more than 4 hours. This means some employers may require you to take your leave in 4-hour increments, while others may do it by 1-hour increments, etc. Your employer is required to inform you of their policies regarding how to use your sick leave.

Will I Lose My Job if I Use Paid Sick Leave?

No. Your employer cannot retaliate against you for taking sick leave. If you take sick leave, you must be allowed to return to the job that you had prior to your leave.

I'm in a Union, But Our Sick Leave Policy Doesn't Seem to Meet These Standards...

Collective bargaining agreements that were enacted after September 2020 are required to have “comparable benefits” to the State’s paid sick leave policies. That means that multiple leave programs or benefits may be combined to meet the standard set by the state. Your contract should reference Labor Law Section 196-b to affirm that it meets the standard set by the state. If you’re not sure, check with your union steward or local office to understand how your contract works.

Resources

New York State Paid Sick Leave Website

<https://www.ny.gov/programs/new-york-paid-sick-leave>

NYS Department of Labor’s Anti-Retaliation Unit

888-52-LABOR or LSAsk@labor.ny.gov

NYS Paid Prenatal Leave

New York State began offering Paid Prenatal Leave on January 1, 2025. The law covers all private-sector employees in the state.

How Many Hours Can I Take?

Up to 20 hours annually, in addition to other paid leaves.

What Can I Use Prenatal Leave For?

Leave can be used for pregnancy-related healthcare services. This includes:

- physical examinations
- medical procedures
- monitoring
- testing
- discussions with healthcare providers related to pregnancy
- end of pregnancy care
- fertility treatments

Can My Employer Deny Me Time Off?

No, your employer cannot deny your request for Paid Prenatal Leave if you have time available to use.

I Just Started Work, Do I Have Leave Time?

Yes, all private-sector employees are entitled to 20 hours a year of paid prenatal leave starting on January 1, 2025. There is no minimum time worked to have access to the leave.

Do I Have to Tell My Employer Why I'm Taking Leave?

No. You do not have to disclose to your employer the reason you are taking leave, as long as the leave is for a qualifying reason. Your employer cannot ask you for personal or medical information related to why you are taking leave.

Request the leave using the same process your employer has for other forms of leave. You can take the leave in increments of one hour.

Resources

NYS Paid Prenatal Leave FAQ

<https://www.ny.gov/new-york-state-paid-prenatal-leave/information-employees>

Retaliation

New York State Department of Labor by calling 1-888-52-LABOR, emailing LSASK@labor.ny.gov,

Discrimination

New York State Division of Human Rights by calling 1-888-392-3644 or [file a complaint online](#).

NYS 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 can 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 | • stepparents |
| • domestic partners | • parents-in-law |
| • children | • grandparents |
| • stepchildren | • grandchildren |
| • parents | • sibling |

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?

Leave is up to 12 weeks per year while receiving 67% of your average weekly salary. 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 7, 2025, your leave amount would reset on May 7, 2026.

Who Pays For This?

Paid Family Leave is funded by employees through payroll contributions. A calculator to estimate how much your pay is included in the Resources for this section.

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.

ResourcesGetting Help

New York State Paid Family Leave Hotline

1 (844) 337-6303

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

Leave Forms

<https://paidfamilyleave.ny.gov/form-pfl-3-pfl-family-care-leave>

Paid Family Leave Benefit Calculator

<https://paidfamilyleave.ny.gov/PFLbenefitscalculator>

Discrimination

What is Discrimination?

Discrimination means you, as an employee or job applicant, are treated differently 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 four or more employees and prohibits discrimination based on the factors above, as well as the ones below:

- Sexual orientation
- Marital status
- Military status
- Domestic violence victim status
- Arrest Record
- Citizenship/Immigration Status
- Familial Status
- Gender Identity/Expression
- Lawful Source of Income
- Predisposing Genetic Characteristics

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 and state 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 childcare?
- 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 the only employee facing discrimination
- Explain to your employer why you feel that you are being treated unfairly and 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

1-800-669-4000

NYS Division of Human Rights

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

1-888-392-3644

For Information

Workplace Fairness

<https://www.workplacefairness.org/employment-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 one’s 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, a contractor 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.

Should My Employer Have a Sexual Harassment Policy?

Yes. Under NYS law, all employers are required to have a sexual harassment prevention policy that meets the standards of the Department of Labor and Division of Human Rights.

Policies should:

- Prohibit sexual harassment
- Provide examples of prohibited conduct
- Include federal, state, and local laws that apply
- Include a complaint form and procedure for a timely and confidential process
- Inform employees of their rights and how sexual harassment complaints may be addressed
- State that sexual harassment is a form of employee misconduct and that sanctions will be enforced against those engaging in the conduct and managers/supervisors who knowingly allow it to continue
- Prohibit retaliation against individuals who report sexual harassment or assist in an investigation

Employers must allow provide annual training on sexual harassment to all employees. Standards for training and resources may be found below.

