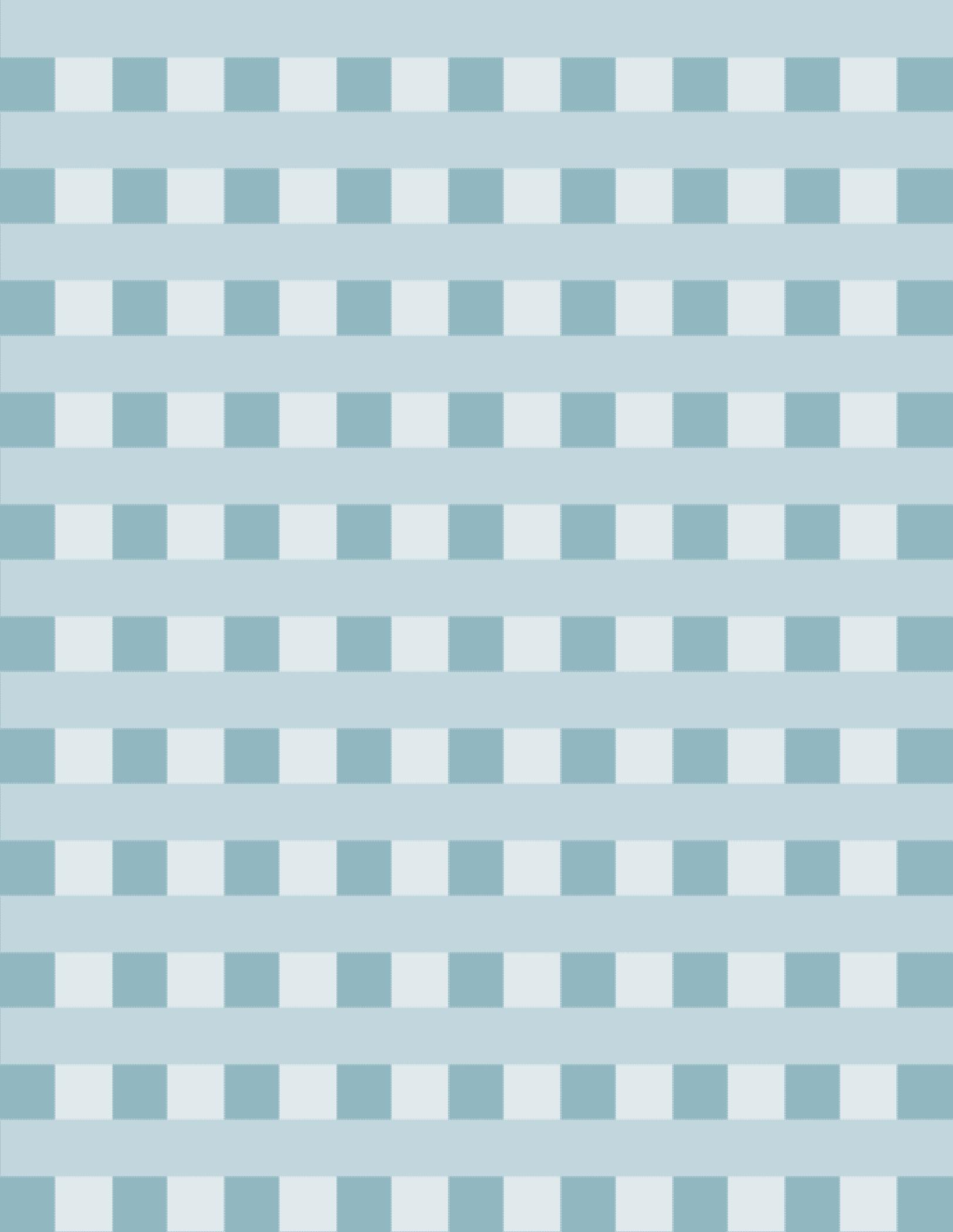
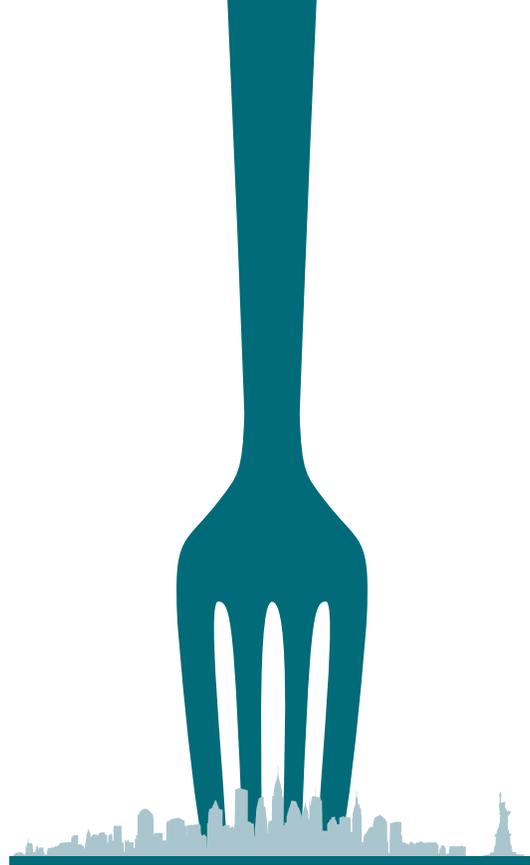


NEW YORK CITY  
RESTAURANT OWNER  
MANUAL

— DECEMBER 2013 UPDATE —





# NEW YORK CITY RESTAURANT OWNER MANUAL

— DECEMBER 2013 UPDATE —

This manual has been prepared by the NYC Mayor's Office of Immigrant Affairs in partnership with the New York Restaurant Association, NYC Mayor's Office for People with Disabilities, Department of Consumer Affairs and Department of Small Business Services' NYC Business Acceleration.



**Mayor's Office of  
Immigrant Affairs**



NEW YORK  
STATE  
RESTAURANT  
ASSOCIATION



**Department of  
Consumer Affairs**



**Mayor's Office for  
People with Disabilities**



**Business  
Acceleration**



NOTICE: THE NYC RESTAURANT OWNER MANUAL IS OFFERED AS A PUBLIC RESOURCE. IT DOES NOT CREATE NEW LEGAL OBLIGATIONS AND IT IS NOT A SUBSTITUTE FOR THE OFFICIAL SOURCES OF APPLICABLE LAW. EVERY EFFORT HAS BEEN MADE TO ENSURE THAT THE INFORMATION PROVIDED IS COMPLETE AND ACCURATE AS OF THE TIME OF PUBLICATION. USERS OF THE MANUAL ARE PUT ON NOTICE THAT THE SUMMARIES, OPINIONS, SUGGESTIONS AND REPRESENTATIONS CONTAINED HEREIN ARE NOT INTENDED, NOR SHALL THEY BE CONSTRUED, AS CONVEYING LEGAL ADVICE AND SHOULD NOT BE RELIED UPON AS SUCH. IF YOU HAVE A SPECIFIC COMPLIANCE MATTER WE ADVISE YOU TO SEEK LEGAL COUNSEL OR CONTACT THE APPLICABLE GOVERNMENT AGENCY.

# MESSAGE FROM THE MAYOR'S OFFICE OF IMMIGRANT AFFAIRS

In collaboration with the New York State Restaurant Association, I am delighted to present an updated edition of the Restaurant Owner Manual. Restaurants are a vital and globally renowned part of New York City's economy and culture, contributing billions of dollars to our City's tax revenues every year. Recognizing that immigrants are the backbone of this crucial industry, we aim to support worker safety and protections while guiding owners on key laws and regulations to ensure the industry's continued success.

This manual celebrates the many restaurant owners who do incredibly well by their immigrant staff and acknowledges the challenges owners and workers may face in navigating the complexities of labor, health and immigration laws. This manual is a user-friendly document designed to help NYC's approximately 24,000 restaurant owners become more familiar with the basics pertaining to wages, hours of work, consumer protection, employment discrimination, and workers' health and safety laws. Since its inception in 2005, the Restaurant Owner Manual has provided restaurateurs with helpful guidance, improving restaurants for patrons and workers alike.

This updated edition is enhanced to provide even further clarity on owners' and workers' obligations and rights and reflects recent changes made in relevant local, state and federal laws regarding labor, health and immigration.

This manual has been built on the foundation of many tremendous partners over the years, who I would be remiss to leave unmentioned: Restaurant Opportunities Center of NY (ROC-NY, which co-authored the first manual in 2006), the Mayor's Office for People with Disabilities, the Mayor's Office to Combat Domestic Violence, and the City of New York's Departments of Consumer Affairs, Health and Mental Hygiene, Small Business Services' NYC Business Acceleration, Office of Citywide Health Insurance Access at the Human Resources Administration and others. All of these organizations and City Agencies continue to serve as committed resources for the restaurant industry.

Thank you for all your hard work for our city. I hope this manual is a helpful guide to continuing to build a city of thriving restaurants and workers.

With best regards,



Fatima Shama  
Commissioner, NYC Mayor's Office of Immigrant Affairs

# MESSAGE FROM THE NEW YORK STATE RESTAURANT ASSOCIATION

The New York State Restaurant Association is proud to have assisted in the development of this important guide for restaurants and small businesses. Whether you are a new or existing restaurant, this guide provides important updated information concerning the most basic regulations that you must master for the proper legal operation of your business. From wage regulations to labor issues, operating a business entails the navigation of many legal and regulatory challenges and the New York State Restaurant Association is pleased to support the Mayor's efforts to provide this guide as a resource to the hospitality industry. As the leader of the hospitality industry for over seventy years, the New York State Restaurant Association is pleased to work with the City of New York to guide businesses towards success. Please do not hesitate to contact the New York State Restaurant Association for any of your operational needs. We can be reached at 212-398-9160 or on the web at [www.nysra.org](http://www.nysra.org).

# ACKNOWLEDGEMENTS

The following individuals and Agencies must be thanked for their contributions to this manual:

**Marla Tepper**, General Counsel, NYC Department of Consumer Affairs

**Thomas Merrill**, General Counsel, NYC Department of Health and Mental Hygiene

**Florence Hutner**, Deputy Commissioner, NYC Mayor's Office to Combat Domestic Violence

**Jason Mischel**, Deputy Commissioner/General Counsel, NYC Mayor's Office for People with Disabilities

**Andrew McCreary**, Analyst and Public Access Designer, NYC Business

**Audrey Diop**, Director of Programs, Outreach and Partnerships, and **Marjorie Cadogan**, Executive Deputy Commissioner, NYC Human Resources Administration's Office of Citywide Health Insurance Access

**Martha Mann Alfaro**, Deputy Chief, Legal Counsel Division, NYC Law Department

**Kavita Pawria-Sanchez**, General Counsel, NYC Mayor's Office of Immigrant Affairs

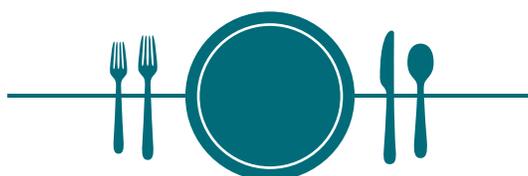
**Matilde Roman**, Former Deputy Commissioner/General Counsel, NYC Mayor's Office of Immigrant Affairs

**Caitlin Sullivan**, Executive Assistant, NYC Office of New York State Restaurant Association

**Jennifer Sultan**, Acting Special Policy Counsel, U.S. Department of Justice Civil Rights Division Office of Special Counsel for Immigration-Related Unfair Employment Practices

**James Versocki**, Counsel, NYC Chapter of the New York State Restaurant Association

**Daniel Wallace**, Policy Advisor, NYC Mayor's Office of Immigrant Affairs



# TABLE OF CONTENTS

PAGE SIX  
**EXECUTIVE SUMMARY**

PAGE EIGHT  
**SECTION ONE: OPERATING AND LICENSING LAWS**

Health and Safety Licenses: NYC Department of Health and Mental Hygiene  
*Food Safety Inspections and Permits*  
*Smoke-Free Air Act*  
*Posting Requirements*  
*Health Academy: Food Protection*

Taxes: NYS Department of Taxation and Finance

Consumer Protection Laws: NYC Department of Consumer Affairs

Bicycle Delivery Workers

Local, State and Federal Public Accommodation Laws, including Service Animals

PAGE TWENTY  
**SECTION TWO: EMPLOYMENT REGULATIONS**

Employment Eligibility  
*Employment of Minors*  
*Wages and Hours of Work*  
*Wage Theft Prevention Act*  
*Minimum Wage*  
*Tips and Tipped Employees*  
*Overtime*  
*Breaks, Deductions and Records*

Penalties for Violating Wage and Hour Laws

No-Match (DECOR) Letters

Unionization

Anti-Discrimination Laws

Retaliation

Hiring, Firing and Promotion

Verbal Abuse and Harassment

Types of Discrimination

*National Origin*

*Religion*

*Language*

*Age*

*Unemployment Status*

*Disability*

*Marital Status*

*Military Status*

*Discrimination Based on Record of Arrest or Conviction*

*Lawful Off-duty Activity*

*Sex-based Discrimination*

*Sexual Orientation*

*Gender Identity*

*Pregnancy*

Employee Health and Safety

*OSHA Requirements*

*Injury Prevention Techniques*

*Workers' Compensation and Disability Benefits*

*Family and Medical Leave*

**PAGE FIFTY-SEVEN**

**RECOMMENDED BEST PRACTICES**

**PAGE SIXTY-TWO**

**RESOURCES**

**PAGE SEVENTY-ONE**

**APPENDIX**

**PAGE EIGHTY-ONE**

**ENDNOTES**

# EXECUTIVE SUMMARY

## About the Restaurant Owner Manual

Issued by the Mayor's Office of Immigrant Affairs and the Restaurant Opportunities Center of New York for the first time in 2006, this updated Restaurant Owner Manual serves as an easy-to-read compilation of relevant city, state and federal rules and regulations that are organized into key topics of interest for restaurant owners and workers. It is meant to provide an overview of the basic operational, licensing and employment regulations that restaurants should consider when starting or continuing operations.

You should remember that laws constantly change, so this Manual should not be your sole source for evaluating your compliance with applicable local, state and federal laws.

## What You'll Find Inside

The Manual is divided into two sections – Section One: Operating and Licensing Regulations covers relevant rules and regulations that restaurant owners must observe in order to ensure the safety and protection of their consumers, and Section Two: Employment Regulations highlights the protections afforded to restaurant workers and includes a discussion of the penalties employers may face for violating those protections.

This executive summary highlights those areas of the law where restaurants have traditionally faced heightened scrutiny from regulators and private litigants. It is therefore advisable that you review these sections with particular attention:

- **Wages and Hours of Work.** The proper methods to pay wages to restaurant workers can be confusing and the failure to employ proper methods can have serious legal consequences for you and your business. Restaurants employ different categories of workers, including food service workers (e.g. waiters and busboys), service workers (e.g. delivery workers), and back of the house employees. You must carefully categorize employees to ensure that only tipped employees eligible to participate in tip pools are in the tip pool. Similarly, you must make sure to not share tips from tip eligible, front of the house employees with non-tipped, back of the house employees. Failure to comply with these rules can result in governmental investigations or lawsuits from employees.
- **Immigration Documentation.** Immigration issues can be very complex, from determining an employee's status to responding to requests for documentation from the federal government.
- **Food Safety.** It is imperative for public safety – and the success of your business – that you observe the highest of standards for food safety. The New York City Department of Health and Mental Hygiene provides extensive information about how to comply with the Health and Administrative Codes. Developing good sanitary practices, including staff training for your employees, are hallmarks of successful restaurants in New York City.
- **Proper Licensing.** Your restaurant must comply with all applicable regulations and be properly licensed. From your pre-opening Department of Health Inspection to your sidewalk café permit from the Department of Consumer Affairs, it is important that you obtain all necessary permits to avoid fines or the possible shutdown of your restaurant. New York City is dedicated to assisting your business and provides numerous agencies to assist you in the area of compliance, including the Small Business Services' NYC Business Acceleration. You can also find assistance from associations such as the New York State Restaurant Association.

## What's New for 2014

Since the first release of the Manual in 2006, there have been several important changes to rules and regulations, as well as the resources available to small business owners.

- **Increased Minimum Wage.** The minimum wage will increase in stages every year starting at the end of 2013, with additional increases continuing at the end of 2014 and 2015.
- **Sick Leave.** In 2013, New York City passed a new law which requires many employers to provide paid sick leave to their employees. Employers with 20 or more employees must provide sick leave beginning April 1, 2014. Employers with 15-19 employees must provide paid sick leave beginning October 1, 2015. And, employers with less than 15 employees must provide unpaid sick leave beginning April 1, 2014.
- **Bicycle Delivery Workers.** Many restaurants deliver to customers utilizing bicycles. As of November 2013, electric bikes (a.k.a. motor scooters), which includes all vehicles that cannot be registered with the NYS Department of Motor Vehicles, have been banned from use in New York City. For regular bicycles used for deliveries, there are very explicit rules that must be followed such as requiring businesses to provide helmets, reflective vests and identification.
- **Business Acceleration.** The Small Business Services' NYC Business Acceleration is a NYC program that offers one-stop support to help restaurants, bars, and food retailers open or expand faster. The team gives individual advice and coordinates NYC agency processes. It offers plan reviews, consultations and inspections on behalf of NYC's Departments of Buildings, Environmental Protection, Health, and Consumer Affairs – in many cases conducting multiple inspections on a single visit.
- **Laws Prohibiting Discrimination on the Basis of Pregnancy and Unemployment Status.** NYC's Human Rights Laws protect pregnant women and unemployed job-seekers from discrimination by employers.

We hope you find the New York City Restaurant Owner Manual to be a valuable resource in your operation and look forward to enjoying food from your soon-to-be or already existing restaurant!



SECTION  
ONE

OPERATING AND

LICENSING LAWS

Several New York City and State Agencies issue licenses and govern operations for restaurants. This section has been divided into three sub-sections covering some critical local Agencies which govern the restaurant industry:

- NYC Department of Health and Mental Hygiene
- NYS Department of Taxation and Finance
- NYC Department of Consumer Affairs
- Bicycle Delivery Workers
- Local, State and Federal Public Accommodation Laws

## Health and Safety Licenses: NYC Department of Health and Mental Hygiene

The New York City Department of Health and Mental Hygiene (DOHMH) has jurisdiction to regulate all matters affecting health in the City and to perform all those functions and operations that relate to the health of the people of the City. As part of these duties, the Department is responsible for enforcing food safety and sanitation laws. DOHMH's goal is to reduce food-related illnesses.

### Food Safety Inspections and Permits

You must obtain a Department of Health and Mental Hygiene permit to operate a food service establishment. Failure to obtain a permit is illegal and subjects an establishment to immediate closure. Twenty-one days before opening for business, you must schedule a pre-permit inspection. To schedule a pre-permit inspection, call the NYC Business Acceleration Program at (212) 788-6722. The pre-permit inspection will determine if your facility is suitable for operating a food service establishment (FSE). Once permitted, your FSE will receive regular cyclical inspections to determine if it meets the New York City (NYC) Health and New York State (NYS) Sanitary Codes requirements.

NYC Public Health Sanitarians conduct "unannounced" inspections of food service establishments. During inspections, sanitarians evaluate food workers' practices, including the manner in which they receive and store foods, how they process foods and the temperatures, at which they cook, cool, hold and reheat food. As a result of the inspections, sanitarians may issue administrative summons for violations of the NYC Health Code, the NYS Sanitary Code or other applicable laws. The Department posts the results of restaurant inspections on its website and, following certain inspections issues grade cards for posting near restaurant entrances.

For more information about opening, designing, and operating your restaurant or other Food service establishment, visit [nyc.gov/health/foodservice](http://nyc.gov/health/foodservice).

### Smoke-Free Air Act

The DOHMH enforces the NYC Smoke-Free Air Act (SFAA), Local Law 47 of 2002 which is available online at [www.nyc.gov/html/doh/downloads/pdf/smoke/tc7.pdf](http://www.nyc.gov/html/doh/downloads/pdf/smoke/tc7.pdf). Smoking in most indoor spaces in New York City, including restaurants, is strictly prohibited. There are limited exceptions for tobacco bars that have been in operation since at least 2002 and which comply with stringent requirements established in the law. Restaurants with outdoor space are permitted to allow smoking only in limited areas described in the law.

## E-Cigarettes

Under Local Law 152 of 2013 the restrictions on smoking at restaurants and other public places will apply to electronic cigarettes. Restaurants will need to start enforcing the prohibition on April 29, 2014, and post new signage including the prohibition about smoking electronic cigarettes by June 28, 2014.

## Inspections

### Questions, Comments, Complaints and Compliments about Inspections

Local Law 89 of 2013 establishes a Food Service Establishment Inspection Ombuds Office within the Department of Health and Mental Hygiene. The Office will establish a telephone hotline and website to receive questions, comments, complaints and compliments about inspections. It will be able to withdraw violations concerning the physical layout or major fixtures within a food service establishment when the Department of Health and Mental Hygiene finds that they existed at the time of a prior inspection but were not the subject of a violation, and that they have not been altered since the time of that inspection.

### Food Service Establishment Inspection Code of Conduct

Local Law 90 of 2013, which takes effect on February 7, 2014, requires the Department of Health and Mental Hygiene to develop a Food Service Establishment Inspection Code of Conduct that includes the following:

1. the food service establishment inspector shall behave in a professional and courteous manner;
2. upon arriving at the food service establishment to perform a sanitary inspection, the food service establishment inspector shall immediately identify himself or herself to the staff of the food service establishment, and note the type of inspection, in a manner that does not unreasonably interfere with the dining experience of patrons;
3. the food service establishment inspector shall be as unobtrusive as possible during the inspection while conducting the inspection;
4. the food service establishment inspector shall return any equipment he or she moved back to its original location, and reassemble any equipment he or she disassembled, during the course of the inspection;
5. the food service establishment inspector shall have a sound knowledge of all relevant health code provisions and any other applicable laws and regulations;
6. the food service establishment inspector shall meaningfully communicate with the food service establishment owner or operator, and if necessary, utilize language assistance services to facilitate meaningful communication;
7. the food service establishment inspector shall answer reasonable questions relating to the inspection;
8. the food service establishment inspector shall enforce agency rules in a fair and impartial manner;
9. the food service establishment inspector shall, upon finding a violation, explain to the food service establishment owner or operator how to remedy such violation;
10. the food service establishment inspector must provide information informing the food service establishment owner or operator how such owner or operator may contest a notice of violation before the relevant local tribunal; and
11. the food service establishment inspector shall provide information on how the food service establishment owner or operator may file a comment, compliment, or complaint about an inspector. Inspectors will be required to give the owner or operator a copy of the code of conduct prior to beginning an initial inspection.

### **Consultations from DOHMH**

Under Local Law 93 of 2013, which takes effect on May 8, 2014, the Department of Health and Mental Hygiene will be offering food service establishments the opportunity to request a “consultative inspection,” performed for educational and information purposes only, where an inspector will provide advice about potential violations and how to remedy them. A consultative inspection would not result in the issuing of a notice of violation, but the Department of Health and Mental Hygiene could still take appropriate action if a food service establishment fails to remedy a public health hazard at the time of the consultative inspection. The Department of Health and Mental Hygiene will issue a regulation establishing a fee for consultative inspections.

### **Language Preferences during Inspections**

Local Law 132 of 2013, effective April 16, 2014, calls for the Department of Consumer Affairs and the Department of Health and Mental Hygiene to allow business owners to request that inspections be conducted in a language other than English. However, while the law requires the opportunity to make such a request, it does not guarantee that the request will be accommodated.

### **Organic Recycling**

Local Law 146 of 2013 establishes a new recycling program for organic waste, including food scraps, soiled paper, and plant trimmings. Some restaurants are not covered by the law. Restaurants' obligations under the law will depend on their size and whether they are part of a chain. Restaurants that are subject to the law will need to comply by January 1, 2016. They will have to make arrangements for the proper disposal of their organic waste for composting, aerobic or anaerobic digestion, or other Department of Sanitation-approved processing method. A restaurant can comply with this requirement by ensuring proper organic waste collection by a private carter, carting its own organic waste to an appropriate facility (provided that the restaurant is properly registered with the Business Integrity Commission), or providing for on-site processing of its organic waste. Restaurants will have to post a sign or decal near their entrances that indicates how they are disposing of their organic waste. Additionally, restaurants will be required to provide separate bins for the disposal of organic waste and post instructions on the proper separation of organic waste where the instruction will be visible to people who are disposing organic waste.

## Posting Requirements

The Smoke-Free Air Act (SFAA) requires that “No Smoking” signs are posted in all indoor public spaces and ashtrays are prohibited in all smoke free areas. Signs in many different languages are available on the Department of Health and Mental Hygiene website: [www.nyc.gov/html/doh/html/environmental/smoke-free-act.shtml#nosmoke](http://www.nyc.gov/html/doh/html/environmental/smoke-free-act.shtml#nosmoke). The SFAA also requires establishments to have and disseminate to employees a smoking policy, a sample of which also is posted on the Department’s website.

Restaurants must also post the following health-related signs:

- “Choking first aid” poster
- “Alcohol and pregnancy” warning sign
- “Wash hands” signs at the hand wash facilities
- “Allergy” poster

For assistance in understanding what is required by law, please consult the applicable regulations, review the information available at [nyc.gov/health/foodservice](http://nyc.gov/health/foodservice), or contact:



New York City Department of Health and Mental Hygiene  
Division of Environmental Health  
Bureau of Food Safety and Community Sanitation (BFSCS)  
125 Worth Street, 9th Floor, New York, NY 10007  
(212) 676-1600/1601

## Health Academy: Food Protection

The Health Code requires that supervisors of food operations and non-retail food processing be certified as having completed a course in food protection. A person holding a certificate issued after passing an examination as part of an approved Food Protection Course must be on the premises and supervise all food preparation activities during all hours of operations of a food service establishment.

This course costs \$114.00 and lasts for five days. It usually starts on Monday and ends on Friday. The course is conducted over fifteen hours, with three-hour classes each day. Whenever Monday is a City holiday, classes begin on Tuesday. In any four-day work week, classes last three hours and forty-five minutes each day.

The course is offered continuously. In the daytime, English classes are held in the morning from 9:00 a.m. to 12:00 p.m., and in the afternoon from 1:00 p.m. to 4:00 p.m. Chinese and Spanish classes are offered twice a month, in the evening, from 5:00 p.m. to 8:00 p.m. One evening class is held each month in Korean.

The course is also available online for free in English, Spanish or Chinese. The exam is given in person and is required to obtain the Food Protection Certificate. The fee for the exam is \$24.60.

Participants who complete the course and pass the final examination are issued certificates. Registration for the in-person course is done in person at the Citywide Licensing Center. Payment of the fee can be made by certified check, money order or credit card. You can register for the online course at [www.nyc.gov/html/doh/html/services/hany-food.shtml](http://www.nyc.gov/html/doh/html/services/hany-food.shtml). Please contact 311 for more information.

The Citywide Licensing Center is located at:



42 Broadway, 5th Floor  
New York, NY 10004  
Tel: 311

The Health Academy is located at:



East Harlem Multi-Service Center  
Second Floor  
413 East 120th Street  
New York, NY 10035  
Tel: (917) 492-6990

The Food Protection Course and other food and alcohol safety courses can also be obtained through certified classes offered by other organizations, including the New York State Restaurant Association located at:



New York State Restaurant Association (NYSRA)  
New York City Regional Office  
1001 Avenue of the Americas, 3rd Floor  
New York, NY 10018  
Tel: (212) 398-9160, (800) 442-5959  
(For NYC Food Handler, ServSafe Alcohol, and ServSafe Food safety courses)

After taking this class, the applicant must take an exam at the Health Academy in order to obtain the food protection certificate.

## Taxes: NYS Department of Taxation and Finance

Restaurant owners must collect and pay sales taxes based on their customers' purchases. In addition, restaurant owners must pay the following taxes, as applicable:

- Sales and use taxes (on their own purchases other than merchandise held for resale)
- Corporation tax or unincorporated business tax
- Withholding tax (on employees' earnings)
- Alcohol beverage tax
- Beverage container tax
- Cigarette and tobacco products tax

More information about these taxes is available at the website of the New York State Department of Taxation and Finance at [www.tax.ny.gov](http://www.tax.ny.gov).

# Consumer Protection Laws: NYC Department of Consumer Affairs

## What All New York City Businesses Should Know

The New York City Department of Consumer Affairs (DCA) licenses almost 80,000 businesses and enforces licensing, consumer protection, and weights and measures laws at all retail businesses, as well as related federal and state laws. DCA's Business Toolbox at [nyc.gov/businessstoolbox](http://nyc.gov/businessstoolbox) makes it easy for businesses to apply for or renew licenses online, check if a business is licensed, change business information, request license replacements, pay fines, request scale inspections, print required signs and forms, access relevant laws and get inspection checklists to help businesses comply with the law and avoid fines.

For more information, to obtain license applications, or to file a complaint, call 311 within the five boroughs (or 212-NEW-YORK outside NYC) or visit DCA's website at [www.nyc.gov/consumers](http://www.nyc.gov/consumers). DCA also offers Live Chat, an online opportunity exclusively for businesses to get their questions answered by staff experts during business hours. DCA's "10 Things Every Business Should Know" and other free guides, in English, Spanish, Chinese, Korean, Haitian Creole, Russian and Bengali, are available at [www.nyc.gov/consumers](http://www.nyc.gov/consumers) or by calling 311.

For restaurants interested in applying for a sidewalk café license, call 311 for an application and design guidelines, or download both from DCA's website.

## Does your business need a license?

By law, DCA licenses 55 different industries including sidewalk cafés, cigarette retail dealers, catering halls, and more. To find out if you need one or more DCA licenses, visit [www.nyc.gov/businessstoolbox](http://www.nyc.gov/businessstoolbox) or call 311. You can also visit [nyc.gov](http://nyc.gov) and search "Business Express" to find out what you need to start and operate businesses in New York City. DCA encourages business owners to view the Business Owner's Bill of Rights, available at [www.nyc.gov/bizrights](http://www.nyc.gov/bizrights).

## What kind of sidewalk cafés need licenses?

A valid DCA sidewalk café license is required to operate part of a restaurant on a public sidewalk (not on private property). There are three types of sidewalk cafés:

1. Enclosed Café: An enclosed area on the public sidewalk in front of the restaurant that is constructed predominantly of light materials such as glass, plastic, or lightweight metal.
2. Unenclosed Café: An outdoor area on the public sidewalk in front of the restaurant that contains removable tables and chairs.
3. Small Unenclosed Café: An unenclosed sidewalk café containing no more than a single row of removable tables and chairs next to the building. The tables and chairs can occupy no more than 4 feet, 6 inches of the public sidewalk.

## Do you hire employees through employment agencies?

Employment agencies that charge clients a fee for finding jobs must be licensed by DCA. Every agency must display its license on the premises where customers can see it. To learn whether an employment agency is licensed and to learn about the laws with which employment agencies must comply, visit DCA's website at [www.nyc.gov/consumers](http://www.nyc.gov/consumers).

## Restaurant Surcharges

Under the Rules of the City of New York §5-59, restaurants are prohibited from adding a surcharge to the cost of items listed on the menu. For example, if they want to raise prices, they must change the individual prices on the menu, not just add a surcharge.

Some surcharges are exempt, including bona-fide service charges for persons sharing one meal, a personal minimum conspicuously posted, and businesses which are solely "take-out." At the time of the writing of this Guide, DCA is reviewing its regulations so please visit [www.nyc.gov](http://www.nyc.gov) or [www.nysra.org](http://www.nysra.org) for further updates as they are made available.

## Receipts

If a customer requests a receipt for a purchase between \$5 and \$20, you must provide it, and if the purchase is \$20 or more, you are required by law to provide a receipt. By law, your receipts must show:

- Your business name and address and, if you are a licensee, you must add "Department of Consumer Affairs" followed by your DCA license number
- The amount of money paid for each item
- The total amount the customer paid, including a separate line for tax
- The date of the purchase
- Receipts cannot show a credit card's expiration date or more than its last five digits.

## Selling Tobacco Products

All retailers selling cigarettes must be licensed by DCA. Merchants caught selling tobacco to persons under 21, on more than two occasions within a two-year period, risk high fines and losing their City license, State registration, and lottery license.

## Weights and Measures

DCA inspects all scales used by stores for accuracy. Scales must be positioned so customers can view the weight and the price per pound. If you sell packaged items, you must subtract the weight of the packaging ("tare weight") from the cost of the weighed item. Businesses can request a scale inspection online in DCA's Business Toolbox or by contacting 311.

## Violations and Penalties

If a DCA inspector issues a violation during an inspection, you will be given a Notice of Hearing with the date and time that you need to meet with a Settlement Officer or contest the violation with an Administrative Law Judge at DCA's Adjudication Tribunal. You may bring an attorney with you, and free translation services are available. Those with disabilities can request special accommodations before their hearings. Depending upon the violation or your violation history, you may be able to settle the violation online or by mail. Not responding to a Notice of Hearing will result in additional violations and fines. For a free copy of DCA's Administrative Hearing Guide, or to request a reasonable accommodation, call 311 or visit DCA's website at [www.nyc.gov/businesstoolbox](http://www.nyc.gov/businesstoolbox).

## Resolving Customer Complaints

If DCA receives a complaint, the agency will contact you by phone or mail to get your side of the story before DCA mediates the complaint. All licensees must respond within 20 days. A DCA mediator will work with you and the customer and if the complaint cannot be resolved, it may be heard by a judge at a hearing at DCA's Adjudication Tribunal or State Court. DCA maintains permanent public records of complaint histories and how they are resolved.

## Bicycle Delivery Workers

Many restaurants deliver to customers utilizing bicycles. As of November 2013, electric bikes a.k.a. motor scooters – which includes all vehicles that cannot be registered with the NYS Department of Motor Vehicles – have been banned from use in New York City. For regular bicycles used for deliveries, there are very explicit rules that must be followed:

- The restaurant that the bicyclist works for must be identified on the bike by name and identification number.
- The bike's operator must wear upper body apparel with business' name and operator's number on the back (most commonly using a safety vest with this information on the back).
- The business must provide operator with a helmet according to A.N.S.I. or Snell standards.
- The bike's operator shall wear a helmet provided by the business.
- The bike's operator must carry and produce on demand a numbered ID card with operator's photo, name, home address and business' name, address and phone number.
- The business must maintain a log book that includes the name, identification number and place of residence of each bicycle operator; and the date of employment and discharge. A copy of a model roster may be found here: [www.nyc.gov/html/dot/downloads/pdf/commercial-cyclist-roster-template.pdf](http://www.nyc.gov/html/dot/downloads/pdf/commercial-cyclist-roster-template.pdf)
- The log book must also include information on daily trips, identifying the bicycle operator's identification number and name; and name and place of origin and destination.
- The owner of business must file an annual report with the Police Department identifying the number of bicycles it owns and the identification number and identity of any employees.
- You must also post a bicycle safety poster in your establishment where staff who use bicycles can easily see it. A copy of the poster can be found here: [www.nyc.gov/html/dot/downloads/pdf/commercial-bicyclist-safety-poster.pdf](http://www.nyc.gov/html/dot/downloads/pdf/commercial-bicyclist-safety-poster.pdf)
- The City of New York also requires that each commercial bicyclist take a safety course. A copy of the course can be printed at [www.nyc.gov](http://www.nyc.gov); it is offered in multiple languages and it is recommended that you keep proof, including the date and time that each commercial bicyclist took or reviewed the course materials. The full safety course may be found here: [www.nyc.gov/html/dot/downloads/pdf/commercial-bicyclist-safety-course.pdf](http://www.nyc.gov/html/dot/downloads/pdf/commercial-bicyclist-safety-course.pdf)

The "Do You Deliver?" business guide prepared by the City of New York which provides an overview of the requirements for deliveries may be found here: [www.nyc.gov/html/dot/downloads/pdf/delivery-cyclist-brochure.pdf](http://www.nyc.gov/html/dot/downloads/pdf/delivery-cyclist-brochure.pdf)

Failure to comply with any of these rules may result in summons being issued to your employee and/or your business.

## Local, State and Federal Public Accommodation Laws, including Service Animals

Federal, state and local laws prohibit discrimination by public accommodations, including restaurants, on the following grounds:

- Race
- Color
- Religion or Creed
- National Origin or Ancestry
- Sex or Gender (including gender identity)
- Age
- Disability
- Marital Status
- Partnership Status
- Military Status
- Sexual Orientation
- Alienage or Citizenship Status

Public accommodations are required to make reasonable accommodations for persons with disabilities. This may include removing architectural barriers where that would be necessary to provide accessibility. A restaurant would not be required to remove such barriers if that would cause “undue hardship”, which is determined in light of:

- nature and cost of the accommodation
- the restaurant’s overall financial resources
- number of persons employed at the restaurant
- effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the restaurant
- overall size of the business with respect to the number of its employees, the number, type, and location of its facilities
- type of operation or operations of the restaurant, including the composition, structure, and functions of its workforce of such entity; and the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question

For more information, see “ADA Guide for Small Businesses”, at [www.usdoj.gov/crt/ada/smbustxt.htm](http://www.usdoj.gov/crt/ada/smbustxt.htm); and “How to Comply with Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers”, at [www.eeoc.gov/facts/restaurant\\_guide.html](http://www.eeoc.gov/facts/restaurant_guide.html).

Special tax benefits are available for qualifying businesses to help defray the cost of making their facilities accessible. For information, see “Tax Incentives Packet on the Americans with Disabilities Act”, at [www.ada.gov/archive/taxpack.htm](http://www.ada.gov/archive/taxpack.htm).

## Wheelchairs

### **I have what I believe to be a wheelchair friendly restaurant. Does the city provide a way to promote my restaurant's wheelchair-friendliness?**

- Yes. The Mayor's Office for People With Disabilities has launched a Restaurant Access Program (RAP). RAP is designed to provide a restaurant with the opportunity, if it chooses to do so, to advertise the fact that its restaurant is wheelchair-friendly. Should your restaurant qualify, you will be sent a RAP "Wheelchair Friendly" Decal that you can post in your restaurant promoting its friendliness to wheelchair users. For more information go to [www.nyc.gov/mopd/rap](http://www.nyc.gov/mopd/rap) or call 311.

### **Service Animals<sup>1</sup>**

Generally, a restaurant must modify its policies and practices to permit an individual with a disability to use a service animal. Only dogs that are individually trained to work and perform tasks for disabled persons qualify as "service animals" under the Americans with Disabilities Act. The Americans with Disabilities Act also protects the rights of people with disabilities to assistance from miniature horses. However, the regulations implementing the Americans with Disabilities Act recognize that other civil rights laws may protect the right of people with disabilities to use additional types of animals for assistance.

Service animals are working animals, not pets, assisting persons with disabilities in many day-to-day activities, including:

- assisting persons who are blind or have sight impairment
- alerting persons with hearing impairments to sounds
- pulling wheelchairs and carrying and picking up things for persons with mobility impairments
- assisting persons with mobility impairments with balance
- alerting and protecting a person who is having a seizure
- reminding a person with mental illness to take prescribed medications
- calming a person with Post Traumatic Stress Disorder (PTSD)

### **Can I ask the patron to leave the service animal outside the restaurant?**

No. Under the Americans with Disabilities Act, businesses that serve the public generally must allow service animals to accompany the disabled person in all areas of the establishment where the general public is permitted to go.

### **How do I recognize that a patron's animal is a service animal and not just a pet?**

Service animals are harnessed, leashed, or tethered, unless these devices interfere with the animal's work or the person's disability prevents the use of such devices. In these cases, the patron must be able to maintain control of the service animal through other means.

When it is difficult to identify the animal as a service animal, a limited inquiry is permitted. Your staff may ask the following two questions:

1. Is the animal a service animal that is required because of a disability?
2. What work or task has the animal been trained to perform?

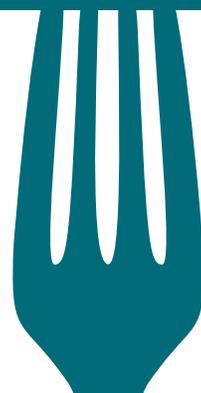
Your staff cannot ask the patron about his or her disability, request medical documentation, special identification card or training documentation for the service animal, or ask that the animal demonstrate the work or task it is trained to perform.

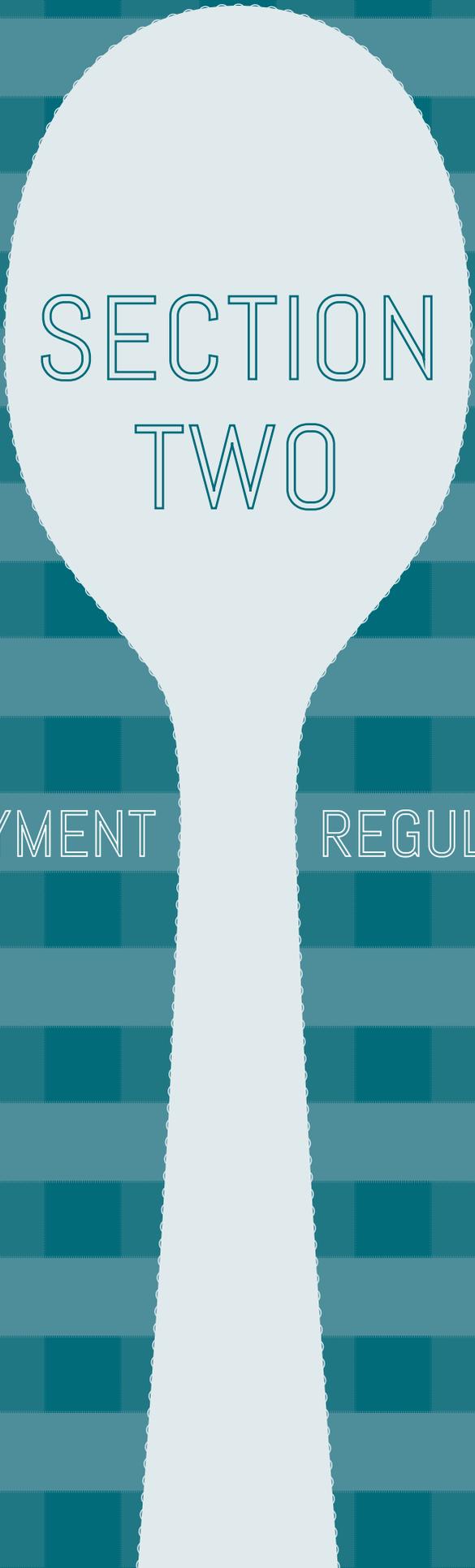
## What are my obligations toward the patron and the service animal?

- Allergies and fear of dogs are not appropriate excuses to refuse service or deny them access to the space. When a person who is allergic to dog dander and a person who uses a service animal are at the restaurant at the same time, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- Generally, the patron cannot be asked to remove the service animal. However, if the dog is uncontrollable or it is not housebroken, then you can ask to remove the service animal and offer the disabled person the opportunity to obtain goods and services without the animal present.
- Service animals must be allowed in all public areas even if it violates the health codes that forbid animals on the premises.
- Disabled persons with service animals cannot be serviced in a separate or isolated area away from other customers, treated less favorably, or charged an additional fee for the animal. Any fee for pets imposed on customers must be waived.
- You are not required to provide care or food for the service animal.
- Direct any questions or clarifications concerning this policy to appropriate management personnel.
- Conduct any discussions with a customer in such a manner so as to avoid any possible embarrassment to the customer.
- Use good judgment.
- For more information, visit the U.S. Department of Justice, Civil Rights Division, Disability Rights Section, "ADA 2010 Revised Requirements – Service Animals", at [www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm); and New York State Attorney General's website, at [www.ag.ny.gov/sites/default/files/pdfs/publications/service\\_animals\\_brochure.pdf](http://www.ag.ny.gov/sites/default/files/pdfs/publications/service_animals_brochure.pdf).

## PUBLIC ACCOMMODATION LAWS

Bella Vita II was found liable for violating the New York Human Rights Law for refusing to allow a person with a disability into the restaurant with a service dog who assisted her with maintaining her balance. The owner of the restaurant was aware that he was to allow a guide dog to accompany a blind person into the restaurant, but was not aware of the statutes that extended the right to have a service dog assist persons with other disabilities. The court held that ignorance of the law is not a recognized defense, fined the restaurant, and ordered the restaurant to comply with the laws in allowing persons with a disability to be accompanied by a guide dog, hearing dog or service dog into the restaurant.<sup>2</sup>





SECTION  
TWO

EMPLOYMENT

REGULATIONS

## Employment Eligibility

### **How do I determine who is eligible to work?**

According to federal law, all new employees must complete an I-9 Employment Eligibility Verification form. Form I-9 lists documents an employee may produce that are acceptable for establishing an employee's identity and work authorization.

If an employee has provided documents that she or he has chosen from the list of documents that are acceptable to establish identity and work authorization under the requirements of federal law, the employer may not demand additional documents. The employer may not refuse to accept documents that on their face reasonably appear to be genuine and relate to the person presenting them.

An employer may be liable for knowingly hiring an undocumented person, or for accepting falsified documents with the Form I-9 when the government can prove the employer knew the employee was undocumented.

For more information, go to the U.S. Citizenship and Immigration Services website [www.uscis.gov](http://www.uscis.gov). Under the "Forms" link, click on "Employment Verification (Form I-9)" to find the Handbook for Employers OR go to [www.uscis.gov/sites/default/files/files/form/m-274.pdf](http://www.uscis.gov/sites/default/files/files/form/m-274.pdf). The "Frequently Asked Questions" section is particularly helpful.

### **What should be done with the completed I-9 forms?**

The forms are not filed with the government. The employer must keep them on file for either 3 years after the hiring date or 1 year after the employee's last work day, whichever is later.

### **What are my responsibilities concerning the authenticity of documents presented to me by employees and prospective employees?**

You must examine the document(s) as specified by the Form I-9 and, if they reasonably appear to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be considered unfair employment discrimination on the basis of immigration status.

### **Can I ask my employees to produce work authorization documents at any time?**

Generally, the I-9 form should be completed within 3 business days of the employee's first paid work day. If an employee has a temporary work authorization, the employer should note the expiration date of that authorization and re-verify the employee's documents by the time it expires.

Re-verifying work authorization during a labor dispute may be considered retaliation. (See section on Unionization in this Manual).

### **Are undocumented employees covered by the same laws as other employees?**

Yes. In general, laws concerning minimum wages and overtime, the right to unionize, and protection against harassment and many other forms of discrimination apply to undocumented employees, although in some cases undocumented persons may not be entitled to all the remedies provided under those laws.

## SETTLEMENT TO PAY \$23,260 IN CIVIL PENALTIES AND \$10,000 IN BACK PAY TO FORMER EMPLOYEE FOR PATTERN AND PRACTICE OF DOCUMENT ABUSE

On May 18, 2010, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) entered into a settlement agreement with John Jay College, a college in the City University of New York (CUNY) system. The lawsuit alleged that John Jay engaged in a pattern or practice of document abuse by having its human resources personnel request that non-U.S. citizens present documents issued by the Department of Homeland Security (DHS) at the initial employment eligibility verification stage as well as at the re-verification stage, while allowing U.S. citizens to present their choice of documentation from the Form I-9's List of Acceptable Documents. As part of the settlement John Jay paid \$23,260 in civil penalties and \$10,000 in back pay to a former employee. John Jay also agreed to training, updating its antidiscrimination policies to comply with the INA, and monitoring provisions.<sup>3</sup>

## Employment of Minors

### Who is covered by child labor laws?

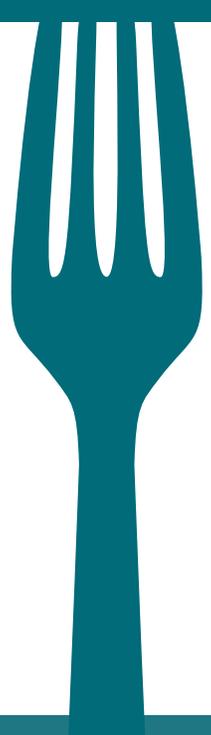
New York's labor laws protect minors' rights in the workplace. Anyone under the age of 18 is considered a minor. If you suspect that an employee is a minor you must obtain proof of his or her age. You cannot use ignorance as an excuse for violating child labor laws.

### May I hire an employee under the age of 18?

Employment of minors under the age of 14 in the restaurant industry is illegal. Minors who are 14 and 15 years old who are enrolled in school full-time during the day time may work after school hours and during vacations.

Minors who are 16 and 17 years old who are not attending school may work full time throughout the year. Different rules apply for 16 and 17 year olds when they are in school. (See "What hours may 14 and 15 year old employees work compared to 16 and 17 olds?" below)

Minors must obtain an employment certificate (working papers) from their school. To get the certificate, students must fill out an application (Form AT-17) and submit it to a designated person in the middle or high school they attend. The school then issues an employment certificate to the student. For minors who cannot obtain an employment certificate (e.g. when schools are closed, out-of-state students), they can obtain one from their District Family Advocate, who works in the office of the Community Superintendent of Schools. Further information is available at [nyc.gov/education](http://nyc.gov/education) by searching "employment certification".



### What hours may 14 and 15 year old employees work compared to 16 and 17 olds?<sup>4</sup>

This chart summarizes the rules regarding when 14 and 15 year olds may work and when 16 and 17 year olds may work depending on whether school is in session:

	14 and 15 year olds	16 and 17 year olds
<b>IF SCHOOL IS IN SESSION:</b>		
Maximum Hours Per Week	18	28
Maximum Hours Per Day	<ul style="list-style-type: none"> <li>• Maximum 3 hrs/day on school days</li> <li>• Maximum 8 hrs/day on Saturdays, Sundays and holidays</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum 4 hrs/day on school days</li> <li>• Maximum 8 hrs/day on Fridays, Saturdays, Sundays and holidays</li> <li>• Allowed to work 4 hours on any day before a school day on Monday through Thursday, until 10:00pm.</li> </ul>
Maximum Days Per Week	6	—
Other Notes	Cannot work between 7:00PM and 7:00AM	Can work until midnight on school days if the minor has provided (a) written consent of a parent or guardian, and (b) a certificate from the minor's school at the end of each marking period showing satisfactory academic standing.
<b>IF SCHOOL IS NOT IN SESSION:</b>		
Maximum Hours Per Week	40	48
Maximum Hours Per Day	8	8
Maximum Days Per Week	6	6
Other notes	Can work from 7:00AM to 9:00PM from June 21 through Labor Day	16 and 17 year olds who are not attending school may obtain a certificate from school authorities to work full-time under certain conditions.

### Do I have any additional responsibilities related to employment of minors?

Yes. Employers must maintain employment certificates for all minors on file on the premises at the restaurant and such certificates must be made available for inspection by authorized agents.

When a minor's employment is terminated, the employer must return the minor's certificate.

The employer must make a schedule for all minors employed by the employer, setting forth the work hours, specifying the beginning and end times, and the time allowed for meals. The schedule must be kept conspicuously posted in the restaurant.

### Are there any job-related duties that are prohibited specifically for minors?

Yes. Minors cannot operate high-risk machinery, such as slicing, mixing, or some dishwashing machinery.

Minors cannot drive any vehicle as part of the job.

If you are considering hiring minors to work in a kitchen using any type of machinery, including freezers, first check with the New York State Attorney General or with the New York State Department of Labor to make sure such employment is legal.

## Wages and Hours of Work

### Wage Theft Prevention Act (WTPA)<sup>5</sup>

New York State Labor Law requires employers to notify workers about their wage rates, give workers wage information each payday, keep certain records, and protect workers who make complaints under the law against retaliation. The New York State Department of Labor may bring enforcement actions and employees may bring private lawsuits under the law.

#### Who is covered by the law?

All private sector employers who employ employees in New York State are covered. You should assume your restaurant is covered by the WTPA.

#### What is required in the pay notice given to workers?

The Notice must contain the following information:

- The employee's rate(s) of pay.
- The basis of the employee's rate(s) of pay (e.g. by the hour, shift, day, week, salary, piece, commission, or other).
- Whether the employer intends to claim allowances as part of the minimum wage, including tip, meal, or lodging allowances, and the amount of those allowances.
- The employee's regular pay day designated by the employer.
- The name of the employer and any "doing business as" names used by the employer.
- The physical address of the employer's main office or principal place of business, and a mailing address if different.
- The telephone number of the employer.
- Any "other information the State Commissioner of Labor deems material and necessary."

#### What if a worker's primary language is not English?

Notices need to be given in a worker's primary language if the Department of Labor provides notice templates in that language. Otherwise the notice need only be provided in English. Templates are available on the Department's web site at [www.labor.ny.gov](http://www.labor.ny.gov).

#### In what languages will the Department provide templates?

Templates are available in English, Spanish, Chinese, Korean, Creole, Polish and Russian.

#### Do I have to use the Department's templates?

No, employers can develop their own notices so long as they contain all the information required by the law.

#### When are pay notices required?

Notices are required to be given to employees: (1) at the time an employee is hired; (2) once a year between January 1 and February 1; and, (3) when there are changes in the information on the pay notices (e.g. you give an employee a raise).

#### What to do if you haven't given the WTPA notices?

Compliance with the WTPA is important; you should correct any failure to provide the required notices immediately or you face severe financial penalties.

#### How long must I keep the notices?

At least six years.

## Minimum Wage

### What is the minimum wage?

The Minimum Wage is the minimum hourly wage you must pay non exempt employees under NYS or Federal law. The minimum wage in NYS in 2013 was \$7.25. As of December 31, 2013, it increased to \$8.00. The following additional increases will take effect:

- \$8.75 on and after Dec. 31, 2014; and,
- \$9.00 on and after Dec. 31, 2015.

### When do I have to pay my employees?

For restaurant workers, full wages must be paid weekly and no later than seven (7) days after the end of the week in which they were earned. You can set what day is the end of your restaurant's work week (i.e. Friday) and make sure the pay for that week is paid no later than seven days from that date.

If an employee is terminated, wages must be paid to that person no later than the regular payday for the period during which the wages were earned. You must also notify any employee terminated from employment, in writing, of the exact date of such termination as well as the exact date of cancellation of any employee benefits connected with such termination. A notice of termination with this information must be provided no more than five working days after the date of such termination.<sup>6</sup>

### Can an employer pay an employee a set daily or weekly amount, e.g. "shift pay"?

Generally, no. The WTPA requires that employees be advised of their hourly rate of pay and overtime pay. You should not pay shift pay to any employees unless they are considered exempt under the New York State Labor Law. Executives (e.g. a general manager), administrative, or professional (e.g. executive chefs) employees are considered exempt.

### Am I required to provide a pay stub to my employees?

Yes. Every employer must give to each employee a statement, commonly referred to as a pay stub, with every payment of wages. Federal tax rules require that the pay stub lists: hours worked, rates paid, gross wages, credits claimed (for tips, meals and lodging) if any, deductions and net wages.<sup>7</sup>

### Am I required to post Department of Labor notices in my establishment?

Yes. Every employer must post, in a conspicuous place in the establishment, notices issued by the State Department of Labor about wage and hour laws, tip appropriations, illegal deduction provisions and any other labor laws that the Commissioner of Labor deems appropriate.<sup>8</sup> Additional postings may be required by other governmental agencies.

## Tips and Tipped Employees

### Is the minimum wage different for tipped employees?

No, all employees must receive the minimum wage. But an employer may take a credit against the minimum wage for some portion of tips actually received by the employee as explained below. Tipped employees in the hospitality industry generally include food servers and delivery workers.

### How much must I pay tipped employees?

If you employ food servers and delivery workers you may deduct a limited amount of money from the hourly minimum wage as a “tip credit,” as long as the total earnings of that employee (hourly wages and tips combined) are at least equal to the minimum wage mandated by law.

The minimum wage rate for employees is:

- \$7.25 until December 30, 2013;
- \$8.00 on and after December 31, 2013;
- \$8.75 on and after December 31, 2014; and,
- \$9.00 on and after December 31, 2015.

To take a tip credit against a food service or service workers' wages, you must:

1. keep records of employees' tips; and,
1. inform employees that a credit for tips is being taken against their wages under the tip credit provisions of the New York State Labor Law.

It is advisable to use the tipped employee notification forms provided by the New York State Department of Labor when providing notice to tipped employees that you are taking a tip credit. Those forms may be found at: [www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm](http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm)

### How is tip credit taken for food service workers?<sup>9</sup>

The employer must keep a record of the tips and inform the worker that their wage is being reduced under the tip credit provision. The following examples are based on rates in effect during 2013:

**Example 1:** A waiter earns at least \$2.25 per hour in tips. The employer must pay the waiter a wage of at least \$5.00 per hour and take a tip credit of \$2.25 per hour, resulting in a minimum wage payment of \$7.25 per hour.

**Example 2:** A waitress makes an average of \$10.00 an hour in tips. The employer must pay at least a \$5.00 per hour wage, and show no more than \$2.25 per hour in a tip credit.

**Important Wage Information:** Please remember that the minimum wage will increase incrementally in 2014 and 2015. You should check the NYS Department of Labor website to ensure you are taking the appropriate tip credit amount as the tip credit will increase as the minimum wage increases.

### Who is a food service worker?

A “food service worker” is defined as any employee who is “primarily engaged in the serving of food or beverages to guests, patrons or customers in the hospitality industry, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receives tips from such guests, patrons or customers.” The term “food service worker” does not include delivery workers. The NY Labor Law prohibits you from taking a tip credit for a food service worker on any day in which he or she has been assigned to work in an occupation in which tips are not customarily received for two hours or more, or for more than 20% of a shift, whichever is less.<sup>10</sup>

## Delivery Workers

A service employee in the hospitality industry is different than a food service worker. A delivery person is an example of a service employee. Service employees must also receive the minimum wage but the tip credit you may take for these employees is different.

A service employee must receive a wage of at least \$5.65 per hour, and the credit you may take for their tips may not exceed \$1.60 per hour. The total of tips received, plus wages, must equal or exceed the minimum wage. The employer must keep a record of the tips and inform the worker that their wage is being reduced under the tip credit provision.

***Example:** The following example is based on rates in effect during 2013. A delivery worker makes an average of \$10.00 an hour in tips. The employer must pay a \$5.65 per hour wage, and show no more than \$1.60 per hour in a tip credit (through December 30, 2013).*

**Important Wage Information:** Please remember that the minimum wage will increase incrementally in 2014 and 2015. You should check the NYS Department of Labor website to ensure you are taking the appropriate tip credit amount as the tip credit will increase as the minimum wage increases.

## How to handle wages for an employee who performs tipped and non-tipped occupations on the same day?

On any day that a service employee or food service worker works at a non-tipped occupation for two hours or more, or for more than twenty percent (20%) of his or her shift, whichever is less, the employer may not take a tip credit for that day.

***Example:** An employee's 8-hour schedule is as follows:*

*Food preparation: 8:00 a.m. to 9:45 a.m.*

*Serving food at the restaurant: 9:45 a.m. to 1:30 p.m.*

*Lunch: 1:30 p.m. to 2:00 p.m.*

*Serving food at the restaurant: 2:00 p.m. to 4:30 p.m.*

*The employee has worked 8 hours total, consisting of 6.25 hours as a food service worker and 1.75 hours in a non-tipped occupation. Although the employee worked less than two hours at the non-tipped occupation, s/he has worked more than twenty (20%) of his/her shift at the non-tipped occupation because twenty percent (20%) of an 8-hour shift is 1 hour, 36 minutes. Therefore, the employer cannot take a tip credit for the employee's work on that day and must pay at least the minimum wage to the employee for each hour worked that day.<sup>11</sup>*

## Do I have to pay an hourly wage to employees who earn tips?

Yes. Employers cannot require employees to work only for tips. As explained above, employers must pay a minimum wage directly to employees no matter how much money employees receive in tips from customers.

## My employees earn a lot of money in tips. I think I should be entitled to a portion of it. Can I take a cut of their tips?

No. An employer may not demand to receive any portion of an employee's tips. Moreover, an employer is required to distribute to the employee, in full, any house-imposed charges on the customer bills that are purported to be tips.

## Can I require my employees to share or pool the tips they collect?

Yes. Sharing and pooling of tips among employees are allowed. An employer may require that employees pool their tips. The employer may set the percentages to be distributed to each occupation from the tip pool.<sup>12</sup> However, the law prohibits tip appropriation by an employer or any agent of an employer. For example, requiring tipped employees to share tips with the general manager who has hire and fire authority over staff or requiring tips to be shared with the executive chef would be impermissible. Only food service workers may receive distributions from the tip pool.

### **What are the rules for sharing tips among employees?**

Employers may require directly tipped food service workers to share their tips with other food service workers who participated in providing service to customers and may set the percentage to be given to each occupation. However, employees must handle the transactions themselves<sup>13</sup> and employers may not require directly tipped employees (e.g. waiters/waitresses) to contribute a greater percentage of their tips to indirectly tipped employees (e.g. bussers) than is customary and reasonable.<sup>14</sup>

Eligibility of employees to receive shared tips, or to receive distributions from a tip pool, must be based upon duties and not titles. Eligible employees must perform, or assist in performing, personal service to patrons at a level that is a principal and regular part of their duties and is not merely occasional or incidental. Examples of eligible occupations include:<sup>15</sup>

1. wait staff;
2. counter personnel who serve food or beverages to customers;
3. bus persons;
4. bartenders;
5. service bartenders;
6. barbacks;
7. food runners;
8. captains who provide direct food service to customers; and
9. hosts who greet and seat guests.

### **What are the record-keeping obligations when I institute tip sharing or pooling system?**

If an employer mandates tip sharing or pooling, the employer must keep a record of the tips that are received and distributed.

Employers who operate a tip sharing or pooling system must establish, maintain, and preserve for at least six years records which include:

1. A daily log of the tips collected by each employee on each shift, whether in cash or by credit card;
2. A list of occupations that the employer deems eligible to receive tips through a tip sharing or tip pool system;
3. The shares of tips that each occupation is scheduled to receive from tip sharing or tip pooling; and
4. The amount in tips that each employee receives from the tip share or tip pool, by date.

Such records must be available to participants in the tip sharing or pooling systems to review. However, this rule does not grant any employee the right to review the payroll records of any other employee.<sup>16</sup>

### **What are my duties with respect to administrative costs, which are not tips?**

A charge for the administration of a banquet, special function, or package deal shall be clearly identified as such, and customers shall be notified that the charge is not a gratuity or tip. The notification shall be included in the billing statement as well as any contract signed by the customer.

A mandatory charge, part of which is for the administration of a banquet, special function or package deal and part of which is to be distributed to the employees who provided service to the guests, must be broken down into specific percentages or portions, in writing, to the customer.<sup>17</sup>

### Payment of Tips Received by Credit Card and Cash

When tips are given by customers via credit card, the employer must pay the employee the amount due no later than the next regularly scheduled pay day. The employer may subtract from the employee's tips the pro-rated share of the charge imposed by the credit card company. An employer remitting tips to an employee must include a breakdown between the tips and the wages on the employee's wage statement, which must meet all other requirements for wage statements.

*Example: The bill totals \$100.00. The customer pays with a credit card the \$100.00 for the bill, as well as a \$20.00 tip. Both the tip and the bill must be processed through a credit card company which charges a 5% fee on all transactions. The total charge levied by the credit card company on the \$120.00 charge is \$6.00. Of that \$6.00, \$5.00 is for the bill (5% of \$100) and \$1.00 is for the tip (5% of \$20). The employer must give the employee \$19.00, which represents the \$20.00 tip minus \$1.00 pro-rated employee's portion of the surcharge, if the employer wishes to recoup that fee.<sup>18</sup>*

### What costs involving tips may I pass through to my employees?

The NYS Department of Labor does not allow you to deduct any other fees charged to your operation from employee tips except the pro-rata portion of credit card fees. For example, you may not deduct delivery service fees charged by outside companies for delivery from employee gratuities.

### May I charge a mandatory gratuity and pay it to employees?

Yes, but effective January 1, 2014, the Internal Revenue Service will treat any mandatory charge – even if distributed in full to employees as a gratuity – as a service charge that is subject to taxation. Hence, mandatory gratuity charges should only be utilized if you understand the tax implications of such charges.<sup>19</sup>

### What records about charges for gratuities must I keep?

Employers who make charges purported to be gratuities must maintain records of such charges and their dispositions and preserve them for at least 6 years. Such records must be regularly made available for participants in the tip sharing or tip pooling systems to review.<sup>20</sup>

## Overtime

### To whom must I pay overtime?

Generally any wage earning employee must be paid overtime. The main exceptions to this rule are supervisors and managerial employees, and professional and administrative employees. You should consult an attorney if you have questions about these exemptions but note that the exemptions are generally limited in nature.

### When do I have to pay overtime?

Whenever an employee works more than 40 hours a week, the employer must pay that employee 1½ times the regular hourly rate of pay for each additional hour worked.

*Example: In 2013, if an employee earns the minimum wage of \$7.25 per hour, that employee must be compensated at the rate of \$10.88 per hour when working overtime. These rates will increase in 2014.*

### How much in overtime pay must I give tipped workers?

Tipped employees must be paid at least 1½ times the full minimum wage minus the tip credit. So the overtime rates for tipped employees who are eligible for a tip credit and are paid the minimum wage would be paid as follows:

*Example (based upon rates in effect in 2013; higher rates will apply starting in 2014):<sup>21</sup> A food service worker regularly paid \$7.25 per hour minus a tip credit of \$2.25 per hour, for a wage rate of \$5.00 per hour, who works 50 hours in a work week:*

*Regular rate: \$7.25 per hour*

*Overtime rate: \$7.25 x 1.5 = \$10.875 per hour*

*Tipped Wage payment for 40 hours: \$7.25 - \$2.25 = \$5.00 per hour*

*Tipped Wage payment for 10 overtime hours: \$10.875 - \$2.25 = \$8.625 per hour*

*Wages for the workweek:*

*\$5.00 x 40 hours = \$200.00*

*\$8.625 x 10 hours = \$86.25*

*Total: \$286.25*

*Alternative calculation for work week wages:*

*\$7.25 x 40 hours = \$290.00*

*\$10.875 x 10 hours = \$108.75*

*Subtotal: \$398.75*

*Minus tip credit \$2.25 x 50 hours = - \$112.50*

*Total: \$286.25*

### My employees want to work more hours and don't care if they get overtime pay. Are they allowed to waive overtime pay?

No. Overtime pay may not be voluntarily waived by an employee. Even if an employee asks for additional hours of work and agrees to decline overtime pay, the employer is legally obligated to pay time and a half for the overtime hours worked by the employee.

### Can I require my employees to work overtime?

There is generally no limitation on the number of hours in a day that an adult employee may be required to work as long as the employee is properly compensated. An employer may have to provide special consideration for employees with disabilities and employees whose religious observances are protected by law.<sup>22</sup> Further information on these issues is available in this manual. In addition, there are limits for the number of hours a minor may work, which are described in this manual.

### What is the spread of hours payment?

You must pay an employee an additional hour at the applicable minimum wage when an employee's workday is more than ten hours in a day, including meal breaks and off duty time (e.g. breaks between lunch and dinner shifts). This extra payment is known as the "spread of hours payment".

## Breaks, Deductions and Records

### **Am I required to give breaks and time off?**

New York law requires that employees be given one full day off (i.e. 24 consecutive hours) each week. All employees who work a daytime shift of more than 6 hours must be given a one-half hour meal break between 11:00 a.m. and 2:00 p.m.

Employees whose shift begins prior to 11:00 a.m. and ends after 7:00 p.m. must also be given a 20-minute break between 5:00 p.m. and 7:00 p.m.

Employees who work a shift of more than 6 hours between 1:00 p.m. and 6:00 a.m. must be given a 45-minute break midway between the start and end of the shift.

### **Can I require a deposit from an employee to use expensive equipment?**

No. It is illegal to require employees to make deposits to use certain equipment. If an employee takes or damages the employer's property, the employer may not recoup the value of damaged property by withholding any portion of the employee's wages. An employer harmed by negligent or criminal behavior may only seek reimbursement after pursuing the matter in a court of law. The employer cannot confiscate wages from an employee without a court order.

### **What paycheck deductions are permitted?**

Employers may not make deductions from an employee's pay without the employee's authorization, except those required by law or government rules and regulations, such as taxes. Any other deductions must be explicitly authorized by the employee in writing, and be for the benefit of that employee.

Authorized deductions are limited to union dues, insurance premiums, charitable contributions, pension or health and welfare benefits, child care and educational benefits, dues and assessments, food and lodging, payment for U.S. bonds and other similar payments that are for the benefit of the employee.

Employers may not charge a fee for cashing an employee's check.<sup>23</sup>

### **Can I recoup overpayments made to employees through payroll deductions?**

Yes, where the overpayment is due to a mathematical or other clerical error by the employer.<sup>24</sup> But, there are very specific procedures that must be followed, including:

The employer must give written notice to the employee, generally at least three weeks prior to the deduction, that includes the total amount overpaid and the pay period(s) where the overpayment was made; the total amount to be deducted, and the date and amount of each proposed deduction. The notice must explain how the employee can challenge the determination that there has been an overpayment and/or the terms of recovery.<sup>25</sup>

The employer may only make the deduction after giving the employee the opportunity to dispute the amount via a specific procedure.<sup>26</sup>

There are limits on how much an employer may recover during each pay period after the overpayment:

In cases where the entire overpayment is less than or equal to the net wages the employee earned after other permissible deductions in the next wage payment, the employer may recover the entire amount of such overpayment in that next wage payment.

If recovery of an overpayment would exceed the net wages after other permissible deductions in the immediately subsequent wage payment, the recovery may not exceed 12.5% of the gross wages earned in that wage payment, and any deduction to recover the overpayment may not reduce the effective hourly wage below the statutory state minimum hourly wage.<sup>27</sup>

### **My employee has asked for a wage advance; can I collect it back through a payroll deduction?**

Yes, assuming that the advance is not a loan and that there are no fees or interest and the amount collected is the same as the advance amount. Before the advance is given, the employer and employee must agree in writing to the timing and duration of any deduction from wages that will be made to repay the advance.<sup>28</sup>

### **Can I deduct pay for poor performance?**

No. It is illegal for an employer to deduct pay as a penalty for poor performance. However, an employer is not required to pay an employee for hours not worked. You may deduct wages for lateness or absences, but only for the value of the time missed.

### **Can I take a credit for meals I provide to my employees?**

Yes. Whenever the shift is long enough to require the employer to allow meal time to the workers, the employer must either allow employees to bring their own food or provide the meal. If the employer provides the meal, the employer can consider it part of the employee's wages, but may count only \$2.50 per meal, toward an employee's pay. The meal allowance for tipped employees is \$2.50 per meal.<sup>29</sup> The maximum meal credit for non-service employees (e.g., cooks) increased to \$2.75 per meal on December 31, 2013, while the meal credit for food service and service workers remains at \$2.50.

#### Meal credits in restaurants and all-year hotels:

An employer may only take credit for one meal for a day when an employee worked less than 5 hours.

An employer may take credit for one meal per shift for an employee working on a split shift.

When an employer takes a meal credit toward the pay of an employee, the employer may not charge the employee any additional money for the meal.

### **Do I have to pay for and maintain my employee's uniforms?**

It depends. If you require your employees to wear uniforms, then you must provide the uniform, replace it when necessary, and bear the cleaning and maintenance costs. Employees should not be charged nor have their wages reduced to cover the costs.<sup>30</sup>

If your employees, however, are required to wear a specific outfit made of "wash and wear" materials, such as black pants with a white shirt, then the employee bears the cost of cleaning, and maintaining the uniform. The employer must still provide the employee a sufficient number of such uniforms for the number of days the employee works, or reimburse the employee for purchasing them.<sup>31</sup>

### **What should I do if my employee is called for jury duty?**

Employees must be allowed time off for jury duty. They may not be fired or penalized in any way at work so long as the employee has given the employer notice of the reason for his or her absence. If an employer has 10 or more employees, he or she must pay the first \$40.00 of an employee's wages for each day of the first three days of jury service. Other than this requirement, employers may withhold wages for work missed due to jury service.<sup>32</sup>

### What record keeping requirements apply to employers?

Employers must provide employees a pay stub with each wage payment that shows the following:

- Hours worked
- Hourly rate paid
- Gross wages
- Credits claimed, if any, for tips, meals and lodging
- Deductions
- Net wages

AND every employer must establish, maintain, and preserve for at least 6 years weekly payroll records which shall show for each employee:<sup>33</sup>

- Name and address
- Social security number or other employee identification number
- Occupational classification
- Hours worked daily and weekly, including arrival and departure time for each employee working a split shifts or spread of hours exceeding 10 hours
- Regular and overtime hourly wage rates
- Amount of gross wages
- Deductions from gross wages
- Amount of net wages
- Allowances claimed as part of minimum wage (e.g. tip credit)
- Meal and lodging credits, if any, claimed as part of wages
- Money paid in cash
- Student classification
- Whether employee uniforms are laundered, cleaned, or maintained by the employer

A wage and hour summary for restaurants can be found at Appendix A.

## Penalties for Violating Wage and Hour Laws

What can happen to restaurant owners who break any of these rules?

Criminal prosecution:

**First offense:** Failure to pay wages in accordance with the Labor Law is punishable as a misdemeanor. The maximum penalties can include fines of up to \$20,000 and imprisonment of up to one year for each separate violation. In addition, the offender may be sentenced to make a payment of restitution.<sup>34</sup>

**Second offense:** Failure to pay wages a second time within 6 years of the prior offense is punishable as a felony, for which the offender can be sentenced to fines, imprisonment and restitution.

### Civil action:

Employees who have been underpaid may pursue civil remedies in Small Claims Court, Civil Court, or Supreme Court.

The New York State Attorney General, New York State Department of Labor, or U.S. Department of Labor may investigate and/or sue employers for failure to comply with wage and hour laws.

Employers may be made to pay liquidated damages up to 100% of the wages originally due, among other civil penalties.

Corporate shareholders, owners, and managers may be held personally liable for unpaid wages in some cases.

A court may also impose attorney fees and costs on the employer found to have violated the Labor Law.<sup>35</sup>

*\*Note: There are also penalties for other violations of the labor laws described in this manual.*

### **Who enforces these laws?**

Employees have the right to seek enforcement of wage and hour laws through government agencies such as the NYS Department of Labor, private attorneys, and worker advocacy groups.

### **What can happen if a worker is fired after filing a complaint against a restaurant for wage and hour law violations?**

It is illegal to retaliate against workers for making a complaint with an enforcement agency or for making a complaint about wages. An employer who does so may be subject to civil and criminal penalties.<sup>36</sup> Prohibited retaliation includes, but is not limited to, reducing an employee's hours, demotion, termination, change in duties, or change in hours.

## No-Match (DECOR) Letters

### **What is a "No-Match" letter?**

"No-Match" letters are sent by the Social Security Administration (SSA) to employers when the Social Security Number (SSN) on a filed W-2 does not match the Administration records. The letter is intended to inform the employee of the discrepancy so that he or she can follow up with SSA to ensure that Social Security contributions are credited to the correct account.

### **Why are No-Match letters sent out?**

No-Match letters are intended only to help SSA make sure that its records and database are accurate and that SSA maintains an accurate earnings record for each employee. There are many possible reasons for an employer's receipt of a No-Match letter. A No-Match letter does NOT imply that the employee's immigration status or work authorization is suspect, or that the employee intentionally provided incorrect information about the employee's name or Social Security number.

### **Do No-Match letters come from the Department of Homeland Security (DHS)?**

No. No-Match letters come from SSA and are not intended to enforce immigration law.

### **What am I required to do if I receive a No-Match letter?**

A No-Match letter obligates employers to do the following:

- Check your own records for error
- Inform the employee of the No-Match letter so that his/her employee knows that the earnings are not being credited properly
- Request that the employee check their records for errors
- Refer employees to the local SSA office for assistance
- Submit any employer or employee corrections to the SSA

An employer should apply its policy regarding No-Match letters consistently to all employees, and may not treat employees differently based on citizenship or immigration status, or based on the employee's national origin. Moreover, it is important to give employees a reasonable amount of time to address a reported no-match with SSA.

#### **Am I required to fire an employee whose name appears on a No-Match letter?**

No. You are not required to fire an employee whose name appears on a No-Match letter, and, in fact, the letter from SSA states this clearly. The 2011 SSA 'No-Match' letter states:

*"This letter does not imply that you or your employee intentionally provided incorrect information about the employee's name or SSN. It is not a basis, in and of itself, for you to take any adverse action against the employee, such as laying off, suspending, firing, or discriminating against the individual. Any employer that uses the information in this letter to justify taking adverse action against an employee may violate state or federal law and be subject to legal consequences. Moreover, this letter makes no statement about your employee's immigration status."*

In some cases, employers use the No-Match letter as an opportunity to fire or intimidate employees who may be speaking up for their rights on the job. As a reminder, an employer who does any of the following may be violating the law:

- Discriminate against employees of certain national origins, citizenship or immigration statuses, or ethnic groups
- Retaliate against employees because they filed a claim or complaint with an administrative agency or court
- Retaliate against employees for union organizing activities or other union protected activities

#### **Must I require an employee to bring in proof of their work authorization if I receive a No-Match letter?**

No. The receipt of a No-Match letter by itself does not give employers notice that a worker is not authorized to work and does not trigger any duty to ask for such proof.

#### **Am I ever required to terminate an employee for reasons related to work authorization?**

Yes. An employer who has "actual or constructive knowledge" that the employee does not have work authorization has an obligation to terminate employment. An example of "actual or constructive knowledge" is when an employee informs you that he or she is not eligible to work. Receiving a No-Match letter is not the same as having such knowledge.

For more information, see the Frequently Asked Questions about No-Match letters on the Department of Justice website, at [www.justice.gov/crt/about/osc/htm/SSA.php](http://www.justice.gov/crt/about/osc/htm/SSA.php).

## Unionization

According to federal laws, including the National Labor Relations Act, employees have the right to form or attempt to form a union with other employees in a restaurant. Employees have the right to engage in protected concerted activity, including striking to obtain better working conditions.<sup>37</sup> Employees also have the right to resist union organizing and decline to be a part of the union. You should consult an attorney to understand the rights and obligations of the employer. Employees also have the right either individually or with co-workers to speak to their employer or otherwise attempt to make work better or safer without the assistance of a union (this is known as "protected concerted activity"). Recent NLRB decisions have considered discussions on Facebook and similar social media outlets as possible protected concerted activity.

#### **What am I prohibited from doing if a union organizing campaign starts at my restaurant?**

An employer may not threaten employees with the loss of their job or benefits if they attempt to organize or resist organization, or discourage employees from forming or joining a union.

An employer may not question employees about their union activities, status as members of the union, support for or against the union, or whether other employees are for or against the union.

An employer may not surveil or attempt to surveil union activities. An employer may not grant salary raises or make other promises in order to discourage employees from forming or joining a union.

**What happens if an employer engages in any illegal action to discourage or prohibit the unionization efforts of the employees?**

Illegal actions by employers against employees exercising their freedom of association to engage in concerted action to form a union may be prosecuted by the National Labor Relations Board. NLRB remedies can include reinstatement of employees with backpay (less interim earnings), mandated bargaining with the union (even if the election is not won), and requiring a posting of a notice to employees at the employer's business notifying employees of the NLRB action.

**What would happen if an employer called federal immigration authorities to come and conduct an immigration raid on employees attempting to organize a union?**

The employer could be found guilty of an unfair labor practice for calling in Immigration and Customs Enforcement to block the union's efforts.

**If a court or government agency finds that I retaliated against employees for attempting to organize, then what are the possible penalties?**

A union or an employee may file an unfair labor practice charge before the National Labor Relations Board. If the employer is found to have retaliated, it may be ordered to reinstate employees with back pay, or otherwise reverse the retaliatory act. Also, the employer may be required to post a Notice to Employees that it may not retaliate.

## Anti-Discrimination Laws

Discrimination against employees is prohibited by a host of federal, state and local laws. Employment discrimination is unlawful when based on the following protected categories:

- Unemployment Status (\*New according to Amendment to NYC Human Rights Law, Effective June 11, 2013)
- Race
- Color
- Religion or Creed
- National-origin or Ancestry
- Sex or Gender (including gender identity)
- Age
- Disability
- Genetic Predisposition or Carrier Status
- Military Status
- Marital Status
- Partnership Status
- Sexual Orientation
- Status as a Victim of Domestic Violence, Sex Offense, or Stalking
- Arrest or Conviction Records (unless there is a specific relationship between that previous crime and the employment sought)

- Lawful Off-duty Activities
- Alienage or Citizenship Status
- A person's relationship with a protected class member
- Pregnancy

### **What kinds of employment practices are affected by laws against discrimination?**

It is illegal to discriminate in any aspect of employment, including but not limited to:

- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Job advertisements
- Recruitment
- Testing
- Use of company facilities
- Training and apprenticeship programs
- Fringe benefits
- Pay, retirement plans, and disability leave
- Other terms, conditions, and privileges of employment

### **Discriminatory practices under these laws also include:**

- Harassment on the basis of any of the above-stated categories
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals on the basis of any of the above-enumerated categories
- Denying employment opportunities to a person because of marriage to or association with an individual of a particular race, religion, national origin, alienage/citizenship status, or an individual with a disability
- Failure to make reasonable accommodations to enable an employee with a disability, or a person who is a victim of domestic violence, or a victim of sex offenses or stalking, to perform the essential functions of the job
- Failure to make reasonable accommodations for the religious needs of employees

### **Who enforces these anti-discrimination laws?**

Laws prohibiting most of the forms of discrimination described above are enforced by the U.S. Equal Employment Opportunity Commission (EEOC), the New York State Division of Human Rights (NYSDHR) and the New York City Commission on Human Rights (NYCCHR). In addition, federal law prohibiting discrimination on the basis of military status is enforced by the U.S. Department of Labor.

The laws enforced by these agencies vary. Further information can be found on the agencies' websites:



U.S. Equal Employment Opportunity Commission: [www.eeoc.gov](http://www.eeoc.gov)

U.S. Department of Labor: [www.dol.gov/vets](http://www.dol.gov/vets)

New York State Division of Human Rights: [www.dhr.ny.gov](http://www.dhr.ny.gov)

New York City Commission on Human Rights: [www.nyc.gov/html/cchr](http://www.nyc.gov/html/cchr)

## KEY TIPS FOR EMPLOYERS:

Maintain confidentiality: Charges of discrimination filed with the governmental agencies should be treated confidentially. This may help to prevent charges of retaliation.

Make sure that you and your employees do not retaliate against the person filing the charge.

Make clear to employees who file charges that their relationship with the company will not be affected.

Have a written non-discrimination policy, distribute it to employees and have training on the policy.

## Do I have any additional obligations under these laws?

Employers must post notices describing the federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay and disability.

EEOC's poster is available in English, Arabic, Chinese and Spanish. These notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

Employers are required to provide to persons entitled to the rights and benefits under The Uniformed Services Employment and Reemployment Rights Act (USERRA), a notice of the rights, benefits and obligations of such persons and such employers under USERRA. Employers may post the information or provide the notice to employees in other ways that will minimize costs while ensuring that the full text of the notice is provided (e.g., by handing or mailing out the notice, or distributing the notice via electronic mail). A USERRA poster is provided by the U.S. Department of Labor at [www.dol.gov/vets/programs/userra/poster.htm](http://www.dol.gov/vets/programs/userra/poster.htm).

## Can I possibly be discriminating even if I never intended to do so?

Yes. Not only intentional discrimination, but also practices that have the effect of discriminating against individuals are against the law.

*Example: Terminating only higher-paid employees in a layoff may result in a significantly higher percentage of employees over the age of 40 being laid off. Depending on the circumstances, a reviewing court could determine this to be an unintentional adverse impact on older persons and hold the employer responsible for age discrimination.<sup>38</sup>*

## Retaliation

Anti-discrimination statutes prohibit employers from firing, demoting, harassing or otherwise "retaliating" against employees who complain about or object to discrimination or for having filed a Charge of Discrimination with the Federal, State, City or local agencies that enforce the statutes, even if the charge is later dismissed or rejected by an agency or a court. It is also unlawful to retaliate against an individual who testifies or participates in an investigation, proceeding, or litigation under Federal, State, or City anti-discrimination laws.

In addition, New York State law protects "whistleblowers", employees who report to a supervisor or to a public agency their own employer's violation of law which creates and presents a substantial and specific danger to public health and safety, or who refuse to participate in such conduct. A whistleblower can sue his or her employer for reinstatement, back pay and attorney's fees.

### What is illegal retaliation?

An action that makes a materially adverse change in the terms or conditions of employment (more than a mere inconvenience or alteration of job responsibilities) in response to the employee's exercising a right to report, complain, or object to employment discrimination. Such adverse actions may include, but are not limited to, the following: reduction of pay, shifts, hours of work available, discipline, denial of benefits, failure to hire or rehire, intimidation, transfers or reassignment of work.

*Example: It is illegal to call Immigration and Customs Enforcement or give a false (bad) reference regarding an employee because that employee filed a discrimination charge.*

## Hiring, Firing and Promotion

### What is discrimination in hiring and firing?

Discrimination has occurred when an employer has two or more equally qualified applicants for the same job, and chooses to hire one over the other based on the person's actual or perceived race, sex, age, etc. Likewise, an employer may not fire an employee based on a protected category. Firing an employee because of his or her actual or perceived race, sex, age, etc. is also discriminatory.

### What is discrimination in relation to promotion?

Discrimination has occurred when an employer has a choice between two or more equally qualified employees, and chooses to promote one over the other based on the person's actual or perceived race, sex, age, etc.

## Verbal Abuse and Harassment

### A restaurant is a stressful environment to work in. People yell and curse at each other all the time. That's not harassment, is it?

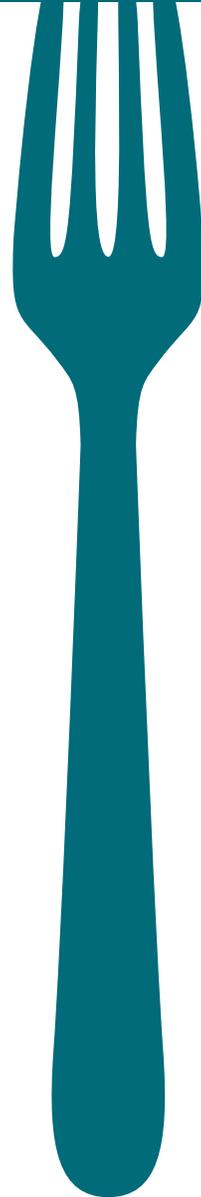
Although shouting or cursing at an employee is not necessarily illegal harassment, it may be depending on the content of what's said, how frequently it occurs, and if all other employees are treated in the same manner.

*Example: A manager does not use racial epithets. However, she frequently shouts at employees of a particular nationality, singling them out for such behavior. A jury might find the manager's behavior to be so severe and pervasive that it created a "hostile work environment" for employees of that nationality, in violation of the laws against discrimination.*

### KEY TIPS FOR EMPLOYERS:

To avoid possible litigation, do not use racial or sexual words when speaking to employees.

It is also NEVER acceptable to single out a particular employee, group, or groups of employees for harsher treatment based on their race, sex, age, etc.



## SONIC RESTAURANT PAYS \$2 MILLION IN DAMAGES TO SETTLE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) SEXUAL HARASSMENT AND RETALIATION CLASS ACTION SUIT

The EEOC brought a class action suit against Sonic restaurant charging the manager with sexually harassing over 70 women employees. The employees who complained were retaliated against by getting their hours reduced. The restaurant settled in a consent decree by offering \$2 million in monetary damages to the former employees. Additionally, the agreement prohibited further discrimination and retaliation against the employees, required Sonic to adopt policies and practices free of sex discrimination and retaliation, and provide their employees with anti-discrimination training and notice.<sup>39</sup>

### Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when the conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The victim as well as the harasser may be a woman or a man. The victim and the harasser do not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur even where there is no economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

### Does the law on harassment only apply to sexual harassment?

No. Harassment based on race, color, national origin, religion, age, and disability, sexual orientation, and alienage/citizenship status is also illegal.

## Types of Discrimination

### National Origin

According to Title VII of the Civil Rights Act, as well as NYS and NYC Human Rights Laws, it is illegal to discriminate against an individual because of his or her birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Employers may not base a hiring decision on a potential employee's ethnic background or country of origin.

The Immigration Reform and Control Act (IRCA) of 1986 requires employers to assure that employees are legally authorized to work in the U.S. Verification must be obtained from all new employees. Thus, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear or sound like a foreigner, may violate Title VII and the New York State and New York City Human Rights Laws, as well as IRCA.

## Religion

Employers may not discriminate against an employee based on his or her religious beliefs. Employers are also required to reasonably accommodate the religious beliefs and practices of employees and applicants unless the accommodation causes undue hardship on the business of the employer.

**I have a waiter working for me who insists on wearing a hat even though it's not part of the uniform here and no one else wears one. He says his religion requires that he keep his head covered. Can I make him take it off?**

Generally, no. An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

## Language

**Can I forbid my employees to speak languages other than English in the restaurant?**

Because "English-only" rules may subject your business to unnecessary litigation and investigation by agencies, you should carefully consider the need for such a policy, avoiding promulgating such a policy where possible. "English-only" rules may only be adopted for nondiscriminatory reasons, such as to promote the safe or efficient operation of the employer's business. You must be able to clearly articulate why the "English-only" policy is necessary at your place of employment. If you choose to institute an "English-only" rule you should inform your employees about when they are required to speak English and what the consequences are for violating the rule.

**I have a food runner who speaks with an accent. I'm considering promoting him to waiter but I'm not sure my customers will like him. If I decide not to promote him for this reason, is it discrimination?**

An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance. This depends on how understandable the food server is and whether customers can communicate with the server. The fact that customers may not like an employee's accent is not a sufficient reason to decide against promoting an employee. Customer preference is generally not a valid justification for discrimination.

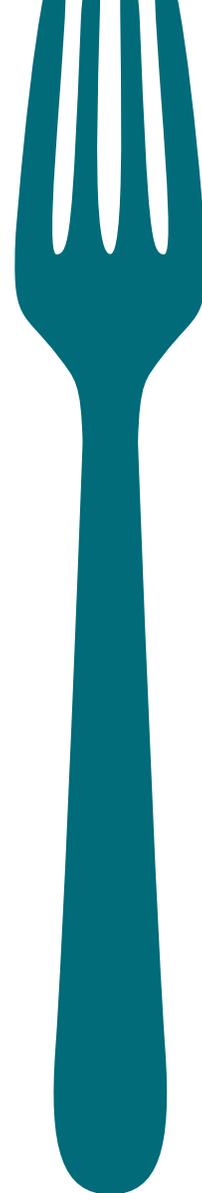
**I'm considering making all job applicants for front-of-house positions at my restaurant take an English fluency test. Is this permissible?**

Tests with a discriminatory impact like an English fluency test may only be imposed if the examination tests skills needed for the job. The test must also be tailored to the type and level of fluency needed for the position. For example, if only the ability to speak in English is needed for the job, the test may not be written.

## KEY TIPS FOR EMPLOYERS:

Prevention is the best tool to eliminate harassment in the workplace.

Employers are encouraged to take the necessary steps to prevent harassment from occurring. Employers should clearly communicate to employees that harassment will not be tolerated. They can do so by providing harassment training to their employees, establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.



## Age

### **Can I recruit employees in a certain age group?**

Federal, State and City laws specifically prohibit employers from using any form of application for employment or making any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age. However, you must comply with New York State law establishing limits on employment for minors, described above.

### **Can I offer different benefits to employees based on age?**

Federal law recognizes that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers.

### **Can I ask employees to waive their rights under federal law against age discrimination?**

Employers may request that their employees waive their rights or claims under the Age Discrimination in Employment Act of 1967 ("ADEA") either in the settlement of an ADEA administrative charge or a court claim or in connection with an exit incentive program or other employment termination program. However, the waiver must comply with the Older Workers Benefit Protection Act of 1990 which amended the ADEA. For more information, go to [www.eeoc.gov](http://www.eeoc.gov).

## Unemployment Status

The NYC Human Rights Law protects unemployed job-seekers from discrimination by employers. It requires that employers treat unemployed applicants in a non-discriminatory manner and allows wronged employees to sue employers through private civil claims or to file claims with the NYC Human Rights Commission.

## Disability

The Federal Americans with Disabilities Act of 1990 ("ADA") and the New York State and New York City Human Rights Laws prohibit discrimination based on an employee's disability. They protect people who are mentally disabled as well as people who are physically disabled. This includes individuals who are regarded as having such an impairment. These laws prohibit employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

### **What are some examples of reasonable accommodations?**

A reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities
- Job restructuring; modification of work schedules
- Providing additional unpaid leave; reassignment to a vacant position
- Acquiring or modifying equipment or devices; adjusting or modifying examinations training materials, or policies
- Providing qualified readers or interpreters

An employer may be required to provide a reasonable accommodation to enable a person with a disability to apply for a job, perform job functions, or enjoy the benefits and privileges of employment that are enjoyed by people without disabilities.

An employer is not required to lower production standards as an accommodation.

An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

**What if I can't afford to make the accommodation this applicant or employee would require?**

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business facility's size, financial resources, and the nature and structure of its operation.

**If a job applicant comes in with a physical disability, what kinds of questions can I ask in the interview to determine whether the applicant can do the job?**

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform essential job functions (with or without accommodation). A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category.

For more information about this subject, see these EEOC Publications:

"Job Applicants and the Americans with Disabilities Act," available on line at [www.eeoc.gov/facts/jobapplicant.html](http://www.eeoc.gov/facts/jobapplicant.html).

"Pre-employment Disability-Related Questions and Medical Examinations," available on line at [www.eeoc.gov/policy/docs/preemp.html](http://www.eeoc.gov/policy/docs/preemp.html).

**In the restaurant industry we have to be very concerned about the medical conditions of employees who handle food. Can I ask employees and applicants for employment whether they have a contagious disease?**

The EEOC has issued guidelines on this subject, which can be found in its publication "How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers", available on line at [www.eeoc.gov/facts/restaurant\\_guide.html](http://www.eeoc.gov/facts/restaurant_guide.html).

**There are different standards for applicants and employees.**

You should not ask medical questions to persons who are applying for a job until you have given them a "conditional offer" of employment. After making a "conditional offer" you may ask medical questions or require medical examinations, as long as you are asking the questions to each person who is applying for the same job. Based on answers to the questions, you may withdraw the conditional offer if you determine that the person has a medical condition that could be transmitted while handling food and either there is no reasonable accommodation that would eliminate the risk of transmitting the disease through food, or any such accommodation would be an undue hardship to your business.

**Medical examinations of employees must be job-related and consistent with business necessity.**

The U.S. Secretary of Health and Human Services maintains a list of infectious and communicable diseases which are transmitted through the handling of food. If an individual has one of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, you may refuse to assign or continue to assign such individual to a job involving food handling. However, if the individual is a current employee, you must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

### **Do the laws about disability discrimination protect people who abuse drugs and alcohol?**

Employees and applicants currently engaging in the illegal use of drugs are not protected when an employer acts on the basis of such use. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

### **Marital Status**

The New York State and New York City Human Rights Laws protect employees against discrimination on the basis of marital status. An employer may not decide whether to hire, fire, or promote someone because he or she is single, married, divorced, separated or the like.

### **Military Status**

The New York State Human Rights Law protects employees against discrimination on the basis of "military status," which includes service in the armed forces of the United States, the army national guard, the air national guard, the New York naval militia, and the New York guard. The Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) also prohibits discrimination. In addition, it provides a right to reemployment following military service under certain circumstances. More information about USERRA is available on the website of the United States Department of Labor at [www.dol.gov/elaws/userra.htm](http://www.dol.gov/elaws/userra.htm).

### **Discrimination Based on Record of Arrest or Conviction**

**According to NYS and NYC Human Rights laws it is, in most cases, an unlawful discriminatory practice for an employer to:**

- Ask an applicant for employment about arrests other than arrests that are currently pending, or
- Refuse to hire someone or take other adverse action because of an arrest other than an arrest that is currently pending

### **Conviction records**

It is unlawful to refuse to hire someone on the grounds that they have been convicted unless:

- There is a direct relationship between one or more of the previous criminal offenses and the employment, or
- The employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public

**In making such a determination, the employer must consider all of the following factors:**

- New York's public policy to encourage the licensure and employment of persons previously convicted of one or more criminal offenses
- Specific duties and responsibilities necessarily related to the employment sought
- The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities
- Time which has elapsed since the occurrence of the criminal offense or offenses
- Age of the person at the time of occurrence of the criminal offense or offenses
- Seriousness of the offense or offenses
- Any information produced by the person, or produced on the person's behalf, in regard to rehabilitation and good conduct
- Legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public

Employees who are discriminated against on the basis of arrests or conviction records can file complaints with the New York State Division of Human Rights or the New York City Commission on Human Rights.

## Lawful Off-Duty Activity

The New York Labor Law<sup>40</sup> provides that it is generally unlawful for an employer to discriminate on the basis of:

- An individual's political activities outside of working hours, off of the employer's premises and without use of the employer's equipment or other property, if such activities are legal
- An individual's legal use of consumable products prior to the beginning or after the conclusion of the employee's work hours, and off of the employer's premises and without use of the employer's equipment or other property
- An individual's legal recreational activities outside work hours, off of the employer's premises and without use of the employer's equipment or other property
- An individual's membership in a union or any exercise of rights granted under the National Labor Relations Act

**An employee's activity is not protected:** (a) if it creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest; or (b) where the employer takes action based on the belief either that the employer's actions were required by law, the employer's actions were permissible pursuant to an established substance abuse or alcohol program or workplace policy, professional contract or collective bargaining agreement; or the individual's actions were deemed by an employer or previous employer to be illegal or to constitute habitually poor performance, incompetency or misconduct.

## Sex-Based Discrimination

It is illegal to discriminate against any employee or applicant for employment because of his or her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. The law also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex. Both intentional discrimination and neutral job policies that disproportionately exclude individuals of a particular sex with no job-related basis for doing so are prohibited. Sex-based discrimination also includes:

- Gender identity discrimination
- Sexual harassment
- Pregnancy-based discrimination
- Unequal levels of compensation because of sex

## Sexual Orientation

Sexual orientation is defined as heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived. The New York State and New York City Human Rights Laws protect employees against discrimination on the basis of sexual orientation. An employer may not decide whether to hire, fire, or promote someone because of their sexual orientation (e.g. heterosexual, homosexual, or transgender).

## Gender Identity

New York City Human Rights Law protects individuals from discrimination based on "actual or perceived gender."

"Gender" is defined in the City's Human Rights Law to include:

- Actual or perceived sex
- Gender identity
- Self-image
- Appearance
- Behavior or expression

A person is protected against discrimination based on gender identity, self-image, appearance, behavior or expression even if any of those is different from that traditionally associated with the legal sex assigned to a person at birth.<sup>41</sup>

“Gender identity” is not defined in the law, but the City Human Rights Commission has described it as “an individual’s sense of being either male or female, man or woman, something other or in-between.”

The law prohibits any practice that discriminates against an employee or applicant for employment based upon actual or perceived gender with regard to recruitment, hiring, firing, promotions, wages, job assignments, training, benefits, and other terms and conditions of employment.

It is also an unlawful discriminatory practice for a place or provider of public accommodation (e.g., restaurants) to directly or indirectly refuse, withhold from, or deny a person of the accommodations, advantages, facilities, services or privileges of an accommodation based upon the person’s actual or perceived gender.

Discrimination may take the form of exclusion from restrooms, unwelcome verbal or physical conduct, including, but not limited to, derogatory comments, jokes, graffiti, drawings or photographs, touching or gestures.

### **How can I prevent gender-identity based discrimination from happening in my restaurant?**

To avoid the appearance of discrimination, individuals should be addressed with names, titles, pronouns, and other terms appropriate to their gender identity. The refusal to do so is a factor that will be considered by a court or administrative agency when making a finding of whether discrimination has occurred.

If you are uncertain about which name, pronoun (he/she; him/her) or title (Ms./Miss/Mrs./Mr.) to use in addressing or referring to another individual, it is generally appropriate to ask the individual by asking “what gender pronoun do you prefer?” or “how would you prefer that I address you?”. Requesting proof of an individual’s gender except when legally required, challenging an individual’s gender, or asking inappropriate questions about intimate details of an individual’s anatomy, are factors that will be considered by a court or administrative agency when making a finding of whether discrimination has occurred.

### **Ensure that Dress Codes Allow for Expression of Individuals’ Gender Identity**

When developing and enforcing a dress code that is gender-specific, employers should permit employees to comply with the gender specific provisions in the code in an appropriate manner that is consistent with their gender identity and gender expression.

### **Provide Access to Restrooms**

Nothing in the Human Rights Law prohibits restrooms from being designated by gender. However, the New York City Commission on Human Rights recommends that where single occupancy restrooms are available they should be designated as “gender neutral.” Individuals who identify as women should be allowed access to women’s facilities and individuals who identify as men should be able to access men’s facilities.

The Commission also encourages covered entities to provide accommodations to individuals who have concerns about use of public restrooms because of gender identity or gender expression. Such accommodations could include, for example, offering the use of a private restroom to a member of the public. If an individual feels uncomfortable using a particular restroom because of another individual’s presence in the restroom, he or she may be encouraged to wait until that individual has left, or to use another restroom.

## Policy/Training

The Commission recommends that employers and providers of public accommodations implement anti-discrimination policies that address gender identity and gender expression issues and institute training for employees and agents on an ongoing basis. The City Commission on Human Rights has published Guidelines on Gender Identity Discrimination. They are available on line at [www.nyc.gov/html/cchr/html/trans\\_guide.html](http://www.nyc.gov/html/cchr/html/trans_guide.html).

## Pregnancy

### What is pregnancy discrimination?

According to federal laws such as the Pregnancy Discrimination Act, New York State Human Rights Law and, in New York City, the Pregnant Workers Fairness Act, employers may not discriminate against a woman on the basis of pregnancy, childbirth, or related medical conditions. Women who are pregnant or affected by related conditions must be treated in the same manner as other applicants or employees with similar temporary limitations in their ability to perform their job.

Employers must provide reasonable accommodations to pregnant women and those who suffer medical conditions related to pregnancy and childbirth. Such a reasonable accommodation may include bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor, among other things, unless requiring such accommodations would cause an undue hardship in the conduct of an employer's business<sup>42</sup>

### What if an employee is unable to fulfill the conditions of the job during her pregnancy?

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her in the same way as any other temporarily disabled employee.

*Example: If the employer allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled due to pregnancy to do the same.*

### Can I require a pregnant employee to obtain a doctor's note verifying her inability to work?

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if you require your employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, you may also require employees affected by pregnancy-related conditions to submit such statements.

### Can I ask a pregnant employee to take a leave of absence at a certain point?

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer also may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.

### How long do I have to hold open a pregnant employee's job?

Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

## ALABAMA RESTAURANT PAYS \$16,500 IN DAMAGES TO SETTLE EQUAL OPPORTUNITY EMPLOYMENT COMMISSION'S (EEOC) PREGNANCY DISCRIMINATION LAWSUIT

The lawsuit alleged that the restaurant would not allow the employee who worked as the salad bar prep worker to return after her pregnancy and childbirth. The EEOC charged that the employee was terminated because of her pregnancy. The employer settled the lawsuit with a \$16,500 payment in damages. It also agreed to provide pregnancy discrimination training, post notices for employees about discrimination and reporting information should it continue the business in the state.<sup>44</sup>

### Must employer-provided health insurance cover pregnancy?

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother would be endangered if the fetus were carried to term, or where medical complications have arisen from an abortion.<sup>43</sup>

Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable-and-customary-charge basis. The amounts payable by the insurance provider can be limited only to the same extent as amounts payable for other conditions. No additional, increased, or larger deductible can be imposed.

Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

### Equal Pay

#### Some of the women in my restaurant earn less than the men but they don't do the same job. Is this pay discrimination?

It could be. Employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. The federal Equal Pay Act of 1963 requires that men and women be given equal wages for "equal work performed under similar working conditions and requiring equal skill, effort, and responsibility." Wages include any earnings of an employee for labor or services rendered, including benefits. Claims alleging discriminatory practices affecting compensation may also be brought under the New York State and New York City Human Rights Laws and the New York State Labor Law.

More information on the Equal Pay Act may be found on the EEOC website at [www.eeoc.gov/laws/statutes/epa.cfm](http://www.eeoc.gov/laws/statutes/epa.cfm).

*See Appendix D for a helpful review of recommended interview questions and ones to avoid.*

## Employee Health and Safety

Health and safety hazards such as hot kitchens, hot equipment and oil, sharp knives, fire hazards, heavy serving trays, and slippery floors are commonplace in restaurants. The most frequent injuries and illnesses among restaurant workers include sprains and strains, cuts and lacerations, bruises and burns.

The good news is that the majority of these injuries can be avoided by eliminating or reducing hazards. Many health and safety solutions are simple and low cost, such as worker training and education. Others, such as developing a written plan or upgrading equipment that is outdated, require greater effort or expense. However, industry experts agree that investing in workplace safety can repay itself many times over by avoiding the full costs associated with injuries and illnesses. One large national chain estimates that for every dollar spent directly on an injury, four dollars are spent on indirect costs such as employee turnover, overtime, accident investigation, and workers' compensation premium increases.

The Occupational Health and Safety Administration (OSHA) proposes and enforces federal rules and guidelines on health and safety for all workplaces. OSHA requires employers to provide a work environment which is free from recognized hazards that cause or are likely to cause death or serious physical harm. The following section highlights some of the key OSHA requirements and OSHA recommendations for improving health and safety conditions in restaurants.<sup>45</sup>

### OSHA Requirements

- Keep workplace clean, orderly and in a sanitary condition.
- Keep floors clean and dry, use non-slip matting, no-skid waxes, or grit-containing materials to create non-slip floor surfaces.
- Provide warning signs for wet floor areas.
- Keep aisles, passageways, and exits free of obstructions at all times.
- Provide appropriate Personal Protective Equipment (PPE). For example, provide gloves, goggles, and splash aprons for employees who handle hazardous chemicals including dishwashing detergents and pesticides. Provide hand protection when hands are exposed to hazards such as cuts, lacerations, thermal burns and extreme temperatures.
- Implement a written Hazard Communication program to provide for worker training, warning labels and access to Material Safety Data Sheets (MSDS) on hazardous chemicals.
- Ensure all machines are properly guarded.
- Keep all electrical equipment and appliances in good repair.
- Ground all electrical service near sources of water.
- Control accumulations of flammable and combustible waste materials and residues (grease in grill and duct work) to prevent fires. Ensure flammable items (cardboard, paper bags, etc.) are stored away from heat producing equipment.
- Develop and implement an Emergency Action and Fire Prevention Plan if fire extinguishers are required or provided, and employees will be evacuated during a fire or other emergency.
- Evaluate, and where appropriate mitigate noise to protect the hearing of restaurant workers.
- An employer must designate and train employees to assist in a safe and orderly evacuation of other employees.

## Are there specific health and safety requirements for workers under 18 years of age?<sup>46</sup>

Yes. Workers under 18 years of age are prohibited from:

- Operating or cleaning power-driven equipment such as meat slicers and dough mixers
- Operating, loading or unloading scrap paper baler or paper box compactors
- Driving a motor-vehicle

### Workers under 16 years of age are prohibited from:

- Cooking over an open flame or using pressurized fryers
- Baking other than use of warming devices
- Cleaning cooking equipment or handling hot oil or grease
- Loading or unloading goods from a truck or conveyor
- Working inside a freezer or meat cooler
- Operating power-driven food slicers or other power-driven machinery such as lawnmowers
- Working from a ladder

*\*Reminder: review work hour restrictions under "Employment of Minors" in this manual.*

## Injury Prevention Techniques

### How can I prevent infectious disease from spreading among my employees?

- Employees who are sick can easily spread illness to other workers, and to restaurant patrons. Employees who have fever, gastrointestinal illnesses, coughs and other potentially contagious conditions should stay home until they are well.
- Some illnesses, like Hepatitis A can be spread for many days before symptoms first appear. Being vaccinated against Hepatitis A can prevent the spread, and the symptoms. Consider providing the Hepatitis A vaccine to your employees.
- Enforce hand washing requirements, and be vigilant about the use of clean gloves when employees handle ready-to-eat food.

### How can I protect the hearing of my employees?

- Become familiar with OSHA regulations (29 CFR Part 1910). Employees may not be exposed to sounds greater than 90 dBA for more than 8 hours per day, 92 dBA for more than 6 hours, 95 dBA for more than 4 hours, or 100 dBA for more than 2 hours per day.
- Measure noise levels in your restaurant at peak noise times to determine whether you need to develop a hearing conservation program, or mitigate the noise.

### How can I help my employees avoid strains and sprains?

- Provide serving carts to carry food and to bus containers on, rather than having workers carry trays and containers.
- Decrease the distance that items need to be carried by providing workers with server and busing stations close to the serving and clean-up areas.
- Provide small containers to be used where possible to carry dirty dishes. Train employees not to overfill containers to avoid lifting excessive weight.
- Choose kitchen utensils, cleaning tools, and other kitchen equipment with good grips.
- Select equipment that will reduce the hazards associated with repetitive overhead and elevated reaches (such as adjustable level rinse nozzles).

- Instruct employees to get help when moving heavy objects, rather than lifting alone.
- Reduce lifting during garbage removal tasks by using garbage handling bags with wheels or garbage cans with wheels for garbage collection when possible.
- Promote easy emptying of garbage cans by using frame versus solid cans or by using anti-cling products to prevent garbage bags from sticking to the inside of cans.
- Limit the size of garbage containers to limit the weight of the load employees must lift and dump.
- Place receptacles in unobstructed and easy-to-reach places. Install dumpsters at or below grade level.

#### **How can I prevent trips and falls in my restaurant?**

- Ensure spills are reported and cleaned up immediately.
- Implement a shoe policy program promoting shoes with slip-resistant soles and low heels. Provide non-slip overshoe covers for employees to use when they perform wet or greasy tasks.
- Install non-slip matting in areas that tend to be wet. Ensure they remain clean and in place. As an alternative in greasy areas, use no-skid waxes and floor surfaces coated with grit.
- Alert workers to step-ups and step-downs by using hazard tape or other warning signs.
- Provide mirrors for blind corners.
- Keep passageways and walkways free of clutter and crowding.
- Decrease overcrowding by adding additional supply stations or carts with supplies at convenient locations.
- Provide adequate lighting, especially in serving and preparation areas.
- Provide windows on swinging doors so you can see if someone is coming out. Provide two-way doors, one for only going in, and one for only coming out. Follow a set traffic pattern to avoid collisions.
- Provide stools or footrest bars at work stations.
- Provide height-adjustable workspaces so that workers can keep elbows close to the body.
- Use mechanical aids (such as food processors and mixers) rather than hand chopping or mixing.
- Reduce the amount of chopping tasks by purchasing ready-made and other pre-prepared foods.
- Restructure jobs to reduce repeated motions, forceful hand exertions, and prolonged bending.
- Rotate workers through repetitive tasks.

#### **How can I help my employees to avoid accidental cuts?**

- Keep knives sharpened and in good condition.
- Instruct employees on safe handling, use and storage of knives, including designating a location or container to store knives and other sharp equipment.
- Train employees to store knives with the blades all facing one direction.
- Allow only experienced, trained workers to sharpen knives.

### **How can I help to eliminate electrical hazards?**

- Ensure that electrical equipment is in good repair. Tag out and remove from service all damaged receptacles and electrical equipment.
- Ensure that all electrical service near sources of water is properly grounded.
- Train employees to not plug or unplug energized equipment when their hands are wet.
- Use ground fault circuit interrupters (GFCIs) if the breaker or receptacle type is to be installed in situations where electricity and wetness coexist.
- Inform all new workers of electrical hazards and how to avoid these hazards. Inform workers that in the event of an electrical injury, no contact should be made with the victim or the equipment until the current has been shut off.

### **How can I help to prevent poisoning or chemical burns resulting from contact with hazardous chemicals?**

- Use cleaning chemicals that are not labeled hazardous.
- Automate dispensing of cleaning chemicals to avoid employee contact with chemicals.
- Provide dishwashing machines with automated detergent dispensers.
- Never transfer products from the original bottle without properly labeling the new container.
- Do not store incompatible chemicals together (check Material Safety Data Sheets (“MSDS”)<sup>47</sup>).
- Avoid storing liquid chemicals on top shelves; instead, store them on lower shelves.
- Provide proper training and equipment (gloves and goggles) for work with chemicals.

### **How can I help my employees to avoid burns, scalds and heat stress?**

- Replace older deep fat fryer models with newer models.
- Use the appropriate quality oil for your fryer to minimize oil splatter.
- Provide an efficient ventilation system or air conditioning to avoid heat stress.
- Install slip-resistant flooring near hot surfaces and cooking appliances.
- Provide guards on dishwashers to prevent accidental scalding by steam and hot water.
- Require use of hand protection when hands are exposed to thermal burn hazards.
- Keep cooking areas as cool as possible using spot cooling fans, evaporative cooling, air conditioning, general ventilation, and local exhaust ventilation at points of high heat production.
- Encourage workers to drink plenty of water.
- Gradually introduce new employees to hot environments to build up heat tolerance.

*A Restaurant Safety Checklist can be found at Appendix B.*

*See Appendix E for a useful chart providing examples of ways that certain injuries may be prevented in restaurants.*

## Workers' Compensation and Disability Benefits

According to federal law, most employees who have been injured at work are entitled to collect workers' compensation insurance benefits.

It is illegal to fire or discriminate in any way against an employee who has filed a workers' compensation claim or because the employee is injured on the job and medical bills are sent to the restaurant.

Keep a log of all injuries/incidents that occur on the job, even if it seems minor. For example, an employee might slip and seem uninjured, but later incur a back injury. If the worker files a workers' compensation claim and you do not have a record of the incident, you can be fined.

Workers who file false claims may be required to repay any monies received or paid to their doctors or hospitals, and may be prosecuted for fraud under criminal law.

## Family and Medical Leave

The Family and Medical Leave Act of 1993 ("FMLA") is a federal law which allows eligible employees to take up to 12 work weeks of unpaid leave during any 12-month period to attend to the serious health condition of the employee, parent, spouse or child, or for pregnancy or care of a newborn child, or for adoption or foster care of a child. FMLA is administered by the Wage and Hour Division of the US Department of Labor.

### Does the Family and Medical Leave Act apply to me?

If you have 50 or more employees you are required to comply with the Family and Medical Leave Act of 1993.

### What are my obligations under the FMLA?<sup>48</sup>

The FMLA entitles eligible employees to take up to 12 weeks of job-protected unpaid leave each year under certain circumstances:

1. for birth of a son or daughter, and to care for the newborn child;
2. for placement with the employee of a son or daughter for adoption or foster care;
3. to care for the employee's spouse, son, daughter, or parent with a serious health condition; or
4. because of a serious health condition that makes the employee unable to perform the essential functions of the employee's job.

## LOCK-INS

### Is it illegal to lock employees in the restaurant at night?

Yes. According to federal law, not only is it illegal to lock employees in the restaurant, it is extremely unsafe. Under no circumstances should you lock employees (porters, cleaning staff, etc.) in the restaurant. The following is a brief list of remedies that could be implemented by employers:

**Increase Supervision.** Doors can remain unlocked while managers supervise janitors. Workers have said that knowing they can go home after they finish cleaning is an incentive to get the job done earlier.

**Upgrade emergency exits.** Outdated emergency exits can pose a severe hazard if a fire ever broke out during hours of operation.

**Use Newer Technology.** Alarmed doors with push locks that can only be opened from the inside can be used to protect merchandise. If the alarm goes off managers and the Police Department will be notified immediately of the disruption.



The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.

The FMLA provides for two additional categories of leave that are for the benefit of members of the armed forces and their families:

1. The FMLA entitles eligible employees to take up to 26 weeks of job-protected unpaid leave each year to care for a covered servicemember with a serious injury or illness, where the employee is the spouse, son, daughter, parent or next of kin of the servicemember. "Next of kin" means the nearest blood relative, other than a spouse, parent, son, or daughter, in the following order of priority: (1) a blood relative designated in writing by the servicemember for FMLA purposes; (2) a blood relative who has been granted legal custody of the servicemember; (3) brothers and sisters; (4) grandparents; (5) aunts and uncles; and (6) first cousins.
2. The FMLA entitles eligible employees to take up to 12 weeks of job-protected leave in a 12 month period for any "qualifying exigency" arising out of the fact that an employee's spouse, son, daughter or parent is on covered active duty or called to active duty status.

There are nine categories of "qualifying exigencies":

- Issues arising from a covered military member's short notice deployment (i.e. deployment on seven or less days of notice). For a period of seven days from the date of notification of deployment, an employee may take leave to address any issue that arises from the short-notice deployment;
- Military events and related activities including official ceremonies, programs, or events sponsored by the military or family support or assistance programs, and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member.
- Certain activities arising related to care of the military member's parent when the parent is incapable of self-care;
- Making or updating financial and legal arrangements to address a covered military member's absence
- Attending counseling provided by someone other than a health care provider for the employee, the covered military member, or the child of the covered military member, when the need for counseling arises from the active duty or call to active duty status of the covered military member.
- Taking up to 15 calendar days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member.
- Any other event that the employee and employer agree is a qualifying exigency.

For more information about the various categories of leave available under the FMLA, including how to determine how much leave an employee should be given when the employee seeks FMLA for more than one reason within a 12 month period, visit the website of the United States Department of Labor at [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla).

*Note: An employer must include a written FMLA policy if an employer prepares an employee handbook. You should discuss the proper FMLA policy terms with your lawyer if you have questions on your obligations under the FMLA.*

### **Are there other laws requiring job-protected leave?**

A leave of absence may be required as a reasonable accommodation for a disability under the Americans with Disabilities Act, and the New York State and New York City Human Rights Laws.

New York City's Earned Sick Time Act was enacted on June 26, 2013. The law will take effect on April 1, 2014. Once it has taken effect, during the first phase of the law, employers who employ 20 or more full time and/or part time employees will be required to provide paid sick leave, and employers with 15 to 19 employees will be required to provide sick leave (but not required to provide paid sick leave). At a later time employers who employ 15 to 19 employees will be required to provide paid sick leave. (Where an employer is part of a "chain business", the total number of employees is determined by counting the employees of all establishments that share a common owner or principal who owns at least 30% of each establishment where the establishments engage in the same business or operate pursuant to franchise agreements with the same franchisor.)

When the law takes effect:

- Employees are entitled to sick leave benefits if they work in New York City more than 80 hours in a calendar year. Eligible employees will begin to accrue sick time beginning on the employee's date of hire or on the effective date of the Act, whichever is later. Employees can use their earned sick leave when he or she has been on the job for 120 days or on the 120th day following the effective date of the Act, whichever is later.
- Covered employers will be required to provide their employees a minimum of one hour of paid sick time for every 30 hours worked, for up to a total of 40 hours of paid sick time in a calendar year.
- If the employer provides paid leave that may be used for paid time off, paid vacation, paid personal days or paid days of rest, and allows that leave to be used for the same purposes and under the same conditions as sick leave required by the law, the employer is not required to provide additional paid sick time for an employee whether or not the employee chooses to use such leave for sick leave purposes.

An employee must be allowed to use earned sick leave time for absence due to:

- The employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment or preventive medical care.
- Care of a family member who needs medical diagnosis, care or treatment, or preventive medical care.
- Closure of the employee's place of business by order of a public official due to a public health emergency, or the employee's need to care for a child whose school or childcare provider has been closed by a public official due to a public health emergency.

The New York City Department of Consumer Affairs (DCA) is responsible for administering and enforcing the New York City Earned Sick Time Act. DCA also provides assistance to help businesses comply with the Act and helps employees understand their rights. More information on earned sick leave will be available at DCA's website at [www.nyc.gov/consumers](http://www.nyc.gov/consumers).

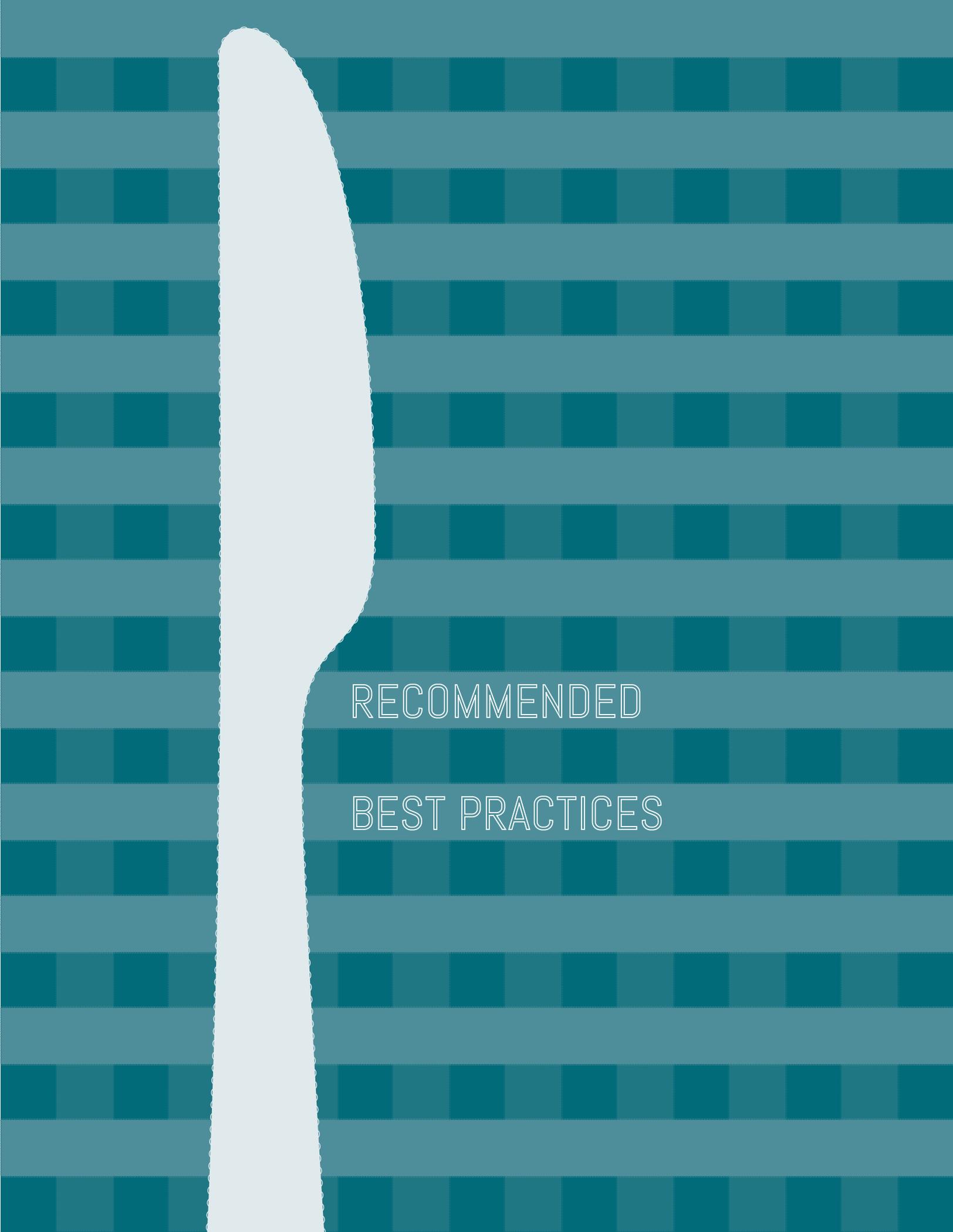
## Victims of Domestic Violence

### **Victims of Domestic Violence, Sex Offense, or Stalking**

Most workers in New York are also protected by the City Human Rights law from discrimination based on their status as a victim of domestic violence, sex offense or stalking. It is important to understand that domestic violence and related situations permeate many lives and compromise the safety of victims and others, with tragic, destructive, and all too often fatal results. A 2005 national survey found that 21% of full-time employed adults were victims of domestic violence. These circumstances can occur in a wide range of relationships, and they must be taken seriously.

### **What can I do if I find out an employee is missing work because of domestic violence?**

Assure the victim that resources are available to help them, and share with them any of the domestic violence resources listed in the Resources section of this Manual. Additionally, in New York City, employers are required to make reasonable accommodation to the needs of victims of domestic violence, sex offenses, or stalking. "Reasonable accommodation" can include time off to visit a doctor, lawyer, domestic violence counselor, or to attend court appointments related to incidents of domestic violence. It can also include unpaid leave to move and get settled in a new residence. Employers may not release any of the information provided to them by the victim unless disclosure is required by federal, state or local law, or the victim has requested or consented to the disclosure in writing.



RECOMMENDED

BEST PRACTICES

## Recommended Best Practices

Many restaurant owners and managers have recognized that when they take good care of their employees, the employees take good care of their customers. Happy employees are more likely to provide attentive, friendly, and good service. These are major factors in increasing customer loyalty. The following section is designed to illustrate how employers can do much more than merely avoid breaking the law to ensure that their employees will be well provided for.

### 1. Provide Employee Handbooks in the Appropriate Languages

Providing an Employee Handbook makes all workplace policies clear and helps you avoid arguments over the ambiguity of management decisions. The handbook should outline all vacation, sick days, and other benefits, and describe unacceptable activities and behavior that lead to discipline or firing. It should also include health and safety training and special instructions for operating equipment. A special orientation should be provided to each new employee to review the handbook and answer any questions.

If you provide any written materials to your employees (such as handbooks, codes of conduct, written contracts or policies) especially when a signature is required on such documents, these materials should be provided in whatever language the employee speaks. If a written translation is not available then an oral translation of the content should be provided.

### 2. Maintain Civility in the Workplace

In any relationship, respect generates respect. If you treat your employees well, chances are they will respect you and your customers. Things like raised voices and insults can create an unpleasant work environment, decrease productivity and foster resentment. Expletives or racial slurs may be discriminatory and should not be used. Managers should be trained to conduct themselves professionally when interacting with the staff, as well as with customers in your restaurant. Do not fire employees publicly “in the heat of the moment” during an argument. Do not threaten employees with demotions or layoffs unless you are truly considering taking such action and have a good reason for doing so.

### 3. Provide Opportunities for Internal Promotion and Salary Increases

In order to increase employee loyalty and decrease turnover, it is preferable to provide opportunities for advancement of current employees rather than hiring from the outside. In the long run, you will save on training costs if you promote qualified existing employees who are already familiar with your establishment and your clientele, instead of training outside applicants to fill positions when they become available.

Provide financial incentives to employees. Provide opportunities for employees to increase their earnings through seniority or by working their way up the industry ladder. Employees who come to you looking for a way to increase their earnings may be motivated to learn more and take on more responsibility for fair compensation.

### 4. Avoid a Segregated Workplace

Be aware of who you are hiring for what types of positions. Are your back-of-the-house employees predominantly immigrants and people of color while your front-of-the-house staff are mostly native-born and/or white? On what basis did you make those hiring decisions? Were they based on stereotypes and subconscious assumptions about the employee’s abilities or who will be viewed as most “attractive” by customers or how well employees with accents can communicate in English? Remember that many types of discrimination are against the law. Try to make hiring and promotion decisions based on actual skill and experience, not on stereotypes and assumptions about people.

## 5. Provide Adequate Staff Training

For both back-of-the-house and front-of-the-house workers, providing adequate job training is essential. For example, workers operating any kind of equipment – cutting machines, freezers, stoves and ovens – should be adequately trained in using them and all employees should be trained in the basic health and safety practices. Regular staff meetings provide opportunities for questions, ongoing training, and more. One portion of each staff meeting should be devoted to health and safety issues.

## 6. Provide a Voluntary Grievance Process

Establish a procedure by which employees can have their concerns heard and addressed by an owner or senior manager. Distribute this policy in written form to all workers. Also post it in the restaurant in an area that all employees have access to and are likely to see it.

## 7. Provide Health Insurance for Workers

Provide your workers with health insurance to keep them healthy and working. Small businesses with 50 employees or fewer can use the NY State of Health, the Official Health Plan Marketplace to offer coverage to its employees. Some businesses that buy coverage through the Marketplace with 25 or fewer employees may qualify for a federal tax credit of as much as 50% of your employer contribution toward employee premium costs. Contact the following organizations to learn about how to provide health insurance to your workers and other resources.



NY State of Health, the Official Health Plan Marketplace

Tel: (855) 355-5777 | [www.nystateofhealth.ny.gov](http://www.nystateofhealth.ny.gov)

Through the NY State of Health small business owners and individuals can shop, compare and enroll in a low-cost quality plan that fits their needs. Small business owners and individuals can also obtain tax credits to reduce the cost of private health insurance. Navigators and Brokers are available to provide in-person enrollment assistance.

New York State Department of Financial Services (NYDFS)

Tel: (212) 480-6400 | [www.dfs.ny.gov](http://www.dfs.ny.gov)

NYDFS supervises banks and all insurance companies that conduct business in New York.



New York State Insurance Fund (NYSIF)

Tel: (888) 875-5790 | [www.nysif.com](http://www.nysif.com)

NYSIF specializes only in Workers' Compensation and Disability Insurance and is the largest provider of workers' compensation insurance in New York State.



New York City Health Insurance Link (HI Link)

Tel: 929-221-6793 | [www.nyc.gov/hilink](http://www.nyc.gov/hilink)

Hi Link helps New Yorkers learn what federal health care reform means to them, and understand their health insurance rights and responsibilities.



#### Health Pass

Accounts Management Department: (212) 252-8010 x210 | [www.healthpass.com](http://www.healthpass.com)

Health Pass works with multiple carriers for businesses that have 2-50 employees. HealthPass offers a menu of over 30+ different health benefit options from four leading carriers: Oxford, Easy Choice, Health Republic and Guardian. The small business owner decides exactly how much to contribute to his or her employees' health plan through its defined dollar contribution method.



#### LIA Health Alliance

Tel: (800) 431-1290 / 542-5513 | [www.nyhealthalliance.com](http://www.nyhealthalliance.com)

LIA Health Alliance provides small businesses (2 to 50 employees) the same marketplace advantages enjoyed by major corporations. By bringing insurers together in a competing arena, the Alliance can offer low rates and more choices. The Alliance gives your employees the opportunity to choose the insurer and benefit plan that meet their personal needs. Each employee selects from a menu of benefit plans offered by four insurers: Oscar, Guardian, EmblemHealth, and UnitedHealthcare.



#### Healthy NY

Tel: (866) HEALTHY NY (1-866-432-5849) | [www.healthyny.com](http://www.healthyny.com)

Healthy NY provides comprehensive and affordable health insurance to small businesses with 50 employees or fewer.



#### Brooklyn HealthWorks by Brooklyn Chamber of Commerce

Tel: (718) 596-4550 | [www.ibrooklyn.com/business\\_support/health\\_insurance.aspx](http://www.ibrooklyn.com/business_support/health_insurance.aspx)

Brooklyn HealthWorks offers a low-cost health insurance plan for small businesses located Brooklyn.



#### ACCESS NYC

[www.nyc.gov/accessnyc](http://www.nyc.gov/accessnyc)

ACCESS NYC is a free service that can help your employees find out if they may qualify for over 30 City, State and Federal benefit programs such as Head Start, Supplemental Nutrition Assistance Program (formerly known as food stamps) or help with utility bills.

### 8. Maintain Adequate Staffing Levels

Often, high staff turnover, high stress levels, accidents, illness and poor customer service in the workplace result from understaffing. Employees who are trained to do one job should not be forced to “fill-in” on a job for which they are not properly trained because there is no one available who is properly trained for the task. Employees will face less risk of injury or illness if they are only performing tasks for which they are properly trained and if they have adequate back-up.

### 9. Avoid Requiring Employee to Perform Jobs for Which They are Not Trained

Employees handling multiple jobs at once or doing jobs for which they are not trained can lead to accidents and can also lead employees to do things in the workplace that put both their own safety and the safety of customers at risk. Any worker operating any kind of equipment, including electrical equipment, should be thoroughly trained to do so. OSHA reports that many restaurant employees have been hurt in electrical accidents; this occurs when workers are asked to change light bulbs or conduct other electrical work for which they were neither hired nor trained.

## **10. Maintain Good Records**

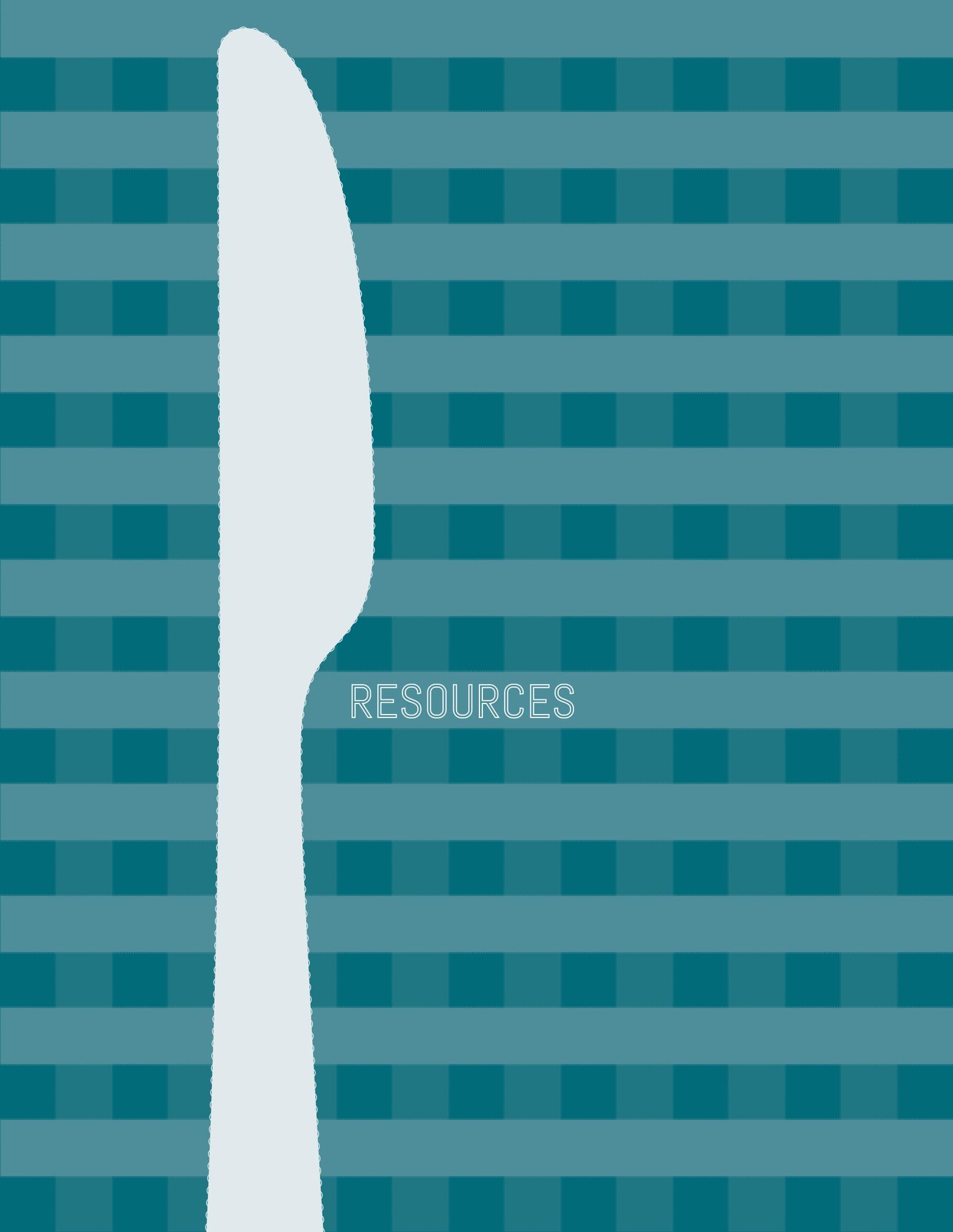
To avoid litigation over discrimination and personnel issues, it is essential to maintain good records and an accurate “paper trail.” For each employee, maintain a personnel file, and document each interaction over personnel matters. The law requires maintaining a log with regard to any accidents or other health and safety incidents that occur in the restaurant. The law also requires that you maintain complete and accurate wage and hour records.

## **11. Help Employees to Access Benefits and Services**

Retain valuable, loyal workers by helping them access benefits and services that can enhance their wages and help them stay employed. Examples of benefits include Childcare Subsidies, Supplemental Nutrition Assistance (formerly known as food stamps), Medicaid, Tax Credits, and Utility Payment Assistance. Information about over 30 benefits programs is available on [nyc.gov/accessnyc](http://nyc.gov/accessnyc) which is available in six languages. For additional assistance accessing these benefits, contact 311.

## **12. Help Employees Manage Their Money**

The City of New York’s free Financial Empowerment Centers can help your employees take control of debt, deal with debt collectors, improve their credit, create a budget, open a bank account, start an emergency fund, save and plan for their future, and much more. Your employees can call 311 to schedule a free one-on-one financial counseling appointment at a Financial Empowerment Center. More information is available at [www.nyc.gov/ofe](http://www.nyc.gov/ofe)



# RESOURCES

## NYC.Gov/Business

NYC Business is a one-stop website designed around your needs as a business owner. It is the first place to turn for business-related information and transactions across NYC government. You can answer a 10-minute set of questions to get a custom list of the laws that apply to your business, across all agencies and levels of government. You can then learn about those requirements with quick guides, clear videos, and detailed explanations. And you can finally apply for, renew, and pay for 80%+ of licenses and permits (including the Food Service Establishment Permit). Information is also available for connecting with all citywide in-person business assistance programs.

To get clear information about how to open, operate, and expand in New York City, and to apply for, renew, and pay for permits online, visit NYC Business at [www.nyc.gov/business](http://www.nyc.gov/business).

## NYC Business Acceleration

Join the 1,500+ business owners who have saved an average of 2+ months opening. The NYC Business Acceleration is a NYC program that offers one-stop support to help restaurants, bars, and food retailers open or expand faster. The team gives individual advice and coordinates NYC agency processes. It offers plan reviews, consultations and inspections on behalf of NYC Buildings, NYC Environmental Protection, NYC Health, and NYC Consumer Affairs – in many cases conducting multiple inspections on a single visit.

To help speed your opening date, contact a client manager today:



NYC Business Acceleration

[www.nyc.gov/nbat](http://www.nyc.gov/nbat)

Call 311 and ask for "NYC Business Acceleration"

Tel: (212) 788-6722

110 William Street, 2nd Floor

New York, NY 10038

## Small Business Services

The mission at the New York City Department of Small Business Services (SBS) is to support the formation, growth and expansion of New York City's small businesses by providing business assistance, fostering neighborhood development and promoting financial and economic opportunity through government procurement. New York City Business Solutions Centers operate in all 5 boroughs and provide assistance to business owners in many different areas including financing, business planning, government facilitation, start-up assistance, etc. All of the services are free and any business owner or prospective business owner is eligible for services.

For more information, call 311 or (212) NEW-YORK from outside NYC (for TTY call (212) 504-4115) and ask for Small Business Services. Check the Department's website at [www.nyc.gov/sbs](http://www.nyc.gov/sbs) or visit a NYC Business Solutions Center conveniently located in your borough.



Bronx Center

555 Bergen Avenue, Bronx, NY 10455

Tel: (718) 732-7590

Hours: Monday - Friday, 9:00 a.m. - 5:00 p.m.



Brooklyn Center

9 Bond Street, 5th Floor, Brooklyn, NY 11201

Tel: (718) 875-3400

Hours: Monday - Friday, 9:00 a.m. - 5:00 p.m.



Lower Manhattan Center  
79 John Street, New York, NY 10038  
Tel: (212) 618-8914  
Hours: Monday - Friday, 9:00 a.m. - 5:00 p.m.



Upper Manhattan Center  
215 West 125th Street, 6th Floor, New York, NY 10027  
Tel: (917) 493-7243  
Hours: Monday - Friday, 9:00 a.m. - 5:00 p.m.



Washington Heights Center  
76 Wadsworth Avenue, 3rd Floor, New York, NY 10033  
Tel: (212) 453-5366  
Hours: Monday-Friday, 9:00 a.m. - 5:00 p.m.



Staten Island Center  
120 Stuyvesant Place, 3rd Floor, Staten Island, NY 10301  
Tel: (718) 285-8400  
Hours: Monday - Friday, 9:00 a.m. - 5:00 p.m.



Queens Center  
168-25 Jamaica Avenue, 2nd Floor, Jamaica, NY 11432  
Tel: (718) 577-2148  
Hours: Monday - Friday, 8:30 a.m. - 5:00 p.m.

## Discrimination

For more information on federal discrimination laws contact:



U.S. Equal Employment Opportunity Commission  
New York District Office  
33 Whitehall Street, 5th Floor  
New York, NY 10004  
Tel: (800) 669-4000; TTY number is (800) 669-6820  
Fax: (212) 336-3790  
[www.eeoc.gov](http://www.eeoc.gov)

**Office Hours:** The New York District Office is open Monday - Friday from 8:30 a.m. to 5:00 p.m. Intake hours are Monday - Friday, from 8:30 a.m. to 3:00 p.m. We encourage you to call our 800 number listed above for information, and pre-screening by an intake information representative before you visit our office.

**Email:** [info@ask.eeoc.gov](mailto:info@ask.eeoc.gov). Please include your zip code and/or city and state so that your email will be sent to the appropriate office.

**Further information:** The EEOC offers a no-cost outreach program where, on a limited basis, an EEOC representative will come to your organization to provide information on general EEOC provisions. The staff is bilingual. The EEOC also conducts free seminars on the Americans with Disabilities Act (ADA) where employers (with 15 to 100 employees) and disabled employees can come to learn about tax incentives, community resources and rights and responsibilities of employers and employees.



Contact the New York Outreach Office  
Tel: (212) 336-3670, TTY (212) 336-3622  
Fax: (212) 336-3621

Free publications on laws enforced by the EEOC, facts about discrimination, and enforcement guidelines are available at:



U.S. Equal Employment Opportunity Commission Clearinghouse  
8280 Greensboro Drive, Suite 300  
McLean, Virginia 22102  
Tel: (800) 669-3362; (800) 800-3302 (TTY)  
Fax: (703) 821-2098  
[www.eeoc.gov/employers/overview.html](http://www.eeoc.gov/employers/overview.html)

For more information on state discrimination laws contact:



New York State Division of Human Rights  
One Fordham Plaza, 4th Floor  
Bronx, NY 10458  
Tel: (718) 741-8400; TDD: (718) 741-8300  
[www.dhr.state.ny.us](http://www.dhr.state.ny.us)

For more information on local discrimination laws contact the New York City Commission on Human Rights Borough Offices at:



Manhattan:  
40 Rector Street, 10th Floor  
New York, NY 10006  
Tel: (212) 306-5070



Brooklyn:  
275 Livingston Street, 2nd Floor  
Brooklyn, NY 11217  
Tel: (718) 722-3130



Bronx:  
1932 Arthur Avenue, Room 203A  
Bronx, NY 10457  
Tel: (718) 579-6900



Queens:  
153-01 Jamaica Avenue - Room 203  
Jamaica, NY 11432  
Tel: (718) 657-2465



Staten Island:  
60 Bay Street, 7th Floor  
Staten Island, NY 10301  
Tel: (718) 390-8506

## Domestic Violence Resources

- Call 311 for information or referral to the Domestic Violence Hotline
- Call the Domestic Violence Hotline directly at 1-800-621-HOPE (4673)
- Go to one of the Family Justice Centers operated by the Mayor's Office to Combat Domestic Violence



Family Justice Center, Brooklyn  
350 Jay Street – 15th Floor  
Brooklyn, NY 11201  
718-250-5113



Family Justice Center, Queens  
126-02 82nd Avenue  
Kew Gardens, NY 11415  
718-575-4545



Family Justice Center, Bronx  
198 East 161st St – 2nd Floor  
Bronx, NY 10451  
718-508-1220



Family Justice Center, Manhattan – opening January 2014  
80 Centre Street  
New York, NY 10007  
212-602-2800

Go to the website of the Mayor's Office to combat Domestic Violence at [www.nyc.gov/html/ocdv/html/home/home.shtml](http://www.nyc.gov/html/ocdv/html/home/home.shtml).

## Family and Medical Leave

For more information on the Family and Medical Leave Act (FMLA), visit the United States Department of Labor website at [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla). You may also contact:



U.S. Department of Labor  
Wage and Hour division  
200 Constitution Avenue, NW  
Washington, DC 20210  
1-866-4-USWAGE  
(1-866-487-9243)  
[www.dol.gov/whd](http://www.dol.gov/whd)

An easy to read guide about FMLA is available in English on the US Department of Labor's website at: [www.dol.gov/whd/fmla/employeeeguide.pdf](http://www.dol.gov/whd/fmla/employeeeguide.pdf) and in Spanish at [www.dol.gov/whd/fmla/employeeeguide-span.pdf](http://www.dol.gov/whd/fmla/employeeeguide-span.pdf).

## Food Safety

The Citywide Licensing Center maintains staff that collects payment for permit fees and registers individuals for Food Protection Courses. In addition, the Citywide Licensing Center is responsible for the issuance of permits.



Citywide Licensing Center  
42 Broadway, 5th Floor  
New York, NY 10004  
Tel: (212) 487- 4436

The Health Academy offers Food Protection Courses.

Certificates are issued and replacements for lost certificates can also be obtained at the Health Academy.



Health Academy  
East Harlem Multi-Service Center, Second Floor  
413 East 120 Street  
New York, NY 10035  
Tel: (917) 492-6990



New York State Restaurant Association (NYSRA)  
New York City Regional Office  
1001 Avenue of the Americas, 3rd Floor  
New York, NY 10018  
Tel: (212) 398-9160, (800) 442-5959  
[For NYC Food Handler, ServSafe Alcohol, and ServSafe Food safety courses]

## Health & Safety

For more information on health and safety laws, compliance and penalties, visit [www.nyc.gov/health](http://www.nyc.gov/health).

For more information about occupational health & safety contact:



Occupational Safety and Health Administration  
201 Varick Street, Room 908  
New York, NY 10014  
Tel: (212) 620-3200  
Fax: (212) 620-4121



New York City Department of Health and Mental Hygiene  
Bureau of Food Safety and Community Sanitation (BFSCS)  
125 Worth Street, 9th Floor, Box CN-59A  
New York, N Y 10007  
Tel:(212) 676-1600/1601  
[www.nyc.gov/health](http://www.nyc.gov/health)



New York City Department of Health and Mental Hygiene Bureau of Environmental and Occupational Disease  
Epidemiology  
125 Worth Street, 6th Floor, Box CN343  
New York, NY 10007  
Tel: (646) 632-6135  
[www.nyc.gov/html/doh](http://www.nyc.gov/html/doh)



New York State Workers' Compensation Board  
20 Park Street, Albany, NY 12207  
Tel: (800) 877-1373 (Manhattan, Brooklyn, and Queens Bureau Offices)  
E-mail: [general\\_information@wcb.state.ny.us](mailto:general_information@wcb.state.ny.us)  
[www.wcb.state.ny.us](http://www.wcb.state.ny.us)



New York Committee for Occupational Safety and Health (NYCOSH)  
116 John Street - Suite 604, New York, NY 10038  
Tel: (212) 227-6440  
Fax: (212) 227-9854  
[www.nycosh.org](http://www.nycosh.org)

### Immigration

For additional information about unfair employment practices related to immigration status, contact:



Office of Special Counsel for Immigration-Related  
Unfair Employment Practices  
Worker hotline: (800) 255-7688  
Employer hotline: (800) 255-8155  
TTY: (202) 616-5525, (800) 237-2515  
[www.usdoj.gov/crt/osc](http://www.usdoj.gov/crt/osc)  
Email: [oscrt@usdoj.gov](mailto:oscrt@usdoj.gov)

### Licensing and Consumer Protection

For more information about licensing contact:



New York City Department of Consumer Affairs  
42 Broadway  
New York, NY 10004  
For more information about DCA, call 311 or (212) NEW-YORK outside the five boroughs.  
[www.nyc.gov/consumers](http://www.nyc.gov/consumers)

### Organizing & Labor

For more information about union organizing contact:



National Labor Relations Board  
26 Federal Plaza, Room 3614  
New York, NY 10278-0104  
Hours of Operation: 8:45 a.m. - 5:15 p.m. (EST)  
Tel: (212) 264-0300  
Fax: (212) 264-2450

## Wage & Hour Law

For more information on Federal labor laws contact:



United States Department of Labor  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

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

Live assistance is available Monday through Friday, from 8:00 a.m. to 8:00 p.m. Eastern Time by calling, (866) 4-USA-DOL, (866) 487-2365, TTY (877) 889-5627.

For more information on New York State labor laws contact:



New York State Department of Labor  
W. Averell Harriman State Office Campus  
Building 12  
Albany, NY 12240

Tel: (518) 457-9000, (888) 4-NYSDOL, and TTY/TDD (800) 662-1220

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



New York State Attorney General, Labor Bureau  
120 Broadway, New York, New York 10271, (212) 416-8700

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



Attorney General's Regional Offices:  
Harlem - 163 West 125th Street, Suite 1324, New York, NY 10027  
Brooklyn - 55 Hanson Place, Suite 1080, Brooklyn, NY 11217

## Other Reference Organizations & Institutions



New York State Restaurant Association (NYSRA)  
New York City Regional Office  
1001 Avenue of the Americas, 3rd Floor  
New York, NY 10018  
Tel: (212) 398-9160, (800) 442-5959



Restaurant Opportunities Center of New York (ROC-NY)  
275 Seventh Avenue, Suite 1703  
New York, NY 10001  
Tel: (212) 343-1771  
Fax: (212) 343-7217  
Email: [info@rocny.org](mailto:info@rocny.org)



New York City Hospitality Alliance  
65 West 55th Street, Suite 203A  
New York, NY 10019  
Tel: (212) 582-2506  
Email: [info@theNYCalliance.org](mailto:info@theNYCalliance.org)

## New York City's Business Improvement Districts

Please visit the NYC Business Improvement District Directory for contact information, specific programs and services of each BID in New York City at [www.nyc.gov/html/sbs/html/neighborhood\\_development/bid\\_directory.shtml](http://www.nyc.gov/html/sbs/html/neighborhood_development/bid_directory.shtml).



United Restaurant & Tavern Owners of New York Inc.  
60 E 42nd St #1946,  
New York, NY 10165  
[www.urto.org](http://www.urto.org)  
Tel: (212) 557-5200



Brooklyn Chamber of Commerce  
335 Adams Street, Suite 2700  
Brooklyn, NY 11201  
[www.ibrooklyn.com](http://www.ibrooklyn.com)  
Email: [info@brooklynchamber.com](mailto:info@brooklynchamber.com)  
Tel: (718) 875-1000



Manhattan Chamber of Commerce  
1375 Broadway, 3rd Floor  
New York, NY 10018  
[www.manhattancc.org](http://www.manhattancc.org)  
Email: [info@manhattancc.org](mailto:info@manhattancc.org)  
Tel: (212)479-7772



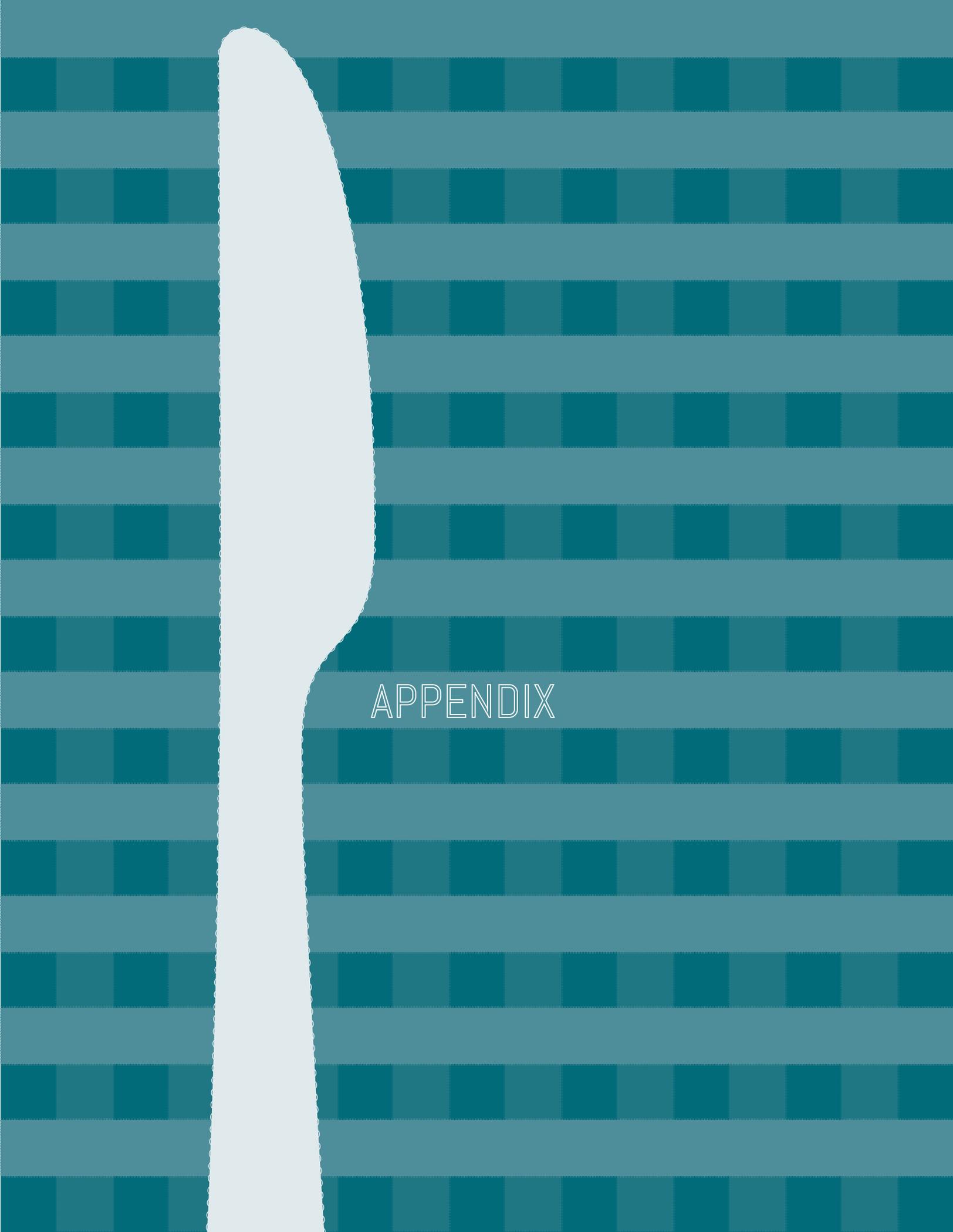
Staten Island Chamber of Commerce  
130 Bay Street  
Staten Island, NY 10301  
[www.sichamber.com](http://www.sichamber.com)  
Email: [info@sichamber.com](mailto:info@sichamber.com)  
Tel: (718) 727-1900



Bronx Chamber of Commerce  
1200 Waters Place, Suite 106  
Bronx NY, 10461  
[www.bronxchamber.org](http://www.bronxchamber.org)  
Email: [info@bronxchamber.org](mailto:info@bronxchamber.org)  
Tel: (718) 828-3900



Queens Chamber of Commerce  
75-20 Astoria Blvd. Suite 140  
Jackson Heights, NY 11370  
[www.queenschamber.org](http://www.queenschamber.org)  
Email: [info@queenschamber.org](mailto:info@queenschamber.org)  
Tel: (718) 898-8500



# APPENDIX

## Wage and Hour Summary for Restaurants

EFFECTIVE JANUARY 1, 2011	
Minimum Hourly Rate	\$7.25
Minimum Overtime Rate	\$10.88
EFFECTIVE DECEMBER 31, 2013	
Minimum Hourly Rate	\$8.00
Minimum Overtime Rate	\$12.00
EFFECTIVE DECEMBER 31, 2014	
Minimum Hourly Rate	\$8.75
Minimum Overtime Rate	\$13.125
EFFECTIVE DECEMBER 31, 2015	
Minimum Hourly Rate	\$9.00
Minimum Overtime Rate	\$13.50
EFFECTIVE JANUARY 1, 2011	
Food Service Workers*	\$2.50
Other Workers (e.g. delivery)	\$2.50
EFFECTIVE DECEMBER 31, 2013	
Non-Service Employees	\$2.75
EFFECTIVE DECEMBER 31, 2014	
Non-Service Employees	\$3.00
EFFECTIVE DECEMBER 31, 2015	
Non-Service Employees	\$3.10

\*A "food service worker" means an employee primarily engaged in the serving of food and beverages to guests, patrons or customers in the hotel or restaurant industry, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receive tips from such guests, patrons or customers.

*Note: The information above applies to all restaurant workers regardless of immigration status.*

For source, see [www.labor.ny.gov/sites/legal/laws/hospitality-industry-wage-order.page](http://www.labor.ny.gov/sites/legal/laws/hospitality-industry-wage-order.page)

EFFECTIVE JANUARY 1, 2011		
Food Service Workers*	Minimum Hourly Rate	\$5.00 (if tips are at least \$2.25 per hour and total compensation including tips equals at least \$7.25 per hour)
	Overtime Hourly Rate	\$8.63
Other Service Workers (i.e. delivery)	Minimum Hourly Rate	\$5.65 (if tips are at least \$1.60 per hour and total compensation including tips equals at least \$7.25 per hour)
	Overtime Hourly Rate	\$9.28
EFFECTIVE DECEMBER 31, 2013		
Food Service Workers*	Minimum Hourly Rate	\$5.00 (if tips are at least \$3.00 per hour and total compensation including tips equals at least \$8.00 per hour)
	Overtime Hourly Rate	\$9.00 [(\$8.00 x 1.5) - \$3.00 tip credit]
Other Service Workers (i.e. delivery)	Minimum Hourly Rate	\$5.65 per hour (if tips are at least \$2.35 per hour and total compensation including tips equals at least \$8.00 per hour)
	Overtime Hourly Rate	\$9.65 [(\$8.00 x 1.5) - \$2.35 tip credit]
EFFECTIVE DECEMBER 31, 2014		
Food Service Workers*	Minimum Hourly Rate	\$5.00 (if tips are at least \$3.75 per hour and total compensation including tips equals at least \$8.75 per hour)
	Overtime Hourly Rate	\$9.375 [(\$8.75 x 1.5) - \$3.75 tip credit]
Other Service Workers (i.e. delivery)	Minimum Hourly Rate	\$5.65 (if tips are at least \$3.10 per hour and total compensation including tips equals at least \$8.75 per hour)
	Overtime Hourly Rate	\$10.025 [(\$8.75 x 1.5) - \$3.10 tip credit]
EFFECTIVE DECEMBER 31, 2015		
Food Service Workers*	Minimum Hourly Rate	\$5.00 (if tips are at least \$4.00 per hour and total compensation including tips equals at least \$9.00 per hour)
	Overtime Hourly Rate	\$9.50 [(\$9.00 x 1.5) - \$4.00 tip credit]
Other Service Workers (i.e. delivery)	Minimum Hourly Rate	\$5.65 (if tips are at least \$3.35 per hour and total compensation including tips equals at least \$9.00 per hour)
	Overtime Hourly Rate	\$10.15 [(\$9.00 x 1.5) - \$3.35 tip credit]

## Restaurant Safety Checklist

### Combustibles

YES NO N/A

1. Are flammable/combustible liquids (solvents, paints, etc.) stored in a safety cabinet or outside?
2. Are combustibles stored at least 30 feet from any heat sources?

### Exits

YES NO N/A

3. Are all exits marked, illuminated, and clear of obstructions?
4. Are all exits unlocked during business hours?
5. Are non exits identified?

### Automatic Fire Extinguishers

YES NO N/A

6. Are automatic dry-chemical extinguishing systems over ranges, grills, and fat fryers present?
7. Do the automatic Ansul extinguishing systems have current inspection tags?
8. Are extinguishing heads capped to prevent clogging?
9. Are extinguishing system's manual pulls located away from the range, grill, or fryer?
10. Will the fuel supply for ranges, grills, and fryers automatically shut-off if the extinguishing system turns on?
11. Are the automatic temperature shut -offs on the fryer(s) operational?

### Filters

YES NO N/A

12. Are exhaust filter(s) cleaned at least once a day?
13. Are exhaust system(s) cleaned on a quarterly basis by a qualified contractor?

### Portable Fire Extinguishers

YES NO N/A

14. Are the portable fire extinguishers the proper type for a kitchen environment?
15. Are fire extinguishers properly wall-mounted?
16. Is there at least 3 feet of clearance around the portable fire extinguishers?
17. Are employees trained in the proper use of extinguishers (both portable and dry-chemical)?

### Sprinklers

YES NO N/A

18. Are sprinkler system control valves secured in the open position?
19. Is there at least 18 inches of clearance between the sprinkle heads and any stored materials?
20. Is there at least 3 feet of clearance around the sprinkler system main control valve?
21. Is there a written record of all annual sprinkler system tests/maintenance?
22. Is the water pressure indicated on the sprinkler system's lower gauge?

### Emergency Response

YES NO N/A

23. Is there a written record of annual emergency response training for all employees?
24. Are doors mount to swing outwards?
25. Two flashlights are available and working?
26. Is the first aid kit available and in good condition?

## Freezers

YES NO N/A

- 27. Do walk-in coolers or freezers have an interior-release mechanism or alarm?
- 28. Are floors free of water and/or ice?
- 29. Are floors textured so that they will not be slick when wet?
- 30. Are light covers in place?
- 31. Are heavier, frequently used items are stored on lower shelves?
- 32. Are racks secure and stable?
- 34. Are pathways clear of trip hazards?

## Storage Rooms

YES NO N/A

- 35. Are supplies securely stacked?
- 36. Supplies have 18" of clearance from sprinklers and 18" from hot water heater?
- 37. Are racks secure and stable?
- 38. There are no foot prints to indicate employees are climbing on shelves?
- 39. Are heavier, frequently used items are stored on lower shelves?
- 40. Are step stools or ladders readily available, if needed?
- 41. Are bulk items less than 25 lbs?
- 42. Are pathways clear of trip hazards?

## Electrical Equipment

YES NO N/A

- 43. Do all portable electrical equipment and extension cords have a grounding prong?
- 44. Are extension cords used for less than 60 days at a time (permanent wiring)?
- 45. Are extension cords appropriate (Amps/Outdoor) for the task?
- 46. Are all breaker switches properly marked?
- 47. Are all breaker boxes accessible? Clearance of at least 30 inches needed?
- 48. Are documented inspections of switches, boxes, and outlets performed?
- 49. Do all outlets have their face plates?
- 50. Do all light fixtures contain bulbs and have covers?
- 51. Are all breaker boxes enclosed with no gaps larger than a person's finger?
- 52. Are GFCI installed on all outlets within 6 feet of a water source?
- 53. Is malfunctioning or out of use equipment tagged and removed?

## Floors & Walking Areas

YES NO N/A

- 54. Are the floors around the fryer(s) free of grease?
- 55. Are the floors around the dishwashing area dried on a regular basis?
- 56. Portable "wet floor" signs available?
- 57. Are the floors around the soft-drink syrup tanks free of sticky build-up?
- 58. Are floors free of boxes, food, or other trip hazards?
- 59. Are floors in good condition? (No broken tiles, loose mats, torn carpets, etc.)
- 60. Do stair treads have a non skid surface?
- 61. Are drainage holes covered and even with the floor?
- 62. Are steps, sloops, or ramps a different color from the surrounding flooring?
- 63. Are door mats at all entrances?
- 64. Are all areas properly illuminated?
- 65. Are handrails present and secure?
- 66. Are ice cubes on the floor beneath the ice machine?
- 67. Are slip resistant shoes required?
- 68. Are spills cleaned up immediately?

**Preventing Cuts** YES NO N/A

---

- 69. Are unused knives stored in a designated drawer or rack?
- 70. Are the guards in place on the meat-slicer?
- 71. Is the meat-slicer returned to "zero" when not in use?
- 72. Are knives kept out of the sinks?
- 73. Are knives sharpened by an outside contractor on a regular basis?
- 74. Are employees trained how to sharpen knives as needed?
- 75. Is a scoop and not glasses used to dispense ice?
- 76. No employee steps on or sticks their hand in the trash?
- 77. Is a broken glass (sharps) container available for safe disposal?

**Illumination and Paths** YES NO N/A

---

- 78. Are parking lots and trash bins well illuminated?
- 79. Are steps and pathways free from tripping hazards (cracks, holes, etc.)?

**Hazard Training** YES NO N/A

---

- 80. Are all new employee trained in proper chemical use?
- 81. Are MSDS available?
- 82. Are gloves and safety glasses available?
- 83. Are compressed gas tanks chained?

**Hygiene** YES NO N/A

---

- 84. Are "employee hand washing" signs posted?
- 85. Is a food safety supervisor with a NYC Food Protection Certificate always on site?
- 86. Does each shift begin with a food safety checklist to ensure compliance with the Health Code?

**Workplace Violence** YES NO N/A

---

- 87. Are security cameras in place and operating?
- 88. Is a drop safe available or is the register skimmed frequently?
- 89. Are bank deposits made with varying times and routes?
- 90. Is the back door locked from the outside?
- 91. Is there documented employee training on workplace violence at least annually?

**Functional Workplace Attire** YES NO N/A

---

- 92. Are slip resistant shoes required?
- 93. Is long hair tied back?
- 94. Is dangling jewelry and rings removed?

*Note: Consumer Affairs combined the license and license complaints sign, previously separate documents, into one consolidated sign. New licensees and licensees that renew after October 15, 2013 will receive the new sign. Renewing licensees must remove the old license document and complaint sign that Consumer Affairs previously provided and post the new combined sign. For more information about this new regulation, go to [www.nyc.gov/consumers](http://www.nyc.gov/consumers).*

# POSTING REQUIREMENTS

## NYC Checklist for REQUIRED SIGNS for RESTAURANTS & BARS



Use this checklist to help you post required signs and avoid fines.  
Learn more at [nyc.gov/businessexpress](http://nyc.gov/businessexpress).



### OUTSIDE

**For All**

- ❑ **Letter Grade** | NYC Department of Health  
Get from inspector | Learn more at [on.nyc.gov/infolettergrades](http://on.nyc.gov/infolettergrades)
  - In view of potential customers outside your establishment.  
(Up to 5' to one side of the door, 4' to 6' above the ground.)

**For Seating on Public Sidewalks**

- ❑ **Sidewalk Café License** | NYC Department of Consumer Affairs  
Apply at [on.nyc.gov/sidewalkcafe](http://on.nyc.gov/sidewalkcafe)
  - Inside window facing out.

**For Seating on Public Sidewalks (continued)**

- ❑ **Sidewalk Café License Complaints** | NYC Dept. Consumer Affairs  
Get online at [on.nyc.gov/signcomplaints](http://on.nyc.gov/signcomplaints)
  - Inside window facing out.
- ❑ **Sidewalk Café Smoking Section** | NYC Department of Health  
Buy or make | Learn more at [on.nyc.gov/signoutsidesmoking](http://on.nyc.gov/signoutsidesmoking)
  - Designate a section only as you wish and law allows.



### CUSTOMER AREA

**For All**

- ❑ **Certificate of Occupancy** | NYC Department of Buildings  
Get from Dept. | Learn more at [on.nyc.gov/infoCO](http://on.nyc.gov/infoCO)
  - Or else post Temporary Certificate or Letter of No Objection.
  - Not needed in your restaurant if posted elsewhere in building.
- ❑ **Food Service Establishment Permit** | NYC Department of Health  
Apply at [on.nyc.gov/fsep](http://on.nyc.gov/fsep)
- ❑ **Choking First Aid** | NYC Department of Health  
Get online at [on.nyc.gov/signfse](http://on.nyc.gov/signfse)
  - In language(s) of workers and customers.
- ❑ **CPR Kit and Information** | NYC Department of Health  
Buy with kit | Learn more at [on.nyc.gov/infocpr](http://on.nyc.gov/infocpr)
  - Include 911, your kit's location, and where to learn CPR.
- ❑ **Sales Tax Certificate of Authority** | NY State Dept. Taxation  
Apply at [on.nyc.gov/taxid](http://on.nyc.gov/taxid)

**For Selling with Tax Included**

- ❑ **Sales Tax Included** | NY State Department of Taxation and Finance  
Buy or Make | Learn more at [bit.ly/infotaxincluded](http://bit.ly/infotaxincluded)
  - Required, for example, to sell bar drinks at a flat price.

**For Seating 75+ Customers Indoors or 200+ Outdoors**

- ❑ **Place of Assembly Certificate of Operation and Permit**  
| NYC Departments of Building, Fire  
Apply at [on.nyc.gov/infoPofA](http://on.nyc.gov/infoPofA)
- ❑ **Maximum Occupancy for Place of Assembly** | NYC Dept. Buildings  
Buy or make | Learn more at [on.nyc.gov/infomaxoccupancy](http://on.nyc.gov/infomaxoccupancy)

**For Selling Alcohol**

- ❑ **Liquor License** | NY State Liquor Authority  
Apply at [on.nyc.gov/alcohol](http://on.nyc.gov/alcohol)
- ❑ **Warning for Pregnant Women** | NYC Department of Health  
Get online at [on.nyc.gov/signfse](http://on.nyc.gov/signfse)
- ❑ **No Liquor Sold to Minors or Intoxicated Adults** | NY State Liquor Auth.  
Buy or make | Learn more at [on.nyc.gov/infodrinkminors](http://on.nyc.gov/infodrinkminors)

**For Delivering by Bicycle**

- ❑ **Bicycle Delivery Safety** | NYC Department of Transportation  
Get online at [on.nyc.gov/signbicycle](http://on.nyc.gov/signbicycle)
  - In language(s) of workers and customers.

**For Owning or Franchising 15 or More Locations**

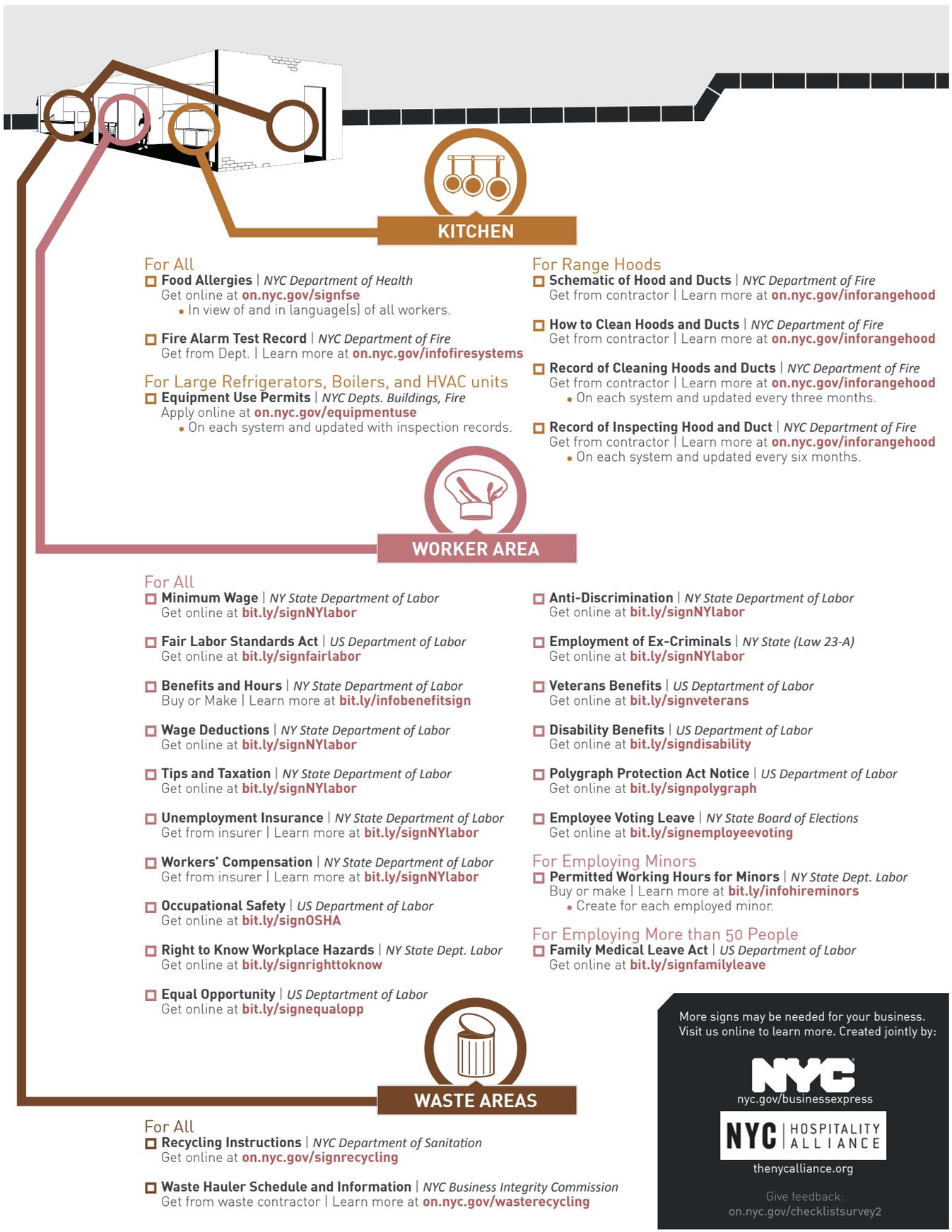
- ❑ **Calorie Counts for Menu Items** | NYC Department of Health  
Buy or make | Learn more at [on.nyc.gov/infocalorie](http://on.nyc.gov/infocalorie)



### THROUGHOUT

**For All**

- ❑ **No Smoking** | NYC Department of Health  
Get online at [on.nyc.gov/signnosmoking](http://on.nyc.gov/signnosmoking)
  - In every room and stairwell.
- ❑ **Must Wash Hands** | NYC Department of Health  
Buy or make | Learn more at [on.nyc.gov/infohandwash](http://on.nyc.gov/infohandwash)
  - Above all hand sinks, not above food or ware sinks.
  - In language(s) of workers and customers.
- ❑ **Exit and Direction to Exit** | NYC Building Code  
Installed by contractor | Learn more at [bit.ly/infoexitsigns](http://bit.ly/infoexitsigns)
- ❑ **Fire Extinguisher Inspection Tags** | NYC Department of Fire  
Get from contractor | Learn more at [on.nyc.gov/infoextinguisher](http://on.nyc.gov/infoextinguisher)
  - On each unit showing date of last annual inspection.



**KITCHEN**

**For All**

- ❑ **Food Allergies** | NYC Department of Health  
Get online at [on.nyc.gov/signfse](https://on.nyc.gov/signfse)
  - In view of and in language(s) of all workers.
- ❑ **Fire Alarm Test Record** | NYC Department of Fire  
Get from Dept. | Learn more at [on.nyc.gov/infofireystems](https://on.nyc.gov/infofireystems)

**For Large Refrigerators, Boilers, and HVAC units**

- ❑ **Equipment Use Permits** | NYC Depts. Buildings, Fire  
Apply online at [on.nyc.gov/equipmentuse](https://on.nyc.gov/equipmentuse)
  - On each system and updated with inspection records.

**For Range Hoods**

- ❑ **Schematic of Hood and Ducts** | NYC Department of Fire  
Get from contractor | Learn more at [on.nyc.gov/inforangehood](https://on.nyc.gov/inforangehood)
- ❑ **How to Clean Hoods and Ducts** | NYC Department of Fire  
Get from contractor | Learn more at [on.nyc.gov/inforangehood](https://on.nyc.gov/inforangehood)
- ❑ **Record of Cleaning Hoods and Ducts** | NYC Department of Fire  
Get from contractor | Learn more at [on.nyc.gov/inforangehood](https://on.nyc.gov/inforangehood)
  - On each system and updated every three months.
- ❑ **Record of Inspecting Hood and Duct** | NYC Department of Fire  
Get from contractor | Learn more at [on.nyc.gov/inforangehood](https://on.nyc.gov/inforangehood)
  - On each system and updated every six months.



**WORKER AREA**

**For All**

- ❑ **Minimum Wage** | NY State Department of Labor  
Get online at [bit.ly/signNYlabor](https://bit.ly/signNYlabor)
- ❑ **Fair Labor Standards Act** | US Department of Labor  
Get online at [bit.ly/signfairlabor](https://bit.ly/signfairlabor)
- ❑ **Benefits and Hours** | NY State Department of Labor  
Buy or Make | Learn more at [bit.ly/infobenefitsign](https://bit.ly/infobenefitsign)
- ❑ **Wage Deductions** | NY State Department of Labor  
Get online at [bit.ly/signNYlabor](https://bit.ly/signNYlabor)
- ❑ **Tips and Taxation** | NY State Department of Labor  
Get online at [bit.ly/signNYlabor](https://bit.ly/signNYlabor)
- ❑ **Unemployment Insurance** | NY State Department of Labor  
Get from insurer | Learn more at [bit.ly/signNYlabor](https://bit.ly/signNYlabor)
- ❑ **Workers' Compensation** | NY State Department of Labor  
Get from insurer | Learn more at [bit.ly/signNYlabor](https://bit.ly/signNYlabor)
- ❑ **Occupational Safety** | US Department of Labor  
Get online at [bit.ly/signOSHA](https://bit.ly/signOSHA)
- ❑ **Right to Know Workplace Hazards** | NY State Dept. Labor  
Get online at [bit.ly/signrighttoknow](https://bit.ly/signrighttoknow)
- ❑ **Equal Opportunity** | US Department of Labor  
Get online at [bit.ly/signequalopp](https://bit.ly/signequalopp)

- ❑ **Anti-Discrimination** | NY State Department of Labor  
Get online at [bit.ly/signNYlabor](https://bit.ly/signNYlabor)
- ❑ **Employment of Ex-Criminals** | NY State (Law 23-A)  
Get online at [bit.ly/signNYlabor](https://bit.ly/signNYlabor)
- ❑ **Veterans Benefits** | US Department of Labor  
Get online at [bit.ly/signveterans](https://bit.ly/signveterans)
- ❑ **Disability Benefits** | US Department of Labor  
Get online at [bit.ly/signdisability](https://bit.ly/signdisability)
- ❑ **Polygraph Protection Act Notice** | US Department of Labor  
Get online at [bit.ly/signpolygraph](https://bit.ly/signpolygraph)
- ❑ **Employee Voting Leave** | NY State Board of Elections  
Get online at [bit.ly/signemployeevoting](https://bit.ly/signemployeevoting)

**For Employing Minors**

- ❑ **Permitted Working Hours for Minors** | NY State Dept. Labor  
Buy or make | Learn more at [bit.ly/infofireminors](https://bit.ly/infofireminors)
  - Create for each employed minor.

**For Employing More than 50 People**

- ❑ **Family Medical Leave Act** | US Department of Labor  
Get online at [bit.ly/signfamilyleave](https://bit.ly/signfamilyleave)



**WASTE AREAS**

**For All**

- ❑ **Recycling Instructions** | NYC Department of Sanitation  
Get online at [on.nyc.gov/signrecycling](https://on.nyc.gov/signrecycling)
- ❑ **Waste Hauler Schedule and Information** | NYC Business Integrity Commission  
Get from waste contractor | Learn more at [on.nyc.gov/wasterecycling](https://on.nyc.gov/wasterecycling)

More signs may be needed for your business. Visit us online to learn more. Created jointly by:

**NYC**  
nyc.gov/businessexpress

**NYC | HOSPITALITY ALLIANCE**  
thenycalliance.org

Give feedback:  
[on.nyc.gov/checklistsurvey2](https://on.nyc.gov/checklistsurvey2)

To enable access to linked resources and ensure you have the up-to-date list, please visit [on.nyc.gov/restaurantsigns](https://on.nyc.gov/restaurantsigns)

## Review – Interview Questions

The following are examples of different types of questions employers sometimes ask of employees and potential employees. The first column contains recommended questions and the second column contains questions that are not recommended.

	NOT RECOMMENDED	RECOMMENDