

Hospitality Wage Order Frequently Asked Questions

The Minimum Wage Order for the Hospitality Industry covers employees in the hotel and restaurant industries. It sets the rules for minimum wage, overtime and tips in those industries. Before New York State issued the Minimum Wage Order for the Hospitality Industry, separate wage orders covered the Restaurant and Hotel industries. The Hospitality Wage Order now combines minimum wage requirements for these industries.

What are the basic requirements in the Minimum Wage Order?

Minimum Wage: View the [Summary of Wage Order Rates and Credits for the Hospitality Industry](#) on the Department of Labor website.

Overtime: Employers must pay overtime pay to all non-exempt employees for all hours worked after 40 hours in a workweek. New York State computes overtime pay at 1½ times the regular rate of pay.

Tips: The Hospitality Wage Order simplifies and increases minimum wage rates for tipped employees. The handling of tips is subject to regulation for the first time in New York State. You can view a separate set of [Tips & Gratuities Frequently Asked Questions](#) on the Department of Labor's website.

Extra Pay: The Hospitality Wage Order requires extra pay under specified circumstances (call-in pay, spread-of-hours pay, and uniform-maintenance pay). Employers must add this extra pay to wages at **any** pay level, rather than only to the pay of minimum wage employees. Employers do not have to pay uniform maintenance for wash-and-wear uniforms.

Non-Hourly Rates of Pay: The Labor Law requires an hourly rate of pay for all non-exempt employees (except commissioned salespersons). Non-exempt employees may not receive salaries, weekly rates, day rates, or piece rates.

Meals: Whenever the Labor Law requires meal periods, employers have to either:

- Allow employees to bring their own food
OR
- Give them a meal at a cost no greater than the meal credit amount in the Hospitality Wage Order

Who does the Hospitality Wage Order cover?

This Hospitality Wage Order applies to private employers in the restaurant and hotel industries and their employees. If an employee's work is "in connection therewith or incidental thereto" the operation of a restaurant or hotel, then the Hospitality Wage Order covers that employee.

The **restaurant** industry includes:

- Any eating or drinking place that prepares and offers food or beverage for human consumption either:
 - On any of its premises
 - OR
 - By such service to the public, its employees, or members or guests of members.
as:
 - Catering
 - Banquet
 - Box lunch
 - Curb service
 - Counter service
 - Services in connection therewith or incidental thereto

The restaurant industry also includes any delivery drivers employed by a restaurant.

The **hotel** industry includes any establishment which, as a whole or part of its business activities, offers:

- Lodging accommodations for hire to:
 - The public
 - Employees
 - Members or guests of members
- Services in connection therewith or incidental thereto

The hotel industry includes:

- Commercial hotels
- Apartment hotels
- Resort hotels
- Lodging houses
- Boarding houses
- All-year hotels
- Furnished room houses
- Children's camps
- Adult camps
- Tourist camps
- Tourist homes
- Auto camps
- Motels
- Residence clubs
- Membership clubs
- Dude ranches

- Baths that provide lodging

The hospitality industry does not include:

- Establishments where food and lodging are incidental to:
 - Instruction
 - Medical care
 - Religious observance
 - The care of:
 - Persons with disabilities
 - Those who are impoverished
 - Other public charges
- Exclusively religious, charitable or educational organizations

What is work “in connection therewith or incidental thereto” the operation of a restaurant or hotel?

To be employed “in connection therewith or incidental thereto” the operation of a restaurant or hotel, the employee’s work must *directly relate* to the operations of a restaurant or hotel. This means that the work should further the specific services of a hotel or restaurant.

Example: The hospitality industry covers a janitor, working for a golf resort, who cleans the restaurant and hotel.

What wage order applies to an employee who works for an employer under two separate wage orders?

An employee in the Hospitality Industry who works for the same employer at an occupation governed by another New York State Minimum Wage Order for two hours or more during any one day or for twelve hours or more in any week shall be paid for all hours of working time for that day or week in accordance with the minimum wage standards contained in the minimum wage order that provides the higher level of wages/protection to the employee.

Who is an “exempt employee” under the Hospitality Wage Order?

Some occupations within the hospitality industry are exempt from the requirements of the Hospitality Wage Order. These include:

- Executive employees
- Administrative employees
- Professional employees
- Outside salespeople
- Golf caddies

- Camp workers at children’s camps
- Spa and bath workers
- Staff counselors at children’s camps
- Government employees

What is an “outside salesperson”?

Outside salespersons are customarily and predominantly engaged away from the employer’s place of business and at no fixed location. They work for the purpose of making sales or obtaining orders or contracts for services or for the use of facilities.

May non-exempt employees be paid a salary under the Hospitality Wage Order?

No. The Hospitality Wage Order requires hourly rates for all non-exempt employees, except for commissioned salespersons. Weekly rates, day rates, flat rates and piece rates are no longer permissible in the hospitality industry. Employees cannot waive their rights under the law by consenting to an impermissible wage structure.

Does the Hospitality Wage Order treat residential and non-residential employees differently?

No. Under the previous Restaurant and Hotel Minimum Wage Orders, residential employees -- those who live on the premises of their employer -- were entitled to overtime for all hours worked in excess of 44 hours per week. The Hospitality Wage Order entitles residential employees to overtime for all hours worked in excess of 40 hours per workweek. This is in addition to all the other protections of the Wage Order that apply to non-residential employees.

Are all employees covered by the Hospitality Wage Order entitled to call-in pay, spread-of-hours pay and uniform-maintenance pay?