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 Equal Employment Opportunity Commission (EEOC) or the NYS Division of Human Rights (DHR). EEOC charges must be filed within 180 days of the last incident of harassment taking place, which may be extended if you are filing a state complaint. DHR charges must be filed within three years. You may file a charge as an individual or as part of a group (known as “class action”). You may also be able to file a lawsuit in State Court for a violation of New York’s Human Rights Law. There may be restrictions on filing a lawsuit before a complaint has been filed.

Resources

Getting Help

Equal Employment Opportunity Commission

www.eeoc.gov

1-800-669-4000

NYS Division of Human Rights

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

1-888-392-3644

Sexual Harassment Model Policy + Training

<https://www.ny.gov/combatting-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>

For Information

Workplace Fairness

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

Domestic Violence Accommodations

Under the New York State Human Rights Law, you are protected from discrimination based on your status as a victim of domestic violence.

I Have an Order of Protection, Can My Employer Fire Me if the Perpetrator Comes to the Workplace?

No. Your employer cannot fire you if they learn of your status as a domestic violence survivor. If the perpetrator violates the order of protection, or becomes abusive in the workplace, the police should be called.

Can I Take Time Off to Move Due to Domestic Violence?

Generally, yes. Your employer is required to accommodate time off needed because of domestic violence unless it creates an undue hardship. Health insurance should be continued during the leave. If possible, advance notice should be given. Leave can be taken for the following reasons:

- Medical attention for the victim, or a child who is the victim
- Obtaining services from a domestic violence shelter, program, or rape crisis center
- Obtaining psychological counseling, including for a child who is the victim
- For safety planning or taking action to increase safety, which includes temporary or permanent relocation
- Obtaining legal services, assisting with prosecution, or appearing in court.

Do I Have to Provide Documentation to My Employer?

If you are absent from work due to medical treatment, appearing in court, or another reason related to addressing domestic violence, your employer can require you provide them documentation.

I Had to Quit My Job Because of Domestic Violence, Am I Eligible for Unemployment?

Yes, you may be eligible. Under NYS Law, leaving a job for domestic violence-related circumstances may be “good cause.” When filing your claim, be sure to note that. It may take longer to receive your benefits or require an appeal.

I Think My Employer Is Discriminating Against Me Because of Domestic Violence, What Do I Do?

You can file a complaint with the NYS Human Rights Division. You have to file a complaint within 3 years of the discrimination taking place. Check out the Discrimination for more information.

Resources

NYS Department of Labor FAQ

<https://dol.ny.gov/domestic-violence-and-ui-benefits-frequently-asked-questions>

Employment Rights for Victims of Domestic Violence

<https://dhr.ny.gov/system/files/documents/2024/04/nysdhr-domestic-violence-employment.pdf>

24 Hour New York State Domestic and Sexual Violence Hotline

(800) 942-6906

NYS Spanish Domestic Violence Hotline

(800) 664-5880

<https://www.vipmujeres.org>

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 U.S. 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. You can file a complaint with one or both agencies, depending on what happened and who your employer is. If you are not sure if you are experiencing discrimination, please reach out to WNYCOSH or one of the resources listed below.

Resources

Getting Help

Equal Employment Opportunity Commission

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

<https://www.ada.gov/>

1-800-514-0301

Job Accommodation Network

<https://askjan.org/>

1-800-232-9675

For Information on Workstation Accommodation Modifications

WNYCOSH

716-833-5416

2495 Main Street, Suite 438

Buffalo, NY 14214

Workplace 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 them; 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 10-50% 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, unless it crosses one of those lines, it is not currently illegal to have a tyrant or a bully for a boss or co-worker.

How Does Bullying Differ From Illegal Discrimination?

The law does require that your boss not harass you, 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). Bullying is not typically 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 a desire to attack and diminish another person or group of people, 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 Institute

<https://workplacebullying.org/>

NY Healthy Workplace Advocates

https://nyhwa.org/bg_nyhwa.org/what/

Teen Workers

There are both federal and state laws to protect young workers under 18 years old. The amount of work and what type depends on your age, academic standing, parental permission, and other factors.

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 or roof
- 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 below 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 12 or 13, and have a farm work permit to pick berries, fruits, or vegetables, you may not work:

- More than 4 hours a day
- Before 9 a.m. or after 4 p.m. while school is in session
- Before 7 a.m. and after 7 p.m. when school is not in session

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 p.m. when school is in session
- After 9 p.m. in the summer
- More than 18 hours in a school week or 40 hours in a non-school week
- More than 6 days in any week

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

- More than 4 hours Monday through Thursday during when school is in session
- 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, that is, school breaks or summer break)

- Later than 10 p.m. when school is in session or later than midnight when school is out without parental consent

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.

There are some exceptions to these rules for babysitters, street trades, golf caddies, farm laborers, newspaper carriers, performers, and models. If you are working on a family farm or family-owned business, other rules may apply. Check the resources below for more information.

What Wage Regulations Apply to Teenagers?

