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# Doing Business In New York State

A guide for Employers



## Section 1

### 1. America's Job Bank (Office of Federal Contract Services)

#### *Background*

*A*merica's Job Bank Service Center is the development and processing center for America's Job Bank (AJB), a computerized, national job resource of the State public employment services. The Center is operated by the New York State Department of Labor (NYSDOL) under contract with the U.S. Department of Labor (USDOL). Until 1995, the service was made available only through the individual State networks that tie together more than 1,800 local employment service offices. In February of that year, the service was made available on the Internet, where it quickly became one of the most popular job sites in cyberspace.

Recent years have seen continued growth, not only in the number of jobs accessible through AJB, but also in the popularity of AJB's Internet Site. The coordination between

Currently, 52 states/territories make their jobs available on the Internet. With links to all of these sites, as well as to more than 4,200 employer job sites and 1,500 private employment agency sites, AJB places more than a million job opportunities within easy reach of the on-line job seeker. An additional service (Bath Public Interface) allows employers to automatically transfer vacancy listings from their Human Resources systems to AJB.

In 1999, America's Job Bank, America's Talent Bank, America's Career InfoNet and America's Learning Exchange were linked, giving users access to a system that integrates resume creation, job matching, career information and training information.

Contact:        1. Employer Services: [www.labor.state.ny.us/html.employers.htm](http://www.labor.state.ny.us/html.employers.htm)  
                     2. Federal: [www.ajb.org](http://www.ajb.org)

## FREQUENTLY ASKED QUESTIONS

### Concerning America's Job Bank

**1. How much does it cost to use America's Job Bank?**

There is no charge to employers to list their job vacancies or search the resume file for potential candidates. The services provided by America's Job Bank and State Employment Service programs are funded by Unemployment Insurance taxes paid by employers.

**2. Why do I have to register?**

Registration is necessary to ensure data integrity. Service is limited to U.S. employers, employment agencies, or other organizations that have job openings available and do not charge a fee to job seekers.

**3. I do not have a Federal Employment Identification Number (FEIN) or a State Unemployment Insurance Tax ID Number. Can I still use America's Job Bank?**

Yes. Each state is responsible for validating their employers as part of the registration process. If there is a problem, you will be contacted by either AJB or State staff.

**4. If I register with America's Job Bank, will job seekers see this registration and contact me directly for employment?**

No. The names of employers who register with America's Job Bank are confidential and are not available to job seekers, or other employers. When you create a Job Order, you decide how the job seeker will contact you.

**5. Once I'm registered, why doesn't the company name appear on the URL list?**

Registering provides an employer with the ability to enter jobs and search the resume file. If you have a WWW site with full job information, you must send a separate request to be added to the URL list. This ensures that AJB only points to web sites with job information.

**6. I want separate usernames/passwords for each individual in the company who will be using America's Job Bank. Can I do this?**

Yes. However, each individual will have to register with a unique username and password, which is how usage activity is measured. This means that if multiple staff at your company use AJB, it will take more work to get an accurate account of your overall activity.

**7. When I enter a Job Order, why doesn't it appear immediately?**

Before an order becomes part of the database, AJB/State staff review it to ensure that the listing meets our requirements and that the information is consistent. Every effort is made to complete the review within one day.

**8. Can I enter a Job Order for more than one location?**

Yes, if the same job is available at all the locations in the same state, or if you have jobs located in all states. If you have jobs available in just a few states, you should enter them individually to increase the possible matches.

**9. Can I enter different types of jobs on the same order?**

No. To make it easier for job seekers to find your order, you should list different types of jobs on separate orders. If you assign a job title from our pre-defined list, you will generally be able to recognize when separate orders are needed.

**10. Can I modify or copy an Order already in the system?**

Yes. Go to the My Jobs function to modify an active order. Orders cannot be copied while in active status, but they can be copied when they are initially entered into the system.

## **2. Counsel's Office**

### *Background*

Counsel's Office is responsible for the legal affairs of the Department and, in this capacity, performs several functions. Its primary role is to act as an advisor to the Commissioner of Labor, other Deputy Commissioners and Division Directors on legal matters relating to all Department programs. These programs include unemployment insurance and employment and training services, wage protection, payment of wages, minimum wage and fringe benefits, child labor, farm labor, private employment agencies, public work, occupational safety and health, industrial homework, garment manufacturing, asbestos and other licensing programs.

Counsel's Office acts as an advisor to the Commissioner of Labor on all legislative matters relating to the Department of Labor. The Office also represents the Commissioner of Labor at legislative committees and numerous meetings, conferences, and symposia dealing with legal issues relating to Department programs. Counsel's Office represents the Department at administrative hearings, including those before a Hearing Officer, involving public work or asbestos cases, and before the Industrial Board of Appeals, involving Labor Standards and Public Employee Safety and Health matters. Finally, Counsel's Office acts as Records Access Officer for Freedom of Information Law requests.

Contact Person: Jerome A. Tracy  
New York State Department of Labor  
State Office Campus, Building 12  
Room 509  
Albany, New York 12240  
(518) 457-4380

## FREQUENTLY ASKED QUESTIONS Concerning Counsel's Office

**1. When is Article 8 of the Labor Law, which requires the payment of prevailing rates of wages to employees, applicable to a particular construction project?**

Article 8 will be applicable when two conditions are fulfilled: (1) a public entity must be a party to a contract involving the employment of laborers, workmen or mechanics, and (2) the contract must concern a public work project. A public entity, as used in the statute, means the State, any political subdivision thereof, including SUNY, CUNY, and community colleges, as well as corporations organized solely for the purpose of entering into such a construction contract on behalf of the State. A "public work" has not been defined by statute, but courts have held that in order to be considered a public work, the project's primary purpose must be to benefit the public at large; as opposed to a private purpose.

**2. How is an employee on a public work project classified (e.g., roofer vs. sheetmetal worker), and what is his/her corresponding rate of pay?**

The Bureau of Public Work, within the locality in which the work is being performed, will inform an employer as to the proper classification of an employee, once the employee's job duties have been explained to the Bureau. After this is determined, the employer should request a copy of the current schedule of prevailing wage rates, which will contain the appropriate rates for all classifications.

**3. What are the legal types and amounts of deductions, which may be taken out of an employee's wages?**

Labor Law, Section 193, which covers deductions from an employee's wages by an employer, provides that no such deductions shall be made except those that are expressly authorized in writing by the employee and are for the benefit of the employee. Such authorizations must be kept on file on the employer's premises. Furthermore, Title 12 of the New York State Code, Rules and Regulations, Section 195.1 provides that any such deductions from wages may not exceed 10 percent of the employee's gross wages for the payroll period in question.

**4. When must overtime rates be paid to employees and how much are such rates?**

Title 12 of the New York Code, Rules and Regulations, Section 142-2.2, provides that an employer shall pay an employee for overtime at the rate of one and a half times the employee's regular rate in the manner and methods provided in, and subject to, the exceptions of Sections 7 and 13 of 29 USC 201 et. Seq., the Fair Labor Standards Act of 1938. In addition, "an employer shall pay employees subject to the exemptions of Section 13 of the Fair Labor Standards Act. ... overtime at a wage rate of one and a half times the basic minimum hourly rate." For nonresidential employees, the overtime rate applies to working time over 40 hours in each workweek. For residential employees, the overtime rate applies to working time over 44 hours in each workweek.

**5. What is the amount of compensation to be afforded employees with respect to the period between reporting time and "clocking" time?**

Section 652 (1) of the Labor Law requires that employees be paid at least the minimum wage "for each hour worked." Section 2 (7) of the Labor Law defines "employed" as including "permitted or suffered to work." Once an employer has directed an employee to report to work at a specified time,

that employee is “employed” and “working” within the meaning of the Labor Law, and must be paid at least the minimum wage for all time during which such employee is required to remain on the employer’s premises while waiting to report to such employee’s actual work location. It should be noted, however, that an employer is not required to pay employees for such time at their agreed rate of pay unless the employment agreement so provides.

**6. What types of employment are minors, 16 and 17 years of age, permitted to perform?**

Generally speaking, the purpose of the Child Labor Law is to prevent accidents that could occur due to a combination of dangerous work and inexperience as a result of age. As such, Section 132 of the Labor Law restricts the employment of such minors only upon the presentation of an employment certificate or permit, and Section 133 of the Labor Law expressly prohibits the employment of such minors in certain occupations which generally have a substantial connection to machinery.

More specifically, minors 16 and over may do factory work. However, minors under 18 are prohibited from working in certain hazardous occupations such as those in construction work, or in the operation of certain power-driven machinery, or in the operation of circular saws, or as a helper on a motor vehicle. (For more information about employment of minors, check Section 6: Division of Labor Standards.)

**7. How does an employer obtain a listing of governmental records regarding his/her violations of New York State Labor Law?**

Pursuant to the Freedom of Information Law, an employer may obtain this data by sending a request to:

Records Access Officer  
New York State Department of Labor  
State Office Campus, Building 12  
Room 509

Note: A statutory fee of 25 cents per page will be assessed for all materials released, to cover the Department’s photocopying costs.

**8. How can an employer obtain information contained within the file of a former employee who is seeking unemployment insurance coverage?**

The same procedure listed in the answer to question #7 should be used.

### 3. Division of Employment Services

#### *Background*

**T**he Division of Employment Services coordinates all field-based employment operations. The Division also encompasses the Employer Services Unit, the Economic Development Services Unit, the Rural Employment Services Program, and the Veterans Employment Program.

Contact Person: Division of Employment Services  
New York State Department of Labor  
State Office Campus, Building 12  
Room 576  
Albany, New York 12240  
(518) 457-3584

## FREQUENTLY ASKED QUESTIONS Concerning the Division of Employment Services

#### *Employment Service Offices*

#### **1. What recruiting services are available through the New York State Department of Labor's Division of Employment Services?**

The New York State Department of Labor offers employers exposure to the widest possible selection of qualified job seekers. Employer job openings for all levels of employees (from laborers to executives) are electronically listed and immediately linked to NYSDOL offices within New York State, as well as to our partner agencies and libraries. Our QuickLink computerized matching system ensures that the applicants provided will meet the unique skills required for your position. Exceptionally hard-to-fill jobs are also linked through America's Job Bank to 2,200 State DOL offices across the country. Our Home Page address is <http://www.labor.state.ny.us>.

#### **2. What Human Resources consultation services are available from the New York State Department of Labor's Division of Employment Services?**

Our Human Resources Consultants can help you shape productive personnel policies. The many services these trained specialists provide include resolving personnel issues, developing and classifying job descriptions, writing or revising employee handbooks, assisting with absenteeism and turnover studies, and reviewing individual employer personnel policies and problems. Employers relocating from Canada or other countries have found these services especially useful. For information on your local Human Resources consultant, call 1-800-HIRE-992.

#### **3. How do I ensure the questions on my job applications are legal and acceptable?**

Our Employment Services Offices can offer a generic application as an example of an acceptable job application in this state.

**4. I'm relocating my business to your area. What do you think would be a competitive wage for the jobs I have available?**

Utilizing our knowledge of the labor market conditions in every area of New York State, Employment Services Office staff can provide you with the "going rate" for wages in your industry for your particular geographic area. We also offer prevailing wage information on our web site under Labor Market Information.

*Employer Services Unit*

The Employer Services Unit informs and assists NYS employers on a variety of topics. An emphasis is placed on ensuring that employers understand the New York State Department of Labor's programs and how they affect day-to-day operations. Technical support is provided to Employer Services Representatives and Human Resources Consultants on a statewide basis to ensure service and program delivery is appropriate to meet employer needs. Finally, the Employer Services Unit works closely with other agencies to meet employer needs and concerns and to promote the New York State Department of Labor's programs and services for job seekers.

**1. What hiring incentive programs are available to employers?**

Wage tax credits are available to employers for hiring targeted employees under Work Opportunity Tax Credit (WOTC), Empire Zones (EZ), Zone Equivalent Area Program (ZEA), Welfare-to-Work Tax Credit (W2W), and Workers with Disabilities Employment (WETC) tax credit. For more information on tax incentives for hiring targeted populations, call 1 (800) HIRE-992 (447-3992).

**2. How can I become more involved in suggesting ways to improve how the NYS Department of Labor does business with employers?**

You can join a Job Service Employer Committee (JSEC) in your area and attend valuable seminars. For more information, call 518-457-6821, go to their web site [www.nyjsec.org](http://www.nyjsec.org), or contact the manager of your local Department of Labor office.

**3. Is there a web site that can help high-tech employers find qualified workers?**

[Hightechny.com](http://Hightechny.com) is part of an interagency effort between the New York State Department of Labor and Empire State Development. This web site is designed to assist, attract and retain thousands of college students and other job seekers looking for high-tech jobs in New York State.

The web site was launched in November 2001, and lists over 50,000 high-tech jobs from over 1,000 New York State companies. Firms also may provide a link from [www.hightechny.com](http://www.hightechny.com) to their web sites by sending their URL to [hightechny@empire.state.ny.us](mailto:hightechny@empire.state.ny.us).

Employers with job opportunities in New York can post them in this database by opening a free account directly from the web site. Hightechny.com strengthens New York's commitment to the high-tech industry by helping technology-based firms find the talented people needed to remain competitive in today's economy.

**4. How do I list a job opening with the NYS Department of Labor?**

Listing with America's Job Bank will list your opening with the New York State Department of Labor, as well. Go on-line at: [www.ajb.org/ny](http://www.ajb.org/ny) and follow the instructions to register. (See Section 1: America's Job Bank, for additional information.)

**5. How can I gain direct access to America's Job Bank for national exposure?**

You can list directly with the New York State Department of Labor, and staff will add the job opening to America's Job Bank, or you can list through the Internet at [www.labor.state.ny.us](http://www.labor.state.ny.us). Go to the Employer Services section for instructions. There is no charge for this service, and the decision as to whether to hire the applicant rests with you. (See Section 1: America's Job Bank for additional information.)

**6. How can I learn more about hiring welfare recipients?**

The New York State Department of Labor (NYSDOL), through the Division's Office of Employment Services, has established a toll-free hot line 1 (800) HIRE-992 (447-3992) to provide a "front door" to the many services and programs available through the Department in connection with hiring welfare recipients. Local One-Stop Career Centers offer services tailored to the needs of businesses in their community. (See Section 9: Welfare-to-Work for additional information.)

**7. How do welfare recipients receive job readiness training?**

County Social Service Districts (CSSD) assess the needs of their public assistance population. Through the efforts of the CSSD and local training organizations, training is provided to clients in areas such as communication skills, customer service and teamwork. This type of "soft skills" training has proven to be successful in helping recipients move from welfare rolls to entry-level private sector jobs. (See Section 11: Welfare-to-Work, for additional information.)

**8. My jobs require specific skills. How can I hire welfare recipients with the necessary skills?**

Our Division of Employment Services staff can identify the skills needed for your jobs and, working with local training providers, tailor a training program to meet your needs. Our hot-line number, 1 (800) HIRE-992 (447-3992) can connect you to local staff who will assist you with employer-specific training. Programs such as Building Skills in New York State (BUSINYS) and E-learning offer training grants to businesses, as well. Go to [www.workforcenewyork.com](http://www.workforcenewyork.com) for more information about these programs.

**9. I need assistance with expanding and financing my business so that I can add additional employees. What can I do?**

It is critical that you receive advice from a business counselor. New York State provides free counseling for business owners through our Small Business Development Centers. Most are located on State University of New York campuses. To find a center near you, call 1-800-732-SBDC. You can also check the [workforcenewyork.com](http://workforcenewyork.com) web site for information about new Labor Department programs that help with business plans.

**10. I know there are certain licenses and permits that I will need as I expand my business. How can I find out what I will need for my particular business?**

Information regarding specific licenses and permits is provided through the Governor's Office of Regulatory Reform. Their permit assistance line, (518) 473-1063, walks the business owner through each step in the permit/license process for a particular business. The same information is available online at [www.gorr.state.ny.us](http://www.gorr.state.ny.us).

## *Rural Employment Services Program*

As agriculture is the single largest industry in the State, the New York State Department of Labor recognizes the contribution of agriculture and agribusiness to our economic strength and well-being. The Rural Employment Service of the New York State Department of Labor addresses the special needs of those workers and employers engaged in the business of agriculture. Specially trained Rural Labor Services Representatives have been placed throughout the state in areas where labor-intensive agriculture is located.

**1. Can the Department help me find seasonal and/or full-time farm labor?**

Yes. Our specially trained Rural Labor Services Representatives are available in offices throughout the state to assist agricultural employers.

**2. How can I contact my local Rural Labor Services Representative?**

Call your nearest Department of Labor office for the name and location of the Rural Labor Services Representative who serves your area. They work out of the following offices:

Albany:	(518) 457-6798	Pine Island:	(845) 651-7100
Albion:	(585) 589-5335	Newark:	(315) 331-2011
Dunkirk:	(716) 366-0130	Plattsburgh:	(518) 561-0430
Hudson:	(518) 828-4654	Riverhead:	(631) 727-4870
Kingston:	(845) 331-8920	Syracuse:	(315) 479-3429
Lockport:	(716) 433-6766	Warsaw:	(585) 786-3145

**3. What if I need to recruit outside New York State for labor?**

We can help with applications and other forms necessary to recruit farm workers from other states and with registering farm labor contractors. Farmers and growers who face critical shortages of seasonal labor may apply to the Rural Employment Service for admission to the U.S. Department of Labor's "Agricultural Recruitment System."

## 4. Employability Development/Apprenticeship

### *Background*

*T*he New York State Labor Department can help employers establish their own apprenticeship program, thus making a worthwhile investment in the future of their business and their employees. There are several advantages to operating an apprenticeship program, including guaranteeing a source of trained workers, lower turnover, improved labor relations, public recognition and an improved bottom line. Some of the more than 330 trades that have apprentice programs in New York include: bricklayer, carpenter, electrician, fire fighter, plumber, stonemason, roofer, jeweler and computer technician.

Contact Person: Edward Drago, Director  
New York State Department of Labor  
State Office Campus, Bldg. 12  
Room 436  
Albany, New York 12240  
(518) 457-6820

## FREQUENTLY ASKED QUESTIONS

### Concerning Apprenticeship Programs

#### 1. What is apprenticeship?

Apprenticeship is the process of learning a skilled occupation through both on-the-job training (practical, paid experience) and learning the related technical knowledge in a classroom. You must be 18 years old, or be 16 years old with parental approval. A developing trend in workforce preparation is school-to-work apprenticeship training. This may enable youth to learn about occupations at an even earlier age. The length of training varies from one to six years, depending on the occupation. Training is given under the guidance of experienced master workers.

#### 2. Who sponsors an Apprenticeship Training Program?

Apprenticeship is most valuable to businesses that need a skilled workforce. It is for employers who want to train workers in the latest technologies and not lose valuable production time. It is meant to reduce turnover and improve employer/employee relationships. It allows businesses to be recognized by their community as industry leaders in providing opportunities for employment and training.

#### 3. How does an Apprenticeship Training program work?

Apprenticeship training combines actual work experience with classroom-related instruction. It produces a worker skilled in the *occupation*, who is capable of exercising independent judgement and who subscribes to the highest standards of professional conduct. There is a written agreement between the apprentice and the employer, which acknowledges their joint commitment to the training process. This agreement must be approved by the New York State Department of Labor. Registration of your apprenticeship training program guarantees that your workforce will be trained consistently at the highest skill levels, that your program will be nationally recognized, and that you are entitled to the benefits of registered apprenticeship under Department of Labor laws and regulations.

#### 4. What are the benefits of sponsoring an Apprenticeship Program?

Employers experience benefits in two categories: economic and intrinsic. The economic benefits come from the cost break for a business eligible to pay apprentice wages (usually 40% - 50 % of journey worker wages). Registered apprenticeship sponsors also are exempt from paying overtime to apprentices for the related instruction portion of their training. You may be entitled to tax credits if you hire people who meet specific criteria or if your business is located in specific areas. Furthermore, many sponsors report reduced turnover. We believe this is because the apprentice knows that the employer values trained employees; thus, employees have improved morale.

There are many intrinsic benefits. Overall, apprentices in registered training programs know they have jobs in the future. By working for an employer who values lifelong learning, apprentices become invested in improving their skills and in achieving a Certificate of Completion, which is a nationally recognized credential. Because apprentices not only learn the techniques of a trade but also understand why they do what they do, they become good problem-solvers, work better as team members and demonstrate better interpersonal skills. Apprentices become skilled, motivated craft workers with a strong work ethic, who are well-versed in company policy, who average better attendance and who possess the latest technological skills. They fill the critical need for skilled workers in the face of retirements and the need to be highly productive with a reduced workforce. Apprentices become skilled craft workers, flexible and productive, who are dedicated to the industry and the specific employer.

## 5. Division of Equal Opportunity Development

**T**he New York State Department of Labor's Division of Equal Opportunity Development (DEOD) derives its authority from federal and state laws, rules, regulations and executive orders.

The mission of DEOD, under the direction of the Commissioner of Labor, is to develop and maintain an ongoing affirmative action program, promote equal opportunity, and ensure nondiscriminatory policies and practices.

Contact Person: Andrew Adams  
Director of DEOD  
New York State Department of Labor  
State Office Campus, Building 12  
Room 540  
Albany, New York 12240  
(518) 457-1984

### FREQUENTLY ASKED QUESTIONS Concerning the Division of Equal Opportunity Development

**1. How does the Americans With Disabilities Act affect my business?**

This federal law forbids discrimination in employment against a job-qualified individual with a disability who can perform the essential functions of that job, with or without a reasonable accommodation. It demands non-discrimination in labor-management situations, such as job application procedures, hiring, advancement, discharge, compensation, and training; however, the law does not demand that employers give preference to workers with disabilities over those without disabilities.

**2. Is a small business employer required to adhere to the reasonable accommodation provisions of the Americans with Disabilities Act?**

An employer with four or more employees is required to provide a reasonable accommodation.

**3. Are all employers held to the same degree of reasonable accommodation under the Act?**

An employer is not required to make an accommodation that will cause an undue hardship, either financially or operationally. A reasonable accommodation requirement may differ for a large or small employer.

**4. If an employer has a question regarding its responsibilities under the Americans with Disabilities Act, whom can they contact?**

An employer can contact the nearest office of the New York State Advocate for Persons with Disabilities. If there is no local office available, the employer can contact the central office of the New York State Advocate for Persons with Disabilities at (518) 473-4129.

**5. Can an employer ask about an applicant's/employee's disability?**

According to New York State Human Rights Law, it is unlawful to inquire, either directly or indirectly, about an applicant's/employee's disabilities. An employer may inquire only whether a prospective

employee can perform specific tasks in a reasonable manner. An employer may not disqualify an applicant/employee because of suspected future risk to his/her health while performing a specific job.

**6. What constitutes sexual harassment? What are some examples of sexual harassment in the workplace?**

Federal law defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made explicitly either a term or condition of employment; when submission to or rejection of such conduct by an individual is used as a basis of employment decisions affecting the individual; or when the conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

The following are some examples of sexual harassment: unnecessary touching, patting or pinching; leering at one's body; pressure for sexual activity; questions about one's personal life; sexual posters, magazines, flyers, cards and calendars; quid pro quo (a favor for a favor); and lewd comments regarding one's anatomy.

Employers are encouraged to have in place and implement strong policies prohibiting sexual harassment in their businesses. For information on developing and implementing a sexual harassment policy, contact the New York State Department of Labor's Division of Equal Opportunity Development office at (518) 457-1984. (For general assistance with personnel handbooks, call the Labor Department's Office of Employer Services and ask about our Human Resources Consulting Services.)

**7. How does one file a sexual harassment complaint?**

Complaints may be filed with the New York State Division of Human Rights at (212) 961-8400, the Equal Employment Opportunity Commission at 1 (800) 669-4000, or a private attorney at one's own expense.

**8. In developing an employment application, what are some questions that cannot be asked?**

According to the New York State Division of Human Rights, the following questions cannot be asked, either during a job interview or on a pre-employment application:

- ♦ Have you ever been arrested?
- ♦ How old are you?
- ♦ What is your birth date?
- ♦ What are the ages of your children, if any?
- ♦ Do you have a disability?
- ♦ What is your high school graduation year?
- ♦ What is your marital status?
- ♦ Where were you, your parents or your spouse born?

**9. Can an employer inquire as to an applicant's citizenship?**

According to the New York State Human Rights Law, an employer can ask an applicant the following questions:

- ♦ Are you a citizen of the United States?
- ♦ Do you intend to become a citizen of the United States?
- ♦ Do you have the legal right to remain permanently in the United States?
- ♦ Do you intend to remain permanently in the United States?

## 6. Division of Labor Standards

### *Background*

*T*he Division of Labor Standards enforces New York State Labor Laws concerning minimum wage, hours of work, child labor, payment of wages and wage supplements, industrial homework, apparel industry registration and farm labor. It also administers the Employment Agency Law (Article 11 of the General Business Law) outside New York City. The Division functions in the following areas:

- ♦ **Minimum Wage:** Enforces the New York State Minimum Wage Act, including four minimum wage orders and the Minimum Wage Standards for Farm Workers. These laws, with specified exceptions, apply to all workers in the State, including those subject to the Federal Fair Labor Standards Act
- ♦ **Unpaid or Withheld Wages:** Investigates and endeavors to collect claims for unpaid or withheld wages, including illegal deductions. Also enforces the prohibition against illegal kick-back of wages and tip appropriation.
- ♦ **Wage Supplements or Fringe Benefits:** Investigates and endeavors to collect claims for unpaid benefits or wage supplements, that the employer has agreed to provide, as well as claims for withheld employer contributions to benefit funds. Wage supplements include vacation or holiday pay, paid sick leave, reimbursement of expenses, and other similar items.
- ♦ **Employment of Minors:** Enforces the statutes governing maximum and prohibited hours of work for minors and the type of work permitted for minors. Inspects establishments to ensure that minors under 18 years of age have proper employment certificates (also referred to as Working Papers)
- ♦ **Day of Rest and Meal Periods:** Enforces day of rest regulations, where applicable, and the meal periods required for all workers. Issues short meal period permits and day of rest variances.
- ♦ **Farm Labor:** Enforces minimum wage standards. After investigation, issues certificates of registration to migrant farm labor contractors, growers and food processors who bring migrant farm labor into the State. Enforces compliance with the conditions set forth in the registration. Also issues permits to labor camp commissaries.
- ♦ **Industrial Homework:** Enforces the restrictions on industrial homework set forth in the Industrial Homework Law and the Homework Orders. Issues permits for limited distribution of industrial homework, where authorized, together with certificates to eligible home workers.
- ♦ **Registers and inspects apparel contractors and manufacturers** to ensure that they comply with wage and hour provisions of the Labor Law and refers health and safety issues to appropriate government agencies.
- ♦ **Issues licenses and regulates Professional Employee Organizations (PEOs)** providing employee leasing services to New York State employers.

Contact: Locate the Labor Standards Office in your area, or Labor Standards Central Office via E-mail (NYS DOL@labor.state.ny.us).

### **District Office**

### **Counties Served**

#### **Albany District**

NYS Department of Labor  
State Office Campus  
Bldg. 12, Rm. 185A  
Albany, NY 12240  
Tel. (518) 457-2730  
FAX (518) 457-7997

Albany, Clinton, Columbia,  
Essex, Franklin, Fulton, Greene, Hamilton,  
Montgomery, Rensselaer, Saratoga,  
Schenectady, Schoharie, Ulster, Warren,  
Washington

#### **Binghamton Subdistrict**

NYS Department of Labor  
State Office Building  
44 Hawley Street, Rm. 909  
Binghamton, NY 13901  
Tel. (607) 721-8014

Broome, Chemung,  
Chenango, Cortland, Delaware,  
Otsego, Schuyler, Steuben,  
Sullivan, Tioga, Tompkins, Yates

#### **Buffalo District**

NYS Department of Labor  
65 Court Street  
Buffalo, NY 14202  
Tel. (716) 847-7141  
FAX (716) 847-7140

Allegany, Cattaraugus, Chautauqua, Erie,  
Niagara

#### **Long Island District**

NYS Department of Labor  
400 Oak St., Suite 101  
Garden City, NY 11530  
Tel. (516) 794-8195  
FAX (516) 794-1046

Nassau, Suffolk

#### **New York City District**

NYS Department of Labor  
345 Hudson Street  
New York, NY 10014  
Tel. (212) 352-6981

Bronx, Kings, New York,  
Queens, Richmond

#### **Rochester Subdistrict**

NYS Department of Labor  
155 W. Main Street  
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## FREQUENTLY ASKED QUESTIONS

### Concerning the Division of Labor Standards

Note: Please keep in mind that legal requirements may change from time to time, and the application of specific laws to individual cases may vary.

#### 1. What is the New York State minimum wage?

The minimum wage is \$5.15 an hour for covered employees under Article 19, Section 652 of the New York State Labor Law. Employers are required to post a New York State Minimum Wage poster (available from the Division of Labor Standards). Our wage rate is now tied to the Federal minimum wage and as such will reflect future Federal minimum wage increases.

Note: The legal minimum wage should not be the deciding factor in adopting a wage. Our Division of Research and Statistics (Section 7) can help you determine what the typical pay rates and benefits are in your region for workers in the job category you are trying to fill.

#### 2. If an employee is covered by the Federal minimum wage law, does the State law also apply?

Yes. While the Division of Labor Standards enforces the New York State Minimum Wage Act and its regulations, the Wage and Hour Division of the United States Department of Labor (USDOL) enforces the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA). In situations where both the state and federal governments have jurisdiction, the coverage yielding the higher pay applies.

#### 3. Are all workers in New York State covered by the minimum wage requirements?

Most workers are covered, including most domestic workers. Exceptions are as follows:

- ♦ Part-time babysitters in the home of the employer.
- ♦ Companions to sick or elderly people who live in the home of an employer and whose principal duties do not include housework.
- ♦ Executives, administrators and professionals.
- ♦ Outside salespersons.
- ♦ Taxicab drivers.
- ♦ Ministers and members of religious orders.
- ♦ Government employees (except certain non-teaching employees employed by a school district or board of cooperative educational services).
- ♦ Volunteers, learners and apprentices, and students, if working in nonprofit institutions.

There are certain other exceptions.

#### 4. What is the Equal Pay Law?

The New York State Equal Pay Law prohibits differentials in pay based on sex. It provides that men and women doing equal work in the same establishment at jobs requiring equal skill, effort, and responsibility, and performed under similar working conditions, must be paid at the same rate. The law does permit differences in wages based on a seniority system, a merit system, a system measuring earnings by quantity or quality of production, and so on. For more information, contact the New York State Division of Human Rights or the U.S. Division of Human Rights.

**5. What are the overtime rates?**

For covered employment, the minimum hourly rate is one and one-half times the regular rate after 40 hours in any week. Employees who work in a bona-fide executive, administrative, or professional capacity are not subject to overtime requirements, nor are farm workers or taxicab drivers. Depending on the duties performed, salaried workers may be eligible for overtime pay.

**6. Can you explain what a “prevailing wage” is?**

On a public work project, such as the building of roads or schools, contractors must pay workers, laborers, or mechanics the wage and fringe benefits for the corresponding occupation as set by the collective bargaining agreements in the locality where the work is performed. For information on prevailing wage rates, contact the NYS Department of Labor, Bureau of Public Work.

**7. How often must I pay my employees? Are there required methods of payment?**

- ♦ Generally, manual workers must be paid weekly, no later than seven calendar days after the end of the week in which the wages were earned. However, manual workers employed by a nonprofit organization must be paid no less frequently than semimonthly. Under certain conditions, an establishment that has employed an average of 1,000 or more employees in New York State during the preceding three years (or has employed an average of 1,000 or more employees in New York State during the preceding one year and has, for the preceding three years, employed an average of 3,000 or more employees outside the State) may apply to the State Department of Labor for permission to pay its manual workers no less frequently than semimonthly.
- ♦ Commissioned salespersons must be paid at least once a month, not later than the last day of the month following the month in which the commissions were earned.
- ♦ On or before Thursday of each week, railroad employees must be paid the wages earned up to the Tuesday of the preceding week.
- ♦ Office workers and all other employees must be paid in accordance with the agreed terms of employment, but no less frequently than semimonthly.
- ♦ Payments may be made in either cash or check. You do not need a permit to pay by check. Direct deposit of an employee’s net wages in a bank or other financial institution is also permitted, but only with the employee’s advance written consent.

**8. What deductions can I make from wages?**

No deductions may be made from wages except:

- ♦ Those required by law, such as social security, contributions and withholding taxes.
- ♦ Those which are for the benefit of the employee and which are authorized in writing by the employee, such as insurance premiums, pension, contributions to charitable organizations, payment of U.S. bonds.
- ♦ Payment for union dues, and similar payments for the benefit of the employee.
- ♦ Court-mandated wage garnishments, which usually result from court actions regarding child support, alimony, or taxes. The employer must turn the deducted wages over to the agency named by the court.

An employer may not deduct from a worker’s wages workers’ compensation costs, unemployment insurance shortages, or the cost of breakage or spoilage of materials. Nor may an employer make wage deductions in any indirect manner, such as by requiring a worker to make reimbursement for shortages by means of a separate transaction.

### **9. Am I required to pay employees for holidays, sick time and vacation?**

Only if you have established a policy to grant such pay. But if you have agreed to provide “fringe benefits” (also called “wage supplements”), you are obligated to provide them. Wage supplements include, but are not limited to, reimbursement for expenses or tuition and payment for sick time, vacation, personal leave, and holidays.

Under the law, employers must furnish employees with written or posted notice of the wage supplement policy. You should inform your employees in writing about any fringe benefits and inform them in writing of any change in benefits. You are required by law either to prepare and conspicuously display your own notice delineating your company’s policy concerning fringe benefits and working hours or to distribute a copy of your policy to each employee. A Labor Department Human Resources Consultant (see Section 3, FAQ #2) can help you develop an employee handbook that includes your fringe benefits and Labor Department policies. The publication “Notice Requirements for Fringe Benefits and Hours,” (LS-606) is available from the NYS Department of Labor, Bureau of Labor Standards.

### **10. Can I demand a kickback of any part of my employees’ wages, or require employees to turn over any part of their tip earnings?**

No. It is unlawful for an employer, or any other person, to demand or accept any part of wages as a condition for employees to get or keep a job. It is also unlawful for an employer, or any other person, to demand or accept any part of tip earnings. (This prohibition does not apply to hat checking.) The law does permit the employer to accept the gratuity for distribution to service personnel where a fixed percentage of a patron’s bill is added for gratuities distributed to employees in connection with special functions, such as banquets. Voluntary sharing of tips by a waiter with a busboy or similar employee also is permitted.

### **11. How does the Family and Medical Leave Act affect my business?**

This law requires companies that have at least 50 employees within 75 miles to provide up to 12 weeks of unpaid, job-protected leave for family births and emergencies. For more information, contact the U.S. Department of Labor, which is listed in the blue pages of the telephone directory.

### **12. What are the regulations regarding hours of work?**

While a 40-hour workweek is the standard for full-time employment, overtime and part-time work are common practices in New York. However, special restrictions apply to children under 18 years of age (see Question #14). There are no specific regulations regarding maximum hours, except that most categories of workers are entitled to one “day of rest” per calendar week, and there are no special obligations for part-time employees.

With regard to meals and breaks, the Department of Labor generally permits an uninterrupted meal period of not less than 30 minutes, so long as there is no indication of hardship to employees. You may establish a longer meal period. If, based on special operational needs, you wish to establish a meal period of less than 30 minutes, but at least 20 minutes, you may apply to the Labor Department for a permit to do so. An employee who works a conventional daytime shift of more than six hours should be allowed to take a meal period at some point between 11:00 a.m. and 2:00 p.m. Other shifts of more than six hours should have a break approximately halfway through the shift. You do not have to pay employees for meal periods. For more information, read Publication LS-443 (9-94) Guidelines - Meal Periods, available from the New York State Department of Labor, Division of Labor Standards. On the other hand, breaks such as “coffee breaks” are not mandated by law or labor regulation, but remain entirely discretionary. However, if you grant the customary coffee break of between 5 and 20 minutes, you should not dock employees for this time.

### **13. What sorts of insurance am I required to purchase for my employees?**

- ♦ **Workers' compensation:** All employers operating in New York State must arrange workers' compensation insurance for their employees, either through a private insurance company or through the State Insurance Fund. You must obtain insurance for workers' compensation before you put employees to work for the first time. Rates vary according to the nature of the employment and the hazards involved. Contact the Workers' Compensation Board or a private insurance company for more information.
- ♦ **Disability Insurance:** The Disability Benefits Law is a special section of the Workers' Compensation Law. It protects workers from non-occupational injury or sickness. Employers must arrange disability insurance coverage, either through a private insurance company or through the State Insurance Fund.
- ♦ **Unemployment Insurance:** All employers who are liable under provisions of the Unemployment Insurance Law in New York State must register with the NYS Department of Labor, Unemployment Insurance Division. The Department maintains a separate account for each employer. The employer contributes to the account a percentage of the first \$7,000 of wages paid to each employee. The percentage paid can vary, depending on your account history and other factors. A new employer currently (July 1996) starts at 4.4 percent, and the percentage rate may be adjusted up or down in the future, depending on the amount of unemployment insurance benefits drawn against the account. For more information, contact the NYS Department of Labor, Unemployment Insurance Division.

### **14. I have some questions about New York's Child Labor Law ...**

New York State's Child Labor Law imposes strict regulations on the employment of children (minors) under the age of 18. These regulations prohibit employment at certain jobs, limit the number of hours per week a minor may work, and specify times during which a minor may and may not work. Minors must also have working papers issued by their school district; the employer is required to keep these working papers on file.

For example, a minor attending school may work a maximum of three hours a day on school days, and eight hours on other days, when s/he is 14 or 15 years old. A 16 or 17-year-old may work four hours from Monday-Thursday, and eight hours Friday-Sunday plus holidays. You may order the publication "Permitted Working Hours for Minors under 18 Years of Age" (LS-171) from the NYSDOL website or through your local Employer Services Representative.

Employers must also prepare and conspicuously display their own notice showing the daily starting and ending times, including meal periods, for every day a minor is scheduled to work. For more information, you can order the booklet "Laws Governing the Employment of Minors" (P 882) from your local office or check on the NYSDOL website under Labor Standards.

### **15. Are there questions that I'm not allowed to ask during the hiring process?**

During the hiring process, New York State law does not permit employers to ask about race, sex, religion, health, age, national origin, disability, veteran status, marital status, arrests not followed by convictions, and other personal matters. New York State Human Rights Law also demands non-discrimination in other labor-management situations. For information, contact the NYS Division of Human Rights. (See Section 5, FAQ #8.)

**16. Under what conditions may I dismiss an employee?**

In New York State, the doctrine of “employment at will” prevails. This means that, unless you are party to a contract restricting the circumstances under which termination takes place (such as a collective bargaining agreement negotiated with a union), you have the right to dismiss an employee with or without reasonable cause. This principle also protects your employee’s rights to resign from his or her position without being required to justify that decision.

**17. Do I have to give employees pay in lieu of advance notice of termination?**

No, not unless you have an existing agreement to pay such a benefit, in much the same way as if you had agreed to pay employees a wage supplement, such as vacation pay.

Where an employer has failed to provide the severance pay promised in an established policy, the Employee Benefits Security Administration of the U.S. Department of Labor has exclusive jurisdiction under the Employee Retirement Income Security Act (ERISA).

**18. Before quitting, must an employee give notice to the employer?**

Although an employee is usually not obliged to provide advance notice of his or her intent to resign, negative consequences may result from the employee’s failure to do so. If an employer has an established policy which requires that, in order to qualify for a wage supplement (such as payment for unused vacation), an employee must give adequate notice prior to quitting, then those employees who do not adhere to this condition may forfeit their entitlement to the benefit.

**19. I have a question about unemployment insurance. Can you help me?**

Please direct questions about unemployment insurance to the Department’s Unemployment Insurance Division. (See Section 10 for the appropriate contact person.)

## 7. Division of Research and Statistics

### *Background:*

**T**he Department of Labor's Division of Research and Statistics (R&S) is recognized as the primary source of labor market information in New York State. R&S maintains a network of ten regional labor market analysts across the State, each of whom possesses a unique knowledge of their local labor market, carefully monitors the dynamics of his/her area, and disseminates information to a wide range of customers.

Division staff collect, develop, analyze, and publish a wealth of economic information of key interest to employers, including the quality and quantity of the labor supply; labor costs; training and workforce preparation programs; industry trends; population characteristics; affirmative action data; occupational injuries and illnesses data; and collective bargaining settlements. Labor market analysts also play a strategic role in economic development. Lastly, new developments such as the ALMIS database as well as enhancements to CareerZone can also benefit employers.

### **Quality and Quantity of the Labor Supply**

To begin, the Department's database of registered applicants and Unemployment Insurance (UI) recipients represents the most comprehensive source of labor supply information available in New York State. Moreover, UI beneficiary data provides a particularly good representation of the available experienced labor supply. This data can be sorted according to occupation, educational attainment, work experience, and other characteristics.

Secondly, the NYSDOL has a Geographical Information System (GIS) database file that contains information on registered applicants sorted by zip code and location. This information allows employers to gain a clear understanding of the quality/quantity of an area's labor supply in relation to a specific site location. It can also be used to assess the transportation and communication links between business sites and workers.

Lastly, R&S produces occupational projections for the State and its ten regions. Detailed information on the number of projected openings for specific occupations is available at [http://64.106.160.140:8080/lmi/projections\\_generator.html](http://64.106.160.140:8080/lmi/projections_generator.html). You can also speak to your labor market analyst to learn more about employment trends.

Labor supply information is available on diskette or may be retrieved through WDSuite ([www.workforcenewyork.com/wdsuite/](http://www.workforcenewyork.com/wdsuite/)), a three-programs-in-one software package developed by R&S staff, which allows employers to conduct a skills-inventory search for workers in any county of New York State. (Note: accessing WDSuite requires a Windows-based PC with modem.)

### **Labor Costs**

To recruit and retain workers, employers need to know what constitutes a competitive wage for the positions their business offers. In response to this need, R&S, in cooperation with the U.S. Bureau of Labor Statistics, develops wage data for many occupations by conducting an annual survey, the Occupational Employment Statistics (OES) Survey. Over each three-year survey cycle, the OES Unit gathers information from more than 60,000 public- and private-sector employers in New York State. OES survey data has many uses: evaluating wage trends by industry and occupation; comparing an occupation's wages over time and across geographic areas and industries to adjust its pay structure; evaluating occupational trends by industry; spotlighting emerging or declining occupations, identifying available types of skilled workers; and evaluating how technological advances affect occupations.

(OES is also the source for Alien Labor Certification wage data.) OES wage data can be obtained by contacting your labor market analyst or by searching online at [www.labor.state.ny.us/labor\\_market/LMI\\_subject/LMI\\_subject.html#W](http://www.labor.state.ny.us/labor_market/LMI_subject/LMI_subject.html#W).

## **Training and Workforce Preparation Programs**

The Department of Labor plays a key role in the delivery of workforce preparation programs in New York State, including apprenticeship training, adult training, and on-the-job training. Local labor market analysts can provide information and guidance regarding these programs.

## **Industry Trends**

R&S staff develop specific analyses of new business formations, rapidly expanding industries, and large-growth industries. This information provides valuable insight into the evolution of the economy, such as which industries are emerging and/or successfully growing in a given labor market. Analysts also produce monthly briefings on firm-specific hiring and layoff announcements, deriving their information from press releases, newspapers, business journals, newsletters, and other public sources.

## **High-Performance Workplace Skills and Competencies**

The offices of local labor market analysts serve as repositories for current research focusing on the skill demands of the workplace. Employers can be connected to the National Skill Standards Directory, school-to-work initiatives, SCANS research, high-performance manufacturing skills and other literature about the requirements of the workplace through their local analyst.

## **Population Trends**

Since an area's population represents both customers and workers for businesses, its size and characteristics can be crucial considerations for employers seeking to set up or expand their businesses. As a State Data Center affiliate, R&S produces detailed information on various population categories, including analyses of their changing demographics and the subsequent implications for the economy.

## **Affirmative Action Data**

The Division produces and is the point of contact for Affirmative Action data. R&S provides a statistical analysis of affirmative action/equal opportunity data to New York State employers as a tool for assessing the available workforce in given areas of the State. This analysis also can be helpful in identifying and comparing the demographics of the available workforce in the various federal occupational categories. The main goal of this process is to ensure equal access and equal opportunities for all New York State workers. A detailed EEO file, including information on 511 specific occupations, is available on the NYSDOL site at [www.labor.state.ny.us/labor\\_market/lmi\\_business/eo/index.htm](http://www.labor.state.ny.us/labor_market/lmi_business/eo/index.htm).

## **Occupational Injuries and Illnesses**

Prevention of workplace accidents and injuries continues to be a high priority for the Department. Through a cooperative arrangement with the USDOL, data on injuries and illness in the workplace are collected and analyzed. The results are made available in two annual reports (one private sector, one public sector). Employers can use this information to design cost-effective injury and illness prevention strategies. Reports from 1998 to 2001 are available at [www.labor.state.ny.us/labor\\_market/LMI\\_business/more\\_info.html](http://www.labor.state.ny.us/labor_market/LMI_business/more_info.html).

## Collective Bargaining Settlements

R&S published a quarterly report that summarized wage changes in collective bargaining agreements that affected 100 or more workers and fringe benefit changes that affected 1,000 or more workers in New York State. The publication provides the date of the settlement, the contract term, and an analysis of wage and benefit changes. The settlements are organized by industry. Although this publication has been discontinued, reports from 1999 to 2003 remain available at [www.labor.state.ny.us/labor\\_market/LMI\\_business/cbs/index.html](http://www.labor.state.ny.us/labor_market/LMI_business/cbs/index.html).

## Economic Development

If an employer is considering a site location or the prospects for expanding their business, R&S staff will develop a customized analysis, including information on labor supply/cost, job training programs, educational institutions, and industry-specific data on contractors/subcontractors.

R&S staff can conduct location-specific labor comparisons as well as assist employers with human resources planning and marketing strategies. Analysts also can conduct extensive research to identify industries or clusters exhibiting competitive advantage or specialization for a given county or region. This information can be used for targeting/marketing strategies.

## ALMIS Database

A wide variety of LMI customers, including employers, One-Stop Centers, Workforce Investment Boards, career counselors, and researchers, can now access labor market statistics 24 hours a day, 7 days a week, by visiting the “data” section of the Department’s website. The creation of this data webpage is an outgrowth of New York’s participation in America’s Labor Market Information System (ALMIS), which is a joint effort between the Employment and Training Administration of the U.S. Department of Labor and the states to conduct research, develop products, and deliver information to customers. All information in the “data” section comes from the ALMIS database, which stores information in a standard format and in a single location, providing “one-stop shopping” for LMI customers. Some of the key statistics available on the webpage include ten-year occupational projections for New York and its ten labor market regions; state- and regional-level wages for almost 700 occupations; job and unemployment data; and population and income figures. You can access this information by visiting the Department’s homepage ([www.labor.state.ny.us](http://www.labor.state.ny.us)), clicking the *Labor Market Information* button, and selecting the *Data* link.

## CareerZone

CareerZone ([www.nycareerzone.org](http://www.nycareerzone.org)) is a free career exploration and planning system that brings together multiple sources of career and labor market information. The CareerZone system provides information on 900 occupations from the new O\*NET Database, along with the latest labor market information from the NYS Department of Labor. Employers can benefit from CareerZone in a number of ways. To begin, the detailed information contained in CareerZone’s occupational profiles can help employers compose the descriptions for their job openings. Also, since these profiles have direct links to appropriate listings in America’s Job Bank (AJB), businesses that post their openings on AJB’s website will gain greater visibility. Furthermore, employers interested in having a job at their company highlighted, especially one that would be considered an emerging occupation, can contact CareerZone about having that job included in the Featured Career section. Lastly, human resources personnel can use the Skills and Similar Jobs sections of the occupational profiles to assist employees in building career ladders.

**Labor Market Analysts**  
**New York State Department of Labor**  
**Division of Research and Statistics**

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## FREQUENTLY ASKED QUESTIONS

### Concerning the Division of Research and Statistics

1. **What are the average weekly/annual wages for \_\_\_\_\_ occupation? What are typical starting wages by occupation? Where can I get timely wage information for jobs in a particular region or area of New York State? Where can I get the prevailing wage for an occupation?**

The Department prepares wage data for the State and the ten regions, which is available in the *Occupational Outlook and Wages* publication. These wages are gathered from job orders (job openings listed with the NYSDOL by an employer) and prior earnings of unemployment insurance beneficiaries. While they are not “prevailing wage” for an occupation, and are subject to a number of limitations, they can be used as a rough guide to the wage structure of an occupation within an area. Prevailing wages has many meanings to the Department.

2. **Where can I find Department of Labor information on the Internet?**

The New York State Department of Labor (NYSDOL) web site is located at <http://www.labor.state.ny.us>. NYSDOL has additional resources on the Workforce Development System homepage at <http://www.wdsny.org>. Research and Statistics specific information is organized in a Facts and Figures Index located at [http://www.labor.state.ny.us/html/fact\\_fig.htm](http://www.labor.state.ny.us/html/fact_fig.htm).

3. **How do I get an H1B Visa for an employee?**

Please call New York State Department of Labor’s Alien Employment Certification Office at (212) 352-6482.

4. **What is the latest unemployment rate for our area?**

This information is available through the local labor market analyst and is updated monthly. You might also want to try accessing this and other information on the Internet through our WorldWide Web site at <http://www.labor.state.ny.us/html/pressrel/prtbur.txt>.

5. **I am filling out a grant application. It asks if my business is in a labor surplus area. What does that mean? Is my business in a “Labor Surplus Area” for purposes of bidding on a government contract? Is my business located in a “Labor Surplus Area”?**

An area is considered a “Labor Surplus Area” if its unemployment rate for the previous two calendar years was at least 1.2 times the national average unemployment rate during the same period. A “Labor Surplus Area” is defined as an area that has experienced an unemployment rate 20 percent higher than the national unemployment rate for the previous two years. Employers in labor surplus areas can be given preference in bidding on federal procurement contracts. For the latest information on your area, please contact your local labor market analyst or visit the NYSDOL home page at <http://www.labor.state.ny.us/html/employ/lainnys.htm>.

6. **I need data on affirmative action. How can we develop an affirmative action plan for our company?**

We have affirmative action data for the state, counties and metropolitan areas. Our office can supply you with the latest U.S. Census data for the ethnic, minority and gender breakdown for your area. We will send you the 1990 Census data. This information is available on the NYSDOL web site at <http://www.labor.state.ny.us/html/eao/index.htm>.

**7. Which industries are growing the fastest? In which industries are jobs growing? I am a student interested in knowing what occupations will be in demand when I graduate.**

A publication called *Occupational Outlook and Wages* provides information on the demand for various occupations and predictions on how that demand will change within a certain time period. This publication projects job openings within an occupation, making it useful to those presently seeking employment as well as to those just entering or planning to enter the job market.

**8. I am looking to expand my business and need to know what is the local supply of applicants for a certain occupation. How many workers are available?**

The WDSuite software program has daily updates of the available workforce across New York State. This program enables you to search counties by keywords for the types of workers you need. A breakdown of education and experience levels is included. The software and daily updates are available at: <http://www.wdsny.org/common/frame.htm>, or by using a PC and modem to call the NYS Department of Labor electronic Bulletin Board (BBS) closest to you. A listing of current registered Job Service applicants (people looking for work and coded by occupation) that you can search is available on WDSuite. Downloadable software is available over the Internet at: <http://www.labor.state.ny.us> or from your local BBS.

**9. What is the Immigration Program that grants a visa to a large investor in New York?**

The Immigration Act of 1990 (IMMACT 90), effective November 29, 1991, recognizes the growing internationalization of the world's labor market. This act was necessary "to help American businesses hire highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found." The Governor has designated Empire State Development as the lead/contact agency for requests or inquiries concerning this aspect of the law. Please refer your inquiries to: Empire State Development, International Division, 633 Third Avenue, New York, New York 10017 or call (212) 803-2350.

**10. Where can I get the prevailing wages to bid on a government contract? What is the prevailing wage that government contractors must pay to their workers?**

Prevailing wages for government contracts should be obtained by the Authorizing Agent or Architect for the project by contacting the prevailing wage unit in Albany at (518) 457-5589. A contractor bidding on the contract should contact the Authorizing Agent. If you are a subcontractor, you should get the prevailing wage data from your general contractor. Prevailing wage data is available on the Internet at: <http://www.labor.state.ny.us/html/prewage/htm>.

## 8. Bureau of Public Work

### *Background:*

*T*he Bureau of Public Work is responsible for the administration of Article 8 and Article 9 of the New York State Labor Law. Article 8 covers the payment of prevailing wages and supplements on public construction projects. Any project let by the state or its political subdivisions for construction or reconstruction of a public facility and involves the employment of laborers, workers, or mechanics is considered a public work project and is covered. Article 9 covers the payment of prevailing wages for building service contracts.

In determining whether a construction project is public work, two conditions must be fulfilled in order for the provisions of Article 8 to apply to the project:

1. A public entity must be a party to a contract involving the employment of laborers, workers or mechanics; and
2. The contract must concern a public work project.

To be public work, the project's primary objective must be to benefit the public. Ownership (public or private) is also a factor in determining whether a project is public work. Funding of the project is not considered in determining whether the provisions of Article 8 apply.

Generally, projects for construction, reconstruction or maintenance done on behalf of a public agency (entity) are public work. In instances where there is a question regarding whether this condition exists, the Bureau of Public Work will make a determination based on the project details. The Labor Department issues wage schedules on a county-by-county basis that contain minimum rates of pay for different work classifications. State law requires that these schedules be made part of all contracts between a government entity and a contractor.

Article 9 applies to building service contracts involving the care or maintenance of an existing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars and the principal purpose of which is to furnish services through the use of building service employees.

## FREQUENTLY ASKED QUESTIONS

The following questions deal primarily with Article 8, construction work, which is the largest area of responsibility. For specific questions on Article 9, Building Service work please call any one of the numbers listed for the Bureau.

**1. How are prevailing rates determined?**

Prevailing rates in a locality are determined by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, provided that said employers employ at least 30% of workers in the same trade or occupation in the locality where the work is being performed. (Section 220, subd 5a)

**2a. How often are prevailing rates determined and when do they take effect?**

The prevailing rate of wages and supplements are determined annually on July 1 of each year and are effective through June 30, i.e. July 1, 2001 – June 30, 2002. (Article 8, Section 220, subd. 5a) When you review a schedule for a particular occupation, your attention should be directed to the dates above the column rates. These are the dates that additional adjustments become effective.

**2b. Is the contractor held responsible to pay the newly determined rates even if the new rates are not included in the wage schedule?**

Yes.

**3. Are prime contractors required to provide subcontractors with prevailing wage schedules?**

Yes. It is a violation for any contractor or its subcontractor to fail to provide to its subcontractor a copy of the schedule of wages and supplements specified in the contract as well as any annually determined rate issued subsequent to the schedule specified in the contract. (Section 220-a, subd. 1)

**4. What are the posting requirements for prevailing rates?**

“The contractor and every subcontractor on public work contracts shall post in a prominent and accessible place on the site of the work a legible statement of all wage rates and supplements as specified in the contract to be paid or provided ...” (Section 220, subd. 3-a)

**5. When is payment for overtime required on New York State public work?**

At a minimum, all work performed on a public work project in excess of eight hours in any one day or more than five days in any workweek is overtime. However, the specific overtime requirements for each trade or occupation on a public work project may differ. The specific overtime requirements for each trade or occupation are contained in the prevailing rate schedules issued for public work projects.

**6. May workers for a contractor work four 10-hour days without being paid overtime?**

No. All work in excess of 8 hours in a day, or five days in a week, is overtime. (Article 8, Section 220, subd. 2)

**7. If a worker receives different hourly rates during the course of a day because he is performing different tasks, what overtime rate is paid when overtime pay is required?**

The prevailing rate for the occupation the employee is working on at the time the overtime hours are worked.

**8. How does DOL determine which rate applies to a particular task?**

The Bureau of Public Work looks at all factors, including:

- ◆ Nature of the work
- ◆ Collective bargaining agreements
- ◆ Jurisdictional agreements
- ◆ Jurisdictional decisions
- ◆ Historical practice
- ◆ Past DOL recognition
- ◆ Case law precedents

**9. May contractors request an opinion from the Bureau of Public Work when there is a classification question as to which trade and rate to use prior to bid?**

Yes. Requests should be in writing and include sufficient information regarding the work in question. All requests should be forwarded to the Public Work office nearest where the project takes place.

**10. If an employee is working in more than one classification of work during the same day or during the same week, how should a contractor report this on his payroll records?**

The contractor and every subcontractor shall keep original payrolls or transcripts thereof showing the hours and days worked by each worker, the occupation at which he/she worked, the hourly wage paid and the supplements paid or provided. [Section 220, subd. 3-a (a)]

**11. What payroll records are required to be maintained by contractors?**

The contractor and every subcontractor shall keep original payrolls or transcripts thereof showing the hours and days worked by each worker, the occupation at which he/she worked, the hourly wages paid and the supplements paid or provided. [Section 220, subd. 3-a (a)] This includes all books and records pertaining to the rate of wages paid and supplements provided.

**12. What is a “certified payroll”?**

Certified payrolls are original payrolls or transcripts thereof, subscribed and affirmed as true under the penalty of perjury.

**13. Are contractors and subcontractors required to submit payroll records to the public owner?**

“Every contractor, and subcontractor, shall submit to the department of jurisdiction within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll records, as provided by this Article, subscribed and affirmed as true...” (Section 220, subd 3-a)

**14. How long are certified payroll records required to be kept by the contractor?**

The original payrolls or transcripts are required to be preserved for three years from the date of completion of the work on the awarded contract. (Section 220, subd. 3-a)

**15. Are foremen or supervisors required to be paid prevailing wages when they are “working with the tools” or when they are strictly supervising the work?**

Supervisors and/or foremen working with the tools must be paid at the prevailing rate for the classification of work being performed. When strictly overseeing workers, supervisors or foremen are not covered under Article 8 prevailing rate requirements.

**16. Are owners of the business required to be paid the prevailing wage rate when they “work with the tools” on a job site?**

- ♦ sole proprietor/owner-operators?
- ♦ partnerships?
- ♦ corporations?

Determining the status employer/employee of each of the above is dependent upon the factual situation presented. A decision could be predicated upon one or a combination of factors. You should contact the Bureau of Public Work if you have any questions regarding these areas.

**17. Are independent contractors excluded from coverage under Article 8?**

Legitimate independent contractors are excluded from coverage under Article 8. The Labor Law does not define an independent contractor; however, court decisions have held that the common law tests of “master and servant” are to be applied in making a determination. Under common law tests, all factors concerning the relationship between the two parties will be taken into consideration when making a determination whether someone is an employee or an independent contractor. Possession of liability insurance or the title “DBA” does not in and of itself make a person an independent contractor.

**18. What about the use of apprentices?**

No employee shall be deemed to be an apprentice unless the employee is individually registered in an apprenticeship program that is duly registered with the Commissioner of Labor. (Section 220, subd 3)

**19. How are apprentice ratios determined?**

Apprentice ratios are determined by occupation and are outlined in the Apprenticeship Training Program established by the New York State Department of Labor and the Apprentice Program sponsor.

**20. Can trainees or helpers or pre-apprentices be used on a public work project?**

They can only be used if they are paid at the journey worker rate. Only registered apprentices can be paid less than the journey worker rates.

**21. How may prevailing wage supplements be provided to workers?**

- ♦ cash payment in lieu of supplements
- ♦ through irrevocable contributions to a fund, plan or program
- ♦ any combination of the above.

**22. How is the hourly cash equivalent of supplements determined?**

To determine the hourly cash equivalent of supplements provided to or on behalf of workers, the Department will:

1. divide the actual contribution or cost for providing such supplement by the total annual hours worked by the employee on both public and private work.
2. where proof of the total annual hours worked by the employee on both public and private work is not provided, divide the actual annual contribution or cost for providing such supplement by 2080 hours (8 hours per day x 5 days per week x 52 weeks).

3. where proof of the total annual hours worked by the employee on both public and private work is not provided AND proof is provided that the employee worked only seven hours per day, divide the actual annual contribution or cost for providing such supplements by 1820 hours (7 hours per day x 5 days per week x 52 weeks).

**23. How is a prevailing wage investigation commenced? What records will DOL request from a contractor?**

Subsequent to its receipt of a complaint or on its own initiative, the Bureau of Public Work will request certified payroll records, daily time records, proof of payment of wages, i.e., cancelled checks and proof of the payment and/or providing of supplemental benefits.

**24. Can a contractor be prohibited from bidding or being awarded a public work project?**

The New York State Labor Law prohibits contractors who have been debarred for violations of Article 8 from bidding on or being awarded public work projects for five years. A contractor is debarred when two final determinations have been rendered within any consecutive six-year period that such entity has willfully failed to pay the prevailing rate, or one final determination has been rendered involving the falsification of payroll records or the kickback of wages and/or supplements. (Article 8, Section 220-b, subd. 3b)

**25. What is a “willful” violation and how is willfulness determined?**

For purposes of paragraph 6 of subdivision 3 of Section 220-b of the Labor Law, which pertains to the debarment of contractors from performing public work, a contractor has willfully violated Article 8 if it knows or should have known that it failed to pay the prevailing rates of wages and supplements. There are several circumstances that could constitute willful behavior.

The following is a partial listing:

- ♦ if a contractor had actual knowledge he/she was violating the law
- ♦ experience of contractor - if there is credible evidence that a contractor “should have known” that it was violating Article 8, i.e., receipt of the prevailing rate schedule
- ♦ history of prior public work prevailing rate violations
- ♦ gravity and nature of the violation
- ♦ notification by DOL that it views the contractor’s act a violation and the contractor fails to take corrective action

**26. What penalties may be assessed against a contractor for underpayment of prevailing wages?**

Interest of up to 16% from the date of underpayments to the date of restitution and a penalty up to 25% of the wages, supplements and interest due.

**27. What is the liability of a prime contractor for a subcontractor’s underpayment?**

When evidence indicates a non-compliance or evasion on the part of a subcontractor, the prime contractor is responsible for such non-compliance or evasion. (Section 223).

## Bureau of Public Work Offices

### District Office

### Counties Served

#### Central Office

Bureau of Public Work  
Building #12 - Rm-130  
State Office Campus  
Albany, NY 12240  
Tel. (518) 457-5589  
FAX (518) 485-1870

#### Rochester District

109 South Union Street  
Room 312  
Rochester, NY 14607  
Tel. (585) 258-4505  
FAX (585) 258-4708

Genesee, Livingston, Monroe, Ontario,  
Orleans, Wayne, Wyoming, Yates

#### Albany District

Building #12 - Rm-134B  
State Office Campus  
Albany, NY 12240  
Tel. (518) 457-2744  
FAX (518) 485-0240

Albany, Clinton, Columbia, Dutchess, Essex,  
Greene, Rensselaer, Saratoga, Schenectady,  
Schoharie, Ulster, Warren, Washington

#### Syracuse District

333 East Washington Street  
Room 419  
Syracuse, NY 13202  
Tel. (315) 428-4056  
FAX (315) 428-4671

Cayuga, Cortland, Jefferson, Onondaga,  
Oswego, Seneca, Tompkins

#### Binghamton District

State Office Bldg.  
44 Hawley Street, Room 908  
Binghamton, NY 13901  
Tel. (607) 721-8005

Broome, Chemung, Chenango, Delaware, Otsego,  
Schuyler, Steuben, Sullivan, Tioga

#### Utica District

207 Genesee Street, Room 603B  
Utica, NY 13501  
Tel. (315) 793-2314  
FAX (315) 793-2514

Franklin, Fulton, Hamilton, Herkimer,  
Lewis, Madison, Montgomery, Oneida,  
St. Lawrence

**Buffalo District**

65 Court Street, Room 201  
Buffalo, NY 14202  
Tel. (716) 847-7159  
FAX (716) 847-7650

Allegany, Cattaraugus, Chautauqua, Erie, Niagara

**White Plains District**

120 Bloomingdale Road, Room 204  
White Plains, NY 10605  
Tel. (914) 997-9507  
FAX (914) 997-9523

Orange, Putnam, Rockland, Westchester

**Long Island District**

400 Oak Street Suite 101  
Garden City, NY 11530-6551  
Tel. (516) 228-3915  
FAX (516) 794-3518

Nassau, Suffolk

**New York City District**

345 Hudson Street, 7th Floor  
New York, NY 10014  
Tel. (212) 352-6088  
FAX (212) 352-6580

New York City

## 9. Division of Safety and Health and Associated Programs

### *Background*

**T**he Director of the Division of Safety and Health has executive authority for all Labor Department Safety and Health programs statewide. Associated program descriptions follow:

#### **Asbestos Control Bureau**

The Department of Labor regulates asbestos control activities in New York State through its Asbestos Control Bureau. All contractors must be licensed and all asbestos handlers certified by the Department's License and Certificate Unit. Projects must be conducted in accordance with safety standards promulgated by the Commissioner of Labor to avoid potential public health hazards that can result from the improper handling of asbestos or asbestos material, a potential carcinogen.

#### **Boiler Safety Bureau**

The Boiler Safety Bureau is responsible for the inspection of low and high-pressure boilers in New York State, with the exception of the cities of New York, White Plains and Buffalo. All boilers located in commercial buildings and dwellings of six families or more must be inspected by a Certified Boiler Inspector employed either by the New York State Department of Labor or an authorized insurance company. The Bureau is also responsible for the issuance and review of Boiler Repair Firms' Certificates of Authorization and the certification of insurance company inspectors.

#### **Industry Inspection Bureau & Licensing and Certification Unit**

The Industry Inspection Bureau is responsible for regulation, inspection, or both in the following listed programs throughout New York State, with certain exceptions in New York City:

- ♦ Amusement Rides, Carnivals, Circuses, Viewing Stands, Tents
- ♦ Passenger Tramways, Ski Tows and Ski Areas
- ♦ Crane Operators
- ♦ Explosives Storage and Blasting Operations
- ♦ Window Cleaning Scaffolds and Operations
- ♦ Places of Public Assembly
- ♦ High Voltage Proximity Act
- ♦ Elevators in Factory and Mercantile Buildings
- ♦ Coin Operated Machinery
- ♦ Glass Doors

New York City jurisdiction is limited to:

- ♦ Passenger Tramways
- ♦ Window Cleaning Scaffolds and Operations
- ♦ High Voltage Proximity Act
- ♦ Coin-Operated Machinery

## **Radiological Health Unit**

The New York State Department of Labor Radiological Health Unit regulates the industrial use of radioactive materials in New York State primarily through a program of licensing and inspecting. A license must be obtained before a company is able to acquire the radioactive materials needed for its particular application (e.g., research and development, process control, manufacture of radio-pharmaceuticals, manufacturing smoke detectors, non-destructive testing of structural materials).

If the proposed program, procedures, facilities, shielding, equipment and staff are adequate, the RHU will then draft a licensing document incorporating the approved procedures and other information. All licensee programs are inspected at regular intervals, most ranging from one to three years, depending on the relative hazard of the licensed materials.

The Unit also responds to about 50 incidents and accidents a year involving radioactive materials (contaminated scrap and municipal trash, transportation accidents, accidental damage to radiation devices, etc.), and is part of a statewide radiological emergency response plan. Professional staff are on 24-hour call to respond to incidents and accidents and often work unusual schedules to accomplish the unit's mission.

## **Engineering Services Unit**

This Unit supplies professional engineering expertise required to service other programs within the Division of Safety and Health and miscellaneous operations. Specifically, engineering personnel are responsible for:

- ♦ Development and revisions of Code Rules and Regulations (NYCRR).
- ♦ Review of plans for places of public assembly, ski tows, elevators and elevator hoistways.
- ♦ Review of variance requests.
- ♦ Issuance of approvals for devices and materials required under the Labor Law and Code Rules and Regulations (NYCRR).
- ♦ Assistance to Division staff on any questions that arise requiring engineering expertise.
- ♦ Review of plans submitted by public employers to the Hazard Abatement Board.
- ♦ Assistance to the general public on technical questions relating to the asbestos standards.

## **Occupational Safety and Health Training and Education Unit and Hazard Abatement Board**

The Occupational Safety and Health Training and Education Program (OSH T&E) funds projects that provide occupational safety and health training and education to employers, managers and workers throughout New York State. The goals of the program are to promote safe and healthy conditions in the workplace and prevent workplace accidents, injuries and illnesses.

The Legislature provides funds for the program through annual assessments on worker's compensation carriers. Yearly funding has been about \$6.8 million and more than 100 programs have been funded annually. The New York State Occupational Safety and Health Hazard Abatement Board oversees the program and makes grant awards. The New York State Department of Labor administers the program on the Board's behalf.

Public and private employers, labor organizations or their federations, trade associations, non-profit organizations and educational institutions are eligible to apply for grants. The program supports a wide variety of activities related to occupational safety and health training for workers employed in New York State, including:

- ♦ Training to identify, evaluate, and control workplace hazards.
- ♦ Activities to improve the effectiveness of labor-management safety and health committees.
- ♦ Programs to reduce accidents by training workers in specific problem areas.
- ♦ Programs emphasizing control of carcinogens and other toxic chemicals, physical hazards such as noise, heat, and vibration, or biological hazards, such as hepatitis B and tuberculosis.
- ♦ Projects designed to survey workplace hazards and determine health and safety training needs.
- ♦ Programs which resolve unique or unusually difficult job safety and health problems.

The Hazard Abatement Board also administers the Capital Abatement Project which funds local public agencies for 75 percent of the cost of capital projects undertaken in response to Public Employee Safety and Health citations, or consultation reports. Any political subdivision of the State, except a State agency or public authority created by the State, is eligible to apply.

### **Public Employee Safety and Health Bureau**

The Public Employee Safety and Health (PESH) Bureau is responsible for the enforcement of Article 2, Section 27a of the Labor Law, known as the Public Employee Safety and Health Act of 1980. PESH enforces standards that concern the occupational safety and health of the employees of the State, political subdivisions of the State, public authorities and instrumentality's thereof. PESH conducts programmed inspections at the Commissioner's initiative under an administrative plan. It also investigates complaints filed by employees or their authorized representatives (unions certified under Article 14 of the Civil Service Law) and conducts investigations of accidents that are fatal to one or more public employees or result in the hospitalization of at least two public employees.

Under the consultation component of the program, PESH provides assistance to private sector employers to voluntarily come into compliance. In emergency situations, PESH has, in the past, assisted employers in assuring the safety of their emergency workers through consultation (World Trade Center Bombing). PESH should be contacted whenever an incident arises which involves public sector employees and their safety on the job.

### **Mine Safety Unit**

This Unit provides safety and health training for workers in the mining industry in New York State, under a contract between the New York State Department of Labor and the federal Mine Safety and Health Administration (MSHA). The unit instructs mine workers and management in safe work practices, and also provides train-the-trainer instruction for employees of the mining industry who want to become certified MSHA Instructors.

### **Workplace Safety and Loss Prevention Unit**

The Workplace Safety and Loss Prevention Unit provides Safety and Health Consultations to those companies targeted by the Workers' Compensation Rating Board, in accordance with Workers' Compensation Loss Section 134. In addition, the Unit receives and reviews consultation reports completed by private consultants certified by the License and Certificate Unit. The unit also makes inspections to resolve disagreements between employers and workers' compensation insurers as to whether or not employers are complying with consultants' recommendations.

## **On-Site Consultation Bureau**

This program provides free assistance to small, private sector employers (250 or fewer employees at the work site, 500 or fewer nationwide) to help meet federal Occupational Safety and Health Administration (OSHA) regulations, improve or institute workplace safety and health programs, and reduce workplace injuries and illness. It provides an on-site review of operations to identify hazards, and discusses the findings and possible corrective measures with the employer.

### **DIVISION OF SAFETY AND HEALTH DIRECTOR'S OFFICE**

**Director: Anthony Germano (518) 457- 2574**  
Assistant Director: Carmine Ruberto (518 ) 457- 4256  
New York State Department of Labor  
Division of Safety and Health, Room 532  
State Office Campus, Building 12  
Albany, New York 12240

### **ASBESTOS CONTROL BUREAU**

#### **Albany District Office**

Hany Ayoub (Acting Supervisor, Albany District Office; assigned to Syracuse)  
New York State Department of Labor  
DOSH - Asbestos Control Bureau  
Building 12, State Office Campus  
Albany, New York 12240  
Tel: (518) 485-7195

Counties: Albany, Rensselaer, Clinton, Rockland, Columbia, Saratoga, Dutchess, Schenectady, Essex, Schoharie, Greene, Ulster, Orange, Warren, Putnam, Washington.

#### **Syracuse District Office (Syracuse/Binghamton/Utica Area)**

Daniel Coyle (Supervisor)  
New York State Department of Labor  
DOSH - Asbestos Control Bureau  
4th Floor - Room 401  
450 South Salina St.  
Syracuse, New York 13202-2402  
Tel: (315) 479-3215

Counties: Binghamton, Syracuse, Allegany, Schuyler, Cayuga, Oneida, Broome, Steuben, Cortland, Onondaga, Chemung, Sullivan, Jefferson, Oswego, Chenango, Tioga, Lewis, Seneca, Delaware, Tompkins, Madison, St. Lawrence, Otsego, Utica, Franklin, Fulton, Hamilton, Herkimer, Montgomery.

**Buffalo District Office (Buffalo/Rochester Area)**

Alfred Jakubowski (Supervisor)  
New York State Department of Labor  
DOSH - Asbestos Control Bureau  
65 Court St.- Room 405  
Buffalo, New York 14202  
Tel: (716) 847-7601

Counties: Rochester, Buffalo, Flint, Orleans, Cattaraugus, Erie, Genesee, Wayne, Chautauqua, Niagara, Livingston, Wyoming, Monroe, Yates, Ontario

**New York District Office (New York City/Hempstead/White Plains Area)**

Norma Aird (Supervisor)  
New York State Department of Labor  
DOSH - Asbestos Control Bureau  
Mail Stop #7F  
P.O. Box 683  
New York, New York 10014-0683  
Tel: (212) 352-6084

Counties: New York City, Hempstead, Bronx, Queens, Nassau, Kings, Richmond, Suffolk, New York, Westchester

**BOILER SAFETY BUREAU**

**Garden City**

Alvin VanWart  
400 Oak Street  
Garden City, New York 11530  
Tel: (516) 228-3930

**Utica**

Ronald Holt (Senior Boiler Inspector)  
New York State Department of Labor  
207 Genesee Street  
Room 701  
Utica, New York 13501  
Tel: (315) 793-2657

**Syracuse**

Matthew Sansone (Senior Boiler Inspector)  
New York State Department of Labor  
450 South Salina Street  
Room 401  
Syracuse, New York 13202  
Tel: (315) 479-3296



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**Rochester**

Matthew Sansone (Boiler Inspector)  
New York State Department of Labor  
109 So. Union Street  
Rochester, New York 14607  
Tel: (585) 258-4575

**THE INDUSTRY INSPECTION BUREAU AND LICENSING  
AND CERTIFICATION UNIT**

David Ruppert  
New York State Department of Labor  
State Office Campus, Building 12  
Room 158  
Albany, New York 12240  
Tel: (518) 457-1327

**Albany District**

Kevin Kilrain  
New York State Department of Labor  
State Office Campus, Building 12  
Room 157  
Albany, New York 12240  
Tel: (518) 457-2131

Counties: Albany, Clinton, Columbia, Schenectady, Schoharie, Essex, Green, Rensselaer, Saratoga, Ulster, Warren, Washington, Dutchess.

**Binghamton District**

Gary Bowen  
New York State Department of Labor  
44 Hawley Street, Room 901  
Binghamton, New York 13901  
Tel: (607) 721-8184

Counties: Allegany, Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Steuben, Sullivan, Tioga, Tompkins

**Buffalo District**

Maria Guizzotti  
New York State Department of Labor  
65 Court Street, Room 400  
Buffalo, New York 14202  
Tel: (716) 847-7134

Counties: Cattaraugus, Chautauqua, Erie, Niagara

**Long Island District**

Joseph Gallagher  
New York State Department of Labor  
400 Oak Street, Suite 101  
Garden City, New York 11530  
Tel: (516) 228-3927

Counties: Nassau, Suffolk

**New York City District**

Joseph Gallagher  
New York State Department of Labor  
345 Hudson Street  
Mail Stop 7F, P.O. Box 683  
New York, New York 10014  
Tel: (212) 352-6140

New York State Department of Labor  
175 Fulton Ave.  
Hempstead, New York 11550  
Tel: (516) 565-4660

Counties: Queens, Bronx, Kings, New York, Richmond

**Rochester District**

David Frederick  
New York State Department of Labor  
109 So. Union Street, Room 402  
Rochester, New York 14607  
Tel. (716) 258-4574

Counties: Genesee, Livingston, Monroe, Ontario, Orleans, Wayne, Wyoming, Yates

**Syracuse District**

Gary Bowen  
New York State Department of Labor  
44 Hawley Street, Room 901  
Binghamton, New York 13901  
Tel: (607) 721-8184

Counties: Cayuga, Cortland, Jefferson, Onondaga, Oswego, Seneca

**Utica District**

Albert Schuler  
New York State Department of Labor  
207 Genesee Street, Room 701  
Utica, New York 13501  
Tel: (315) 793-2319

Counties: Franklin, Fulton, Hamilton, Herkimer, Lewis, Madison, Montgomery, Oneida, St. Lawrence

**White Plains District**

Alfred Creadore  
New York State Department of Labor  
120 Bloomingdale Road  
White Plains, New York 10605  
Tel: (914) 997-9510

Counties: Orange, Putnam, Rockland, Westchester

**RADIOLOGICAL HEALTH UNIT ENGINEERING SERVICES UNIT**

New York State Department of Labor  
Division of Safety and Health  
Radiological Health Unit  
State Office Campus, Building 12  
Room 167  
Albany, New York 12240  
Tel: (518) 457-1202

Mr. Clayton Bradt  
New York State Department of Labor  
Division of Safety and Health  
Engineering Services Unit  
State Campus, Building 12  
Room 169  
Albany, New York 12240  
Tel: (518) 457-1202

**OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION UNIT AND THE HAZARD ABATEMENT BOARD**

Dave Hoy  
New York State Department of Labor  
State Office Campus, Building 12  
Room 166  
Albany, New York 12240  
Tel: (518) 457-3427 or 457-7629

Marianne Davidson  
New York State Department of Labor  
State Office Campus, Building 12  
Room 166  
Albany, New York 12240  
Tel: (518) 457-7629

**PUBLIC EMPLOYEE SAFETY AND HEALTH BUREAU**

**Albany and Utica**

Christopher Jay  
New York State Department of Labor  
State Office Campus, Building 12, Room 159  
Albany, New York 12240  
Tel: (518) 457-1365

**Syracuse and Binghamton**

David Merriman  
New York State Department of Labor  
DOSH - PESH  
450 So. Salina Street, Room 401  
Syracuse, New York 13201  
Tel: (315) 479-3273



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**Rochester and Buffalo**

Tom Rath  
New York State Department of Labor  
DOSH - PESH  
109 So. Union Street, Room 402  
Rochester, New York 14607  
Tel: (716) 258-4570

**Long Island**

Joseph Welcome  
New York State Department of Labor  
DOSH - PESH  
400 Oak Street, Suite 101  
Garden City, New York 11530  
Tel: (516) 228-3967

**New York City**

Frank Fazzio  
New York State Department of Labor  
DOSH - PESH  
Mail Stop 7-F, P.O. Box 683  
New York, New York 10014-0683  
Tel: (212) 352-6132

**White Plains**

John Gamrat  
New York State Department of Labor  
DOSH - PESH  
120 Bloomingdale Road, Room 255  
White Plains, New York 10603  
Tel: (914) 997-9514

**MINE SAFETY UNIT**

Marino J. Franchini (Program Supervisor)  
New York State Department of Labor  
DOSH - Mine Safety Training Program  
State Office Campus, Building 12  
Room 167  
Albany, New York 12240  
Tel: (518) 457-1638

## **WORKPLACE SAFETY AND LOSS PREVENTION UNIT**

Marino J. Franchini (Program Supervisor)  
New York State Department of Labor  
DOSH - Workplace Safety Program  
State Office Campus, Building 12  
Room 167  
Albany, New York 12240  
Tel: (518) 457-1125

## **ON-SITE CONSULTATION BUREAU**

James Rush (Program Manager)  
New York State Department of Labor  
DOSH - Onsite Consultation Program  
State Office Campus, Building 12  
Room 168  
Albany, New York 12240  
Tel: (518) 457-2238

## **DISTRICT OFFICES**

### **Albany District Office**

Suzanne Waltz (Supervising Safety and Health Inspector)  
New York State Department of Labor  
State Office Campus, Building 12  
Room 168  
Albany, New York 12240  
Tel: (518) 457-2810

### **Utica District Office**

Vacant (Safety and Health Inspector)  
New York State Department of Labor  
State Office Building  
207 Genesee Street  
Utica, New York 13801  
Tel: (518) 457-2810

### **Syracuse District Office**

Dave Hutchison (Supervising Safety and Health Inspector)  
New York State Department of Labor  
450 So. Salina Street, Room 401  
Syracuse, New York 13202  
Tel: (315) 479-3205

**Binghamton District Office**

Dave Hutchison (Supervising Safety and Health Inspector)  
New York State Department of Labor  
44 Hawley Street  
Binghamton, New York 13901  
Tel: (607) 721-8211

**Buffalo District Office**

Greg Conrad (Supervising Safety and Health Inspector)  
New York State Department of Labor  
65 Court Street  
Room 400  
Buffalo, New York 14202  
Tel: (716) 847-7168

**Rochester District Office**

Greg Conrad (Supervising Safety and Health Inspector)  
New York State Department of Labor  
155 W. Main Street  
Room 406  
Rochester, New York 14614  
Tel: (716) 258-4570

**White Plains District Office**

Michael Ballantine (Supervising Safety and Health Inspector)  
New York State Department of Labor  
120 Bloomingdale Road, Room 256  
White Plains, New York 10603  
Tel: (914) 997-9527

**Hempstead District Office**

Michael Ballantine (Supervising Safety and Health Inspector)  
New York State Department of Labor  
400 Oak Street  
Garden City, New York 11530  
Tel: (516) 485-4408

**New York City District Office**

Chaya Cohen (Associate Industrial Hygienist)  
New York State Department of Labor  
345 Hudson Street, Mail Stop 7F, P.O. Box 683  
Room 7013  
New York, New York 10014  
Tel: (212) 352-6090

## FREQUENTLY ASKED QUESTIONS

### Division of Safety and Health and Associated Programs

**1. What does Industrial Code Rule 56 (ICR 56) mandate for asbestos?**

ICR 56 does not mandate the abatement of asbestos. If an asbestos abatement or project is to be performed or a disturbance occurs, ICR 56 must be followed. It requires the licensure of all asbestos contractors, certification of all workers on an asbestos project, notification to the New York State Department of Labor of the asbestos project, adherence to specified work practices and engineering controls, specified collection of air samples and notice to building occupants.

**2. What is an asbestos project?**

Work that involves any aspect of the removal, encapsulation, enclosure or disturbance of asbestos, or any handling of asbestos that may result in the release of asbestos fiber. An asbestos project includes supervising, planning, design, monitoring, inspection and air sampling of abatement work.

**3. Am I required to employ licensed boiler operators to operate the boilers in my place of business?**

There is no statewide law requiring the employment of licensed boiler operators, but the following cities have enacted local laws requiring licensed boiler operators for various sizes and types of boilers: New York City, White Plains, Yonkers, Rochester, Buffalo and Niagara Falls. You should contact the Building Inspector's Office in the City Hall of the city where your business is located to determine the extent of their boiler operator requirements, if any.

**4. When is a Certificate of Competence required for a crane operator?**

Certification is required for any tower crane operated for construction, excavation or demolition. It is also required for mobile cranes used for construction, excavation or demolition where the crane has a manufacturer's rated capacity exceeding 5 tons or a boom length exceeding 40 feet.

Certification is not required for mobile cranes used for the following applications: as pile drivers with fixed leads, for excavation using a drag line bucket, for materials handling, and cranes operated and leased or owned by a political subdivision of the State, or an agency or authority of the State.

**5. When is a variance needed from Industrial Code Rule 56, Asbestos, and how is a request for a variance prepared?**

You may call the Engineering Services Unit and talk to one of the engineers and you may request a copy of the ESU publication, "How to Prepare a Request for an Asbestos Variance."

**6. I'd like to go into the lead-in-paint evaluation business, and would need to use a detector containing a radioactive source. Do I need a license to obtain this device?**

Yes. An application package can be obtained by contacting the RHU at the address listed or by calling (518) 457-1202.

**7. What agreement does the Department of Labor have with the federal government to provide for the inspection/training of employees who work in the mining operations in the State?**

The Department of Labor has an agreement to provide training to the employees who work in the mining industry. There is no charge for this training. The U.S. Department of Labor, through the Mine Safety and Health Administration, has the jurisdiction for the inspection of all mine operations in New York. They have offices in Albany, (518) 436-8970 and Geneva, (315) 789-0522.

**8. How are the recommendations, issued by a certified consultant under Industrial Code Rule 59, verified for compliance?**

Under the law, the employer's insurer must verify compliance with recommendations issued by a certified consultant. The insurer must inspect the employer's facilities within 60 days from the expiration of the six-month period allotted for completion of remediation and notify the Department of Labor within 45 days of the completion of the compliance inspection. A copy of the inspection report must accompany the notification.

**9. How do I obtain a copy of the safety and health standards enforced by PESH?**

The Public Employee Safety and Health (PESH) Act requires the Commissioner of Labor to adopt all safety and health rules and regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). Copies of individual standards are available from the district offices or by calling (518) 457-1263. Standards can also be accessed through the OSHA Web Page at [www.osha.gov](http://www.osha.gov). Full copies of the Federal Register can be obtained through the U.S. Government Printing Office, Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Credit card orders are taken at (202) 512-1800. Public employers should specify 29CFR Parts 1910 and 1926.

**10. Is there a charge for the on-site consultation services?**

There is no charge for our assistance. The service is free, voluntary, and staffed by experienced safety and industrial hygiene consultants.

## 10. Division of Unemployment Insurance

### *Background*

**T**he Unemployment Insurance Division of the New York State Department of Labor administers the New York State Unemployment Insurance Law. Benefits paid to unemployment insurance claimants are funded by employer contributions to the Unemployment Insurance Trust Fund.

The Unemployment Insurance Division is comprised of four major subdivisions: the Adjudication Services Office, the Determination and Enforcement Office, the Benefit Payment and Tax Accounting Office, and Unemployment Insurance Benefit Operations Office.

### **ADJUDICATION SERVICES OFFICE**

The Adjudication Services Office reviews determinations for which hearings have been requested, processes cases to the Administrative Law Judge Section, selects cases requiring representation and represents the Commissioner at hearings. They also represent the Commissioner at hearings before the UI Appeal Board and write briefs on appeals taken on behalf of the Commissioner.

Adjudication Services also provides training to professional staff, monitors determination quality, prepares the UI Benefit Quality Control program and responds to other training needs as identified by reviews or requests from management

The **Interpretation and Central Services Section** reviews Administrative Law Judge, Appeal Board and Court decisions, and issues and maintains interpretation service and related memoranda to reflect precedent and/or established policy. They investigate labor disputes, employer buy-out plans, mass layoffs and pension plans to assure uniform and efficient handling of resultant claims.

Contact: (212) 352-6840

### **BENEFIT PAYMENT AND TAX ACCOUNTING OFFICE**

The Benefit Payment and Tax Accounting Office is responsible for processing employer tax payments to the UI Division and unemployment insurance benefit payments to claimants as well as maintaining all records related to these transactions.

Benefit Payment and Tax Accounting Office is comprised of three major sections: The Benefit Section, the Employment Account Adjustment Section, and the UI Records Section.

The **Benefit Section** is comprised of the Benefit Payment Subsection, Claims Service Subsection, and the Original Claim Subsection.

Contact: (518) 485-6384

The **Benefit Payment Subsection** processes payments under special programs, and those not possible through on-line, telephone and scanning systems. They maintain and adjust Benefit Control Records, and Benefit Payment entries, act as liaison with County Support Collection Units and NYS

Office of Temporary and Disability Assistance for the interception of benefit payments for court ordered child support. They also provide pre-mailing quality control of form 1099-G, Statement for Recipients of Certain Governmental Payments, to individuals who received taxable benefits or allowance payments.

Contact: (518) 457-8243

The **Claims Service Subsection** is responsible for maintaining UI benefit overpayment and collections systems. They also process combined wage claims for claimants who have earnings in more than one state and approve payment of billings from other states.

Contact: (518) 457-1524

The **Original Claims Subsection** processes original and redetermination exceptions and acts as liaison with the Office of the State Comptroller on certain benefit claim transactions and rejections. The Shared Work Unit processes all benefit claims for the Shared Work Program, makes entitlement and eligibility determinations and processes the shared work certifications for benefits.

Contact: (518) 457-8243

The **Employer Account Adjustment Section** is responsible for tax accounting and experience rating of employer contribution accounts. In performing these functions, the office posts audits, exceptions and adjustments to employer accounts, bills employers for amounts due, and processes refunds of employer overpayments. They issue employer tax rates, process transfers of experience and process adjustments or exceptions to the experience rating account balance. They also act as liaison with the bank processing center that processes the quarterly employer contribution reports and remittances.

Contact: Toll Free (888) 899-8810

The **UI Records Section** maintains employer tax and benefit claim records using electronic imaging technology. They are responsible for the electronic distribution of incoming documents/correspondence from claimants, employers, and the remittance-processing center, in addition to providing document processing support services to the Telephone Claims Centers. They also provide wage information/verification under the Freedom of Information Law to Social Security Administration, Housing Authorities, Insurance Companies and claimants upon request.

Contact: (518) 457-5361

## DETERMINATION AND ENFORCEMENT OFFICE

The Determination and Enforcement Office determines employer liability and claimant coverage, and enforces these determinations through audit and collection activities.

Determination and Enforcement is comprised of six major subsections.

The **Liability and Determination Section** administers the UI Law with respect to employer tax liability. This includes activity in relation to: determining employer status and account adjustment;

propriety of employer contribution to the UI Trust Fund; determining coverage of individuals performing services; determining the propriety of experience rating charges to employer accounts for benefits paid to former employees; reviewing Shared Work Plan applications; reviewing hearing decisions at all levels for appropriate action; maintaining an Interpretation Service of precedent case law decisions; and maintaining a fraud detection program.

Contact: (518) 457-2635

The **Registration Section** makes determinations of employer liability and creates and maintains a database of employer records, including legal name, address, liability date and status information. In addition, they send notices of determination of employer liability, mail various UI forms and pamphlets on request, and receive and route mail for Registration and the Liability and Determination Section. The **Stenographic Subsection** provides stenographic services to L&D.

Contact:

General registration issues: (518) 457-4179  
UI forms/pamphlets: (518) 485-8589

The **Central Assignment and Collection Section** refers and controls UI tax audits and selected investigations, analyzes assignment criteria and prepares management reports. They are also responsible for obtaining delinquent reports and assigning and controlling UI collection, insolvency and enforcement activities.

Contact: (518) 457-5713

The **UI Tax Service** conducts field audits to monitor employer compliance with the taxing provisions of the New York State Unemployment Insurance Law. Field Auditors and Tax Compliance Agents also obtain delinquent tax reports for the purpose of obtaining payment of delinquent taxes and interest.

Auditors also obtain information from employers' records regarding employer liability and claimant coverage for New York State Unemployment Insurance.

Contact:

Upstate Region: (518) 457-5729  
Metro Region: (212) 266-5352

The **Special Audit and Enforcement Section** conducts audits on very large employers that maintain computerized records. They develop and refine computer audit techniques, act as liaison between New York and other State Employment Security Agencies (SESAs) in information sharing, and provide information to employers and the public on provisions of UI Tax Law. They are also involved in collections in difficult or unusual situations.

Contact: (212) 266-5345

The **Quality Assurance and Review Section** is responsible for quality control of UI audits and investigations, on-site review of UI Tax Service and Central Assignment and Collection offices, and completion of the Federal Tax Performance System.

Contact: (518) 457-3309

## UNEMPLOYMENT INSURANCE BENEFIT OPERATIONS

The Unemployment Insurance Benefit Operations Office operates Tel-Claims Centers, which accept and process claims for unemployment insurance benefits, determine claimant entitlement and eligibility, and accept and process hearing requests from claimants who disagree with their determinations.

**Telephone Claims Centers** have been established to handle the statewide Unemployment Insurance claims load. Rather than going in person to local offices throughout the state, claimants can call a toll free number and file their claims through a combination of Interactive Voice Response (IVR) technology and interviewing by a claims representative.

Contact: Toll Free (888) 209-8124

Employers should select **Option 6** from the menu for quick service.

The **UI Special Programs Team** is responsible for the technical support, training and monitoring of the Interstate Combined Wage, Federal Civilian, Federal Military and Trade Act programs. They also handle non-monetary determinations for Shared Work claims, help with the Self Employment program and handle a variety of claimant and employer calls and correspondence as referred by the UI Director's Office.

Contact: (518) 402-0189

## FREQUENTLY ASKED QUESTIONS

### Unemployment Insurance Division

**1. I employ students during summer vacation. Are their wages subject to UI taxes?**

Wages paid to college students are treated in the same manner as wages paid to any employee. High school student wages are also taxable to New York State, because they are taxable under the Federal Unemployment Tax Act (FUTA). Please note, however, that they are only taxable if the employer is subject to FUTA. Also, high school and elementary school students who are employed by nonprofit organizations and governmental entities are covered by unemployment insurance and are entitled to collect benefits in certain circumstances. Further information can be found in Form IA 318.10, which can be obtained by calling (518) 485-8589. For further information on FUTA, you should contact the Internal Revenue Service.

**2. An employee worked for me for four weeks and applied for UI benefits. Can my account be charged, and how will this affect my tax rate?**

When a benefit claim is filed, a base period and a benefit year are established.

The base period is either the first four of the last five completed calendar quarters, or the last four completed calendar quarters prior to the filing of the claim. A claimant's benefit rate and entitlement to benefits are based on their earnings during the base period.

The benefit year is the 52-week period after the week in which the claim is filed. The last employer is charged an amount equal to seven times the claimant's weekly benefit amount, regardless of the total wages paid to the claimant by the employer. Thereafter, benefits are charged proportionally to all base period employers according to how the amount of wages an employer paid relates to the claimant's total base period wages. Exceptions to the above charging formula may occur as a result of employment with out-of-state employers or the federal government.

These charges are subtracted from base period employers' experience rating account balances (a cumulative sum of all timely normal and supplemental taxes paid, less any benefits collected). This will reduce the employer account balance, which is used to calculate the tax rate each year.

**3. I recently took over an organization with an experience rating higher than my own. Will my rate remain the same?**

Whenever one employer acquires the business of another, the UI Law requires that the acquiring employer also acquire the experience rating account of the acquired business. This can have either a positive or negative affect on your own experience rating, depending on the account status of the acquired company. This is also true whether the acquiring company is brand new, or has been in existence for a number of years, since the experience of the acquired employer is merged with the experience of the acquiring employer. Further information regarding transfers of experience rating may be found in Form IA 318.12 (call (518) 485-8589) or by calling Liability and Determination at (518) 457-5807.

**4. There has been a transfer of business. Must I pay UI tax on the first \$8,500 per transferred employee?**

No, when a transfer occurs, and the predecessor employer has paid tax on some portion of the employee's wages, the acquiring employer must pay tax only on any amounts up to the first \$8,500 per year earned by each employee from both employers.

**5. The claimant voluntarily left his employment here to take another job (or was discharged for misconduct), and now my account is being charged for his unemployment benefits. Why?**

Any separation under disqualifying conditions during the base period will render the claimant ineligible until the claimant has worked in subsequent employment and has earnings of at least five times their benefit rate. In addition, if a claimant lost any employment due to misconduct, the wages earned with such employer may not be used to establish a valid claim. Any questions regarding this issue should be sent, in writing, to the Liability and Determination Section.

**6. Am I required to file quarterly payroll report NYS-45 even if I have no payroll in a given quarter?**

Yes, once liable, employers must submit a report for each calendar quarter, even if no wages are paid during the particular quarter. If no wages are paid for four consecutive calendar quarters, you may apply in writing to the Liability and Determination Section to terminate your liability.

**7. My business was audited by an Unemployment Insurance Auditor last year. Why am I being audited again by the same Department?**

Our Quality Assurance and Review Section routinely re-audits employers that have recently been audited by a Field Tax auditor. The QARS audit is conducted to verify that Department procedures are being properly followed, and that federal requirements are met.

**8. I'm the sole officer of a corporation. Do I have to pay UI taxes on myself? Can I collect UI benefits?**

Under provisions of the New York State UI Law, officers of all corporations, including professional, Sub-chapter S and other closely held corporations, who perform services for the corporation, are employees of that corporation and their compensation is taxable. Their services are "covered" for unemployment insurance purposes, that is, their weeks and wages could be used in determining eligibility for benefits. However, as long as they remain an officer of an active corporation, they would not meet the eligibility requirement of being totally unemployed.

**9. I have some employees who work in New York and live in other states. How do I know which state I have to report them to?**

Generally, employees who work entirely in New York State are covered and reportable under New York's UI Law. However, if employees perform some services in New York and some services in another state, there are tests used to determine which state has jurisdiction. The Department of Labor publication, "Jurisdiction of Unemployment," (Form IA 116.3), covers this in detail, and may be obtained by calling (518) 485-8589.

**10. How do you determine who is an independent contractor and who is an employee?**

The New York State UI Law does not define an independent contractor. It contains a very broad definition of employment as any service performed under a contract of hire. Case law has held that employment exists when there is a right to supervise, direct and control the services performed. Relationships are examined on a case-by-case basis to determine if supervision, direction and control is being exercised over the services rendered. Determinations regarding employee or independent contractor status are issued by the Determination and Enforcement Office. The Department of Labor publication, "Independent Contractors," (Form IA 318.14), contains more information on the subject, and may be obtained by calling (518) 485-8589.

**11. How did I get a negative account balance? What does a transfer of an excess negative balance mean?**

A negative account balance results when the amount of any benefits paid to eligible claimants (your former employees), and charged to your account, is greater than the amount of timely normal contributions accumulated in your experience rating account. The New York State Unemployment Insurance Law provides that an employer may carry a negative experience rating account balance of no greater than 21 percent of their previous payroll year's taxable wages. Any amount in excess of that amount is removed from the employer's account and charged to the general account.

The first year after any excess negative amount is removed from the account the tax rate is calculated based on the negative balance amount before the removal. The law stipulates that for the following three years, the employer will receive the highest normal rate allowed by law plus any applicable subsidiary rates, which are charged to all employers uniformly.

**12. What is a voluntary contribution, and how does it affect my rate?**

If you have a transfer of excess negative balance, you will be notified by letter in February. This notice will specify the amount transferred and explain your option to make a voluntary contribution to avoid the assignment of the maximum rate. Even if you have a positive balance, you can contact the Employer Account Adjustment Section to obtain a worksheet to calculate how a voluntary contribution may have a positive impact on your tax rate, or you may download the worksheet from our website.

If you choose to make a voluntary contribution, your tax rate will be calculated based on your account balance after the contribution. Voluntary contributions are nonrefundable, and all required reports must have been filed and no underpayments may exist on your account for the contribution to be accepted. For further information, you may request our "Experience Rating" pamphlet, IA 318.12, by calling 1 (888) 899-8810.

## 11. Division of Welfare-To-Work

### *Background*

**T**he Welfare-To-Work Division is responsible for oversight of State and local Welfare-To-Work programs included under the Temporary Assistance for Needy Families (TANF) and the Food Stamp program, as well as the State-operated Safety Net program.

Contact Person: Karen Papandrea, Director  
Division of Welfare-To-Work  
State Office Campus, Building 12  
Room 288  
Albany, NY 12240  
(518) 485-6289

### **Specialized Work Programs (SWP)**

Involved with programs designed to serve Family Assistance recipients and low-income families with special needs (learning disabilities, mental health problems, physical disabilities and substance abuse.)

Contact Person: Joseph Capobianco, Bureau Chief (518) 485-6290

### **Program Development**

Responsible for promoting self-sufficiency of the state's welfare and low-income households through the development of training, employment and post-employment activities, programs and services.

Contact Person: John Haley, Bureau Chief (518) 485-6324

### **Program Policy and Operations**

Responsible for the development of regulations and policy.

Contact Person: Barbara Guinn, Bureau Chief (518) 457-1228

### **Program Accountability**

Coordinates employer services with other divisions; maintains Division budget and other fiscal-related issues; also coordinates the activities of approximately 125 staff assigned to 54 local districts to place welfare recipients and other low-income individuals into employment. (DOL Jobs Program)

Contact Person: Russ Oliver, Bureau Chief (518) 485-6288

## FREQUENTLY ASKED QUESTIONS

### Concerning the Welfare-To-Work Division

#### 1. We've heard a lot about welfare reform. What exactly does it mean?

In August of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act was signed into law, which authorized the Temporary Assistance for Needy Families program or what is commonly referred to as TANF. New York State began participation under this program in December 1996 when the federal government accepted the State plan.

The TANF program established sweeping changes in the nation's welfare programs. Some of the most important changes included:

- ♦ Limiting the receipt of welfare benefits to five years in a lifetime. The previous welfare program did not have limits. The State welfare program, called the Safety Net, limits the receipt of benefits to two years in a lifetime.
- ♦ Providing federal funds to states in the form of block grants. Welfare is no longer an entitlement program.
- ♦ The establishment of an escalating participation rate. This means that increasing numbers of welfare recipients each year must be involved in programs that will help them become self-sufficient. Failure to meet these rates could result in federal sanctions.
- ♦ The New York State Department of Labor, along with several other state and local agencies, is continuing to implement welfare reform. We are confident that these efforts will result in a stronger New York State for years to come.

Existing legislation governing TANF was originally scheduled to expire on September 30, 2003. It has been extended through March 2004. It is expected that some changes to the existing law, including more stringent work requirements, will be enacted when the welfare program is re-authorized for a multi-year period.

#### 2. What types of programs are available through the Department of Labor to help individuals find work?

While all services are not available in every locality, the following programs administered by DOL offer job preparation, placement and retention services.

The **Wage Subsidy Program** provides payments to employers who hire and retain public assistance recipients and other low-income families who have not been successful in the labor market. The **Employment Agency Initiative** enlists the expertise of professional employment agencies to connect Family Assistance recipients with available jobs. **Built on Pride** is designed to increase the number of eligible economically disadvantaged individuals who are able to transition into the skilled trades. **Teen Works** helps at-risk high school students improve academic performance, remain in school through graduation, and develop necessary job skills. Some individuals require educational services to improve their employability. Three programs have been implemented to address this need. The **Education for Gainful Employment (EDGE)** program provides GED preparation, adult education, English as a Second Language, workplace and family literacy, job placement and post-employment services. **EDGE Plus English Language Instruction** provides English language instruction to limited English-proficient individuals. **Family, Adult and Workplace Literacy (FAWL)** consists of two parts: Family Lit-

eracy Programs integrates early childhood education, adult basic education, parental education and parent-child literacy activities. Workplace Literacy Programs offer instruction at a business site or other location that will help employees improve basic skills such as reading, writing and computation. **HIV/WTW Initiative** provides case management, job placement and job retention services for HIV-positive individuals.

Transportation is an important part of the Welfare-To-Work effort. Two programs have been started to support individuals in their transition to work. **Community Solutions for Transportation** supports a variety of transportation projects including driver training programs, car loan/donation programs, transit pass program, van/shuttle services, guaranteed ride projects and fixed route public transportation services. **Wheels for Work** assists eligible participants with obtaining vehicles necessary for transportation to and from employment or other allowable work activities. These programs provide a number of transportation-related services ranging from automobile insurance assistance, affordable car loans, donated cars, driver's education, vehicle registration assistance, vehicle repair assistance, and other forms of transportation support.

### **3. What are the work-related requirements for individuals receiving welfare benefits?**

Able-bodied adults receiving welfare are expected to work or participate in work-related activities to help them become self-sufficient. Individuals may be assigned to participate in programs for up to 40 hours a week, with specific assignments determined by the local social services district. Social services districts assess individuals to identify work history, skills, and support services needs such as transportation and child care, among other items. Based upon this assessment, the local district may refer the individual to jobs and/or enrollment in a work activity. Work activities vary by district, but may include:

- ♦ Unsubsidized or subsidized employment (public or private sector);
- ♦ Work experience (public or nonprofit sector);
- ♦ On-the-job training;
- ♦ Job search and job-readiness training;
- ♦ Community service;
- ♦ Vocational education training; and
- ♦ Job skills training directly related to employment.

In all instances individuals should only be assigned to participate in activities that they are capable of, and any work-related limitations must be accommodated.

### **4. What are the Earned Income Tax Credit (EITC) and the Advanced Earned Income Tax Credit (AEITC)?**

**Earned Income Tax Credit (EITC):** This is a special tax credit for low-income people offered by the federal government and New York State. New York is one of the 15 states that offer both federal and state EITC. The requirements are the same: If a person qualifies for the federal credit, they automatically qualify for the state credit. The credit reduces the amount of tax owed and is intended to offset some of the increases in living expenses and FICA. Between the federal and state EITC, people can

increase their wages by as much as \$5,382.00 per year. In other words, it can take a \$5.15 per hour job and turn it into a new hourly wage of \$7.73 per hour.

**Advanced Earned Income Tax Credit (AEITC):** If people qualify for EITC, they may be able to receive the federal Advanced EITC, which allows clients to receive up to a third of the federal credit in advance in their paychecks. The remainder is refunded to them when they file their taxes. An employee simply completes a W-5 form, which the employer retains. The employer then deducts the amount advanced to their employee from their state taxes owed.

#### 5. How does an employer get started?

To get started, employers can call the Employer Hotline at 1-(800)-HIRE-992. Information regarding all of the programs operated by DOL is available.

## Section 2

### 1. Related State Agencies

#### Cooperating State Agencies

Empire State Development  
30 So. Pearl Street  
Albany, NY 12245  
Tel: (518) 292-5100  
[www.nylovesbiz.com](http://www.nylovesbiz.com)

NYS Department of State  
Division of Corporations  
41 State Street  
Albany, NY 12231  
Tel: (518) 473-2492  
[www.dos.state.ny.us](http://www.dos.state.ny.us)

NYS Department of Taxation and Finance  
Business Tax Information Center  
W.A. Harriman Campus  
Albany, NY 12227  
Tel: (800) CALL TAX  
[www.tax.state.ny.us](http://www.tax.state.ny.us)

NYS Division of Human Rights  
Public Information  
One Fordham Plaza  
Bronx, NY 10458  
Tel: (718) 741-8400  
[www.nysdhr.com](http://www.nysdhr.com)



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NYS Office of Regulatory Reform  
Governor Alfred E. Smith Office Building  
P.O. Box 2017, 17th Floor  
Albany, NY 12220-0107  
Tel: (518) 486-3292  
[www.gorr.state.ny.us](http://www.gorr.state.ny.us)

Workers' Compensation Board  
20 Park Street  
Albany, NY 12207  
Tel: (518) 474-6674

www.wcb.state.ny.us

## 2. Federal Agencies

### Federal Government

US Citizenship and Immigration Services  
www.cis.gov

130 Delaware Avenue  
Buffalo, NY 14202  
Tel: (716) 551-4741, X3940

26 Federal Plaza  
New York City 10278  
Tel: 1-800-357-2099

1086 Troy-Schenectady Road  
Latham, NY 12110  
Tel: (518) 220-2100

Internal Revenue Service  
Consult your local telephone directory

Occupational Safety and Health Administration  
U.S. Department of Labor  
201 Varick Street, Room 908  
New York, NY 10014  
www.osha.gov

U.S. Department of Labor  
Bureau of Labor Statistics  
2 Massachusetts Avenue, NE  
Washington, DC 20212  
Tel: (202) 691-5200

U.S. Department of Labor  
<http://www.dol.gov>

Employment Laws - Assistance for Workers and Small Business  
<http://www.dol.gov/elaws>

U.S. Department of Labor Small Business Regulatory Compliance Assistance  
<http://www.dol.gov/dol/osbp/public/sbrefa/main.htm>





## State and Federal Posting Requirements For Employers

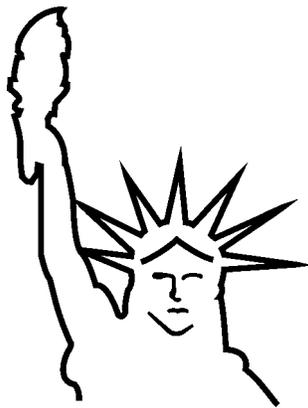
What postings are required?  
Where can you obtain them?

Employers who have questions regarding the attached information can contact the New York State Department of Labor Human Resources consultant for their area.

## New York State Posting Requirements (Non-Agricultural)

Topic	Statute	Poster	Source
Discrimination	New York State Human Rights Law (Executive Law, Article 15)	<i>Discrimination based on Race, Creed, Age, Color, Disability, National Origin, Sex or Marital Status is Prohibited...</i> (in English and Spanish combined)	New York State Division of Human Rights 1-718-741-8459
Minimum Wage	New York State Labor Law	<i>Attention Employees Minimum Wage Information</i> (in English and Spanish combined) Every employer engaged in the sale or service of food or beverages must post Section 193 and 196-d of the NYS Labor Law.	New York State Department of Labor, Division of Labor Standards  Minimum Wage Poster
Safety & Health*	New York State Labor Law	<i>Job Safety &amp; Health Protection</i> Same as federal requirement. Public employers must post <i>You have a right to know!</i>	New York State Department of Labor, Division of Safety & Health Public Employees Job Safety & Health Protection Poster
Public Work/ Prevailing Wage Rates	New York State Labor Law Article 8	The current Prevailing Rate Schedule must be posted in a prominent and accessible place on the site of the public work project; encased in, or constructed of, materials capable of withstanding adverse weather conditions; and be titled "PREVAILING RATE OF WAGES" in letters no smaller than two (2) inches by two (2) inches.	Department of Jurisdiction (Contracting Agency)
Unemployment Insurance	New York State Unemployment Insurance Law	<i>Notice to Employees</i> (IA 133)	New York State Department of Labor, Registration Subsection State Office Building Campus Albany, NY 12240-0339 Phone: (518) 485-8589 Fax: (518) 485-8010
Workers' Compensation and Disability Benefits	New York State Workers' Compensation Law	<i>Notice of Compliance</i> (White) for Workers' Compensation <i>Notice of Compliance</i> (Blue) For Disability Benefits	Supplied by employer's insurance carrier.
Smoking	New York State Clean Indoor Air Act	No Smoking signs or the international No Smoking symbol must be permanently posted in every place where smoking is prohibited or restricted under the act.	For more information on the Clean Indoor Air Act call 402-7600 or 1-800-458-1158 X27600.

\* Employers must maintain a "Log and Summary of Occupational Injuries and Illnesses" and post in workplace on February 1 and keep posted for three months. Private Employers can obtain log from OSHA. Public employers should contact the Division of Safety and Health.



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

1-800-HIRE-992

Equal Opportunity Employer/Program

Auxiliary aids and services are available upon request to individuals with disabilities.