All *non-exempt* employees are entitled to call-in pay, spread-of-hours pay and uniform-maintenance pay. It does not matter whether or not such employees receive pay at or near the minimum hourly wage rate. Employers must pay call-in pay, spread-of-hours pay and uniform-maintenance pay in the same manner and at the same time as any other pay earned during the pay period.

What is Call-In Pay?

Call-in pay is wages owed to employees for reporting to work on a given day even if they are sent home early. Call-in pay requires non-exempt employees (even where the employee did not remain at work for this period of time) to be paid for a minimum of:

- Three hours for one shift
- Six hours for two shifts totaling six hours or less

- Eight hours for three shifts totaling eight hours or less

Call-in pay must be paid to all employees, with payment for actual attendance to be paid at the employees' regular or overtime rate minus tip credit and payment for the balance of the call-in period to be made at the minimum wage with no tip credit.

Example: An employee who reports to work for a single eight-hour shift, but is sent home after only one hour of work, must be paid:

- At his regular rate of pay for the one hour actually worked
- At the minimum wage rate for the two call-in pay hours

Are employees who voluntarily leave early entitled to call-in pay?

No. Employees who *voluntarily* leave work early are not entitled to any additional amount for call-in pay. This applies *only* so long as the employer or the employer's agent does not influence them to leave work. If an employer sends an employee home early for any reason before the employee is paid a sufficient amount for that shift(s), the call-in pay requirement would be triggered and that employee is entitled to call-in pay for reporting to work.

Can call-in pay be offset by a meal or lodging credits?

No. Call-in pay cannot be offset by credits for meals or lodging provided to the employee.

What is Spread-of-Hours Pay?

Spread-of-hours pay is due when the length of time between the beginning and end of a workday is greater than 10 hours. The length of time includes any time off-duty, including meals, rest periods or time between shifts. All employees who work a covered spread of hours in a single workday are entitled to one additional hour's pay at minimum wage for that day.

Can employers set employees' workdays in order to avoid paying spread-of-hours pay?

Yes. An employer may set an employee's workday to avoid spread-of-hours pay so long as the workday is:

- Set on a regular basis
- Consistent with the employer's normal operation
- Not established to circumvent the law

Example: A tavern may define its workday as 5:00 AM - 5:00 AM to coincide with its operations. This means that employees who work an eight-hour shift from 8:00 PM – 4:00 AM five nights a week are not working a spread of hours due to the work taking place on two calendar days, since the work is all within the defined workday.

While an employer is not bound to maintain an employee's previously determined workday indefinitely (for example, if objective economic changes may prompt a business to change its hours of operation), employers may not manipulate their workday to circumvent the intent and requirements of the Labor Law.

What is Uniform-Maintenance Pay?

Uniform-maintenance pay is intended to cover the cost to an employee of maintaining required uniforms worn on the job. A "uniform" is clothing the employer requires an employee to wear at work that would not normally be considered part of an ordinary wardrobe. A uniform does not have to be a complete outfit. It could include a shirt, blouse or jacket only. Employers who do not maintain employees' uniforms must pay those employees uniform-maintenance pay. You can view the [uniform-maintenance pay rates](#) on the Department of Labor website.

To determine the amount of uniform-maintenance pay due an employee, employers need only take actual hours of work into account, not call-in pay or spread of hours pay.

The Labor Law does not require employers to pay the uniform-maintenance pay where:

- The employer requires **wash and wear** uniforms
OR
- Where the employee declines to use a free and readily available employer-provided laundry service (after receiving written notice that such a service is available to the employee)

What does the term "ordinary wardrobe" mean?

Ordinary wardrobe means clothing that is:

1. Ordinary basic street clothing
2. Selected by the employee
3. Allowed to vary in details of dress

If the clothing does not meet **all three criteria**, then the garment is a uniform.

What is a wash and wear uniform?

Wash and wear uniforms must be made of "wash and wear" materials that:

- May be routinely washed and dried with other personal garments
AND
- Do not require
 - Ironing
 - Dry cleaning

- Daily washing
- Commercial laundering
- Other special treatment

To qualify for the exemption, the employer must provide a sufficient number of fresh uniforms for the employee for an average work week. "Fresh" means that the uniform is unworn since last cleaned. Higher standards of cleanliness imposed on employees by an employer may require the employer to provide more uniforms.

Example: If a restaurant owner requires all employees to wear white shirts without stains throughout the shift, the employer may need to provide multiple shirts per shift.

Can employers take credits for meals or lodging provided to employees?

Meals and/or lodging provided by an employer to an employee may be considered part of the wages paid to the employee, subject to the current [meal and lodging credit limitations](#), which can be viewed on the Department of Labor website.

What is an all-year hotel?

An all-year hotel is one that does not qualify as a resort hotel under the definition below. This includes motor courts, motels, cabins, tourist homes, and other establishments serving similar purposes unless they specifically qualify as resort hotels in accordance with the definition below.

What is a resort hotel?

A resort hotel is one that offers lodging accommodations to the public or to members or guests of members, and meets any of the following two requirements:

- The hotel operates for not more than seven months in any calendar year
- The hotel is in a rural community or in a city or village of less than 15,000 population and the hotel increases its number of employee work days or guest days during any consecutive four-week period by at least 100 percent over the number of days in any other consecutive four-week period within the preceding calendar year

How can an employer take a lodging credit for lodging provided to employees?

To take a lodging credit toward the minimum wage under the Hospitality Wage Order, the employer has the burden to prove that State, county, and local health and housing codes are met and the living accommodations meet generally accepted standards of habitability and sanitation.