Like all workers, youths must be paid at least the minimum wage, currently (2025) \$15.50/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 people under 18 years of age, 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. 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 12 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

<https://dol.ny.gov/youthworkers>

U.S. Department of Labor

716-842-2950

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. The maximum weekly compensation benefit is adjusted each year, and can be found [here](#).

Prompt Payment

Prompt payment of benefits is required by law. In cases not 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. If the Board finds that your workers' compensation claim is not valid, you will be responsible for medical bills.

Step 2: Union Representative

If you are part of a union, contact your union steward and union hall as soon as possible. They will advise you of 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 30 days after the date of the accident or within 30 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 to 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 years or older, you must have contributed to Social Security for at least ten years. The necessary time in this system is reduced for workers under the age of thirty-one. 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 healthcare 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

For more detailed information on Workers' Compensation, please go to our Workers' Compensation Page at: <https://wnycosh.org/workercenter/comp/>

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 cents per 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 26 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. You cannot collect disability benefits and Paid Family Leave Benefits at the same time.

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 their 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 Two Weeks Ago and Then Broke My Leg, Am I Still Eligible for NYS Disability?

Yes. You are still eligible if you have been unemployed for less than four weeks or you are collecting unemployment compensation. Of course, you cannot 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. Exams must occur at a reasonable time and place.

Is There a Time Limit on Filing a Claim if I become Disabled?

Yes. You must file your claim within 30 days of becoming disabled.

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 healthcare 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.

ResourcesGetting 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, <https://dol.ny.gov/>

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

Yes, in most cases. Some exceptions are undocumented immigrants employed in any occupation, baby-sitters, 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 their 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 <https://dol.ny.gov/>. 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?

In general, you can receive benefits for up to 26 weeks in a one-year period. 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, <https://dol.ny.gov/>. 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 \$504.

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. Make sure you report all work to the Department of Labor and keep records of all payments received.

Can I Get Help Looking For Work or Job Training?

Your local Department of Labor Career 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. You may be required to attend appointments at your local career center as part of the eligibility requirements for unemployment.

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

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

Legal Aid Bureau of Buffalo, Inc.

716-853-9555

<http://www.legalaidbuffalo.org>

Prior Arrest 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.

What about the Clean Slate Act?

New York's Clean Slate Act took effect in 2024, under which many conviction records will be sealed after a certain amount of time without any further incident by 2027. Once records are sealed, they will not show up on most background checks. There are exceptions for law enforcement purposes; licensing or employment for specific industries where a criminal background check is required to be performed; employment where a fingerprint-based background is performed; extending employment to a person in jobs where they may work with such groups as children, the elderly or other vulnerable populations; when an individual is seeking a gun license, a commercial driver's license, or where required for public housing. This law only affects records in New York State and does not apply to federal convictions or convictions in other states.

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 unless they are required to do so by law.

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 they 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.prp2inc.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 "expressed," 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. New York State law requires employers who will be monitoring electronic communication to notify employees upon hiring in writing, have employees sign a written acknowledgement, and post notice of the monitoring in a conspicuous place. Two federal laws allow victims to sue for violations, but New York does not yet allow a victim to sue, though the NYS Attorney General can enforce penalties if the law has been broken. 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 handbags, 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. The exception is for cannabis, which employers are not allowed to test applicants or employees for, except under specific circumstances. Some jobs, like those in transportation services, law enforcement, and some federal contractors may require regular drug testing under federal or state law. If you work in the public sector, blanket testing of entire workforces is generally not permitted. You may be protected under the Americans with Disabilities Act, such as in the case of a positive test for a drug that was legally prescribed for a disability. Employers may also not single out a group of employees for drug testing, such as testing based on age, race, gender, or other protected groups.

What About Marijuana? That's Legal in New York State

Marijuana is legal for adults over the age of 21 to consume in New York State. Employers are not allowed to discriminate against employees for using cannabis outside of the workplace, outside of work hours, and not on or using the workplace's property or equipment. Employers are allowed to prohibit the use of

cannabis during work hours (for instance, on your lunch break or when you are “on-call”) or bringing cannabis onto their property. An employer may be required to take action under another law or be required by federal funding or contracts to prohibit the use of marijuana. If you are high at work in such a way that it affects your performance, your employer can take action against you. This is also the case if your use of marijuana affects the health and safety of the workplace, for example, if you are still high and are using machinery or equipment. Drug testing for cannabis does not prove that an employee was impaired at work and employers are not allowed to test except under certain circumstances, nor is smelling like cannabis proof of impairment.

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) is strictly prohibited. PSE 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 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 State 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. They may also violate the Americans with Disabilities Act if they screen for a trait connected to a particular medical condition. 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 State constitutions. Public sector employees may also have additional constitutional and statutory protections.

Resources

Getting Help

NY Civil Liberties Union

www.nyclu.org

Western New York Regional Office

716-332-4658

Privacy Rights Clearinghouse

www.privacyrights.org

National Work Rights Institute

www.workrights.org

New York State Cannabis FAQ

<https://dol.ny.gov/system/files/documents/2021/10/p420-cannabisfaq-10-08-21.pdf>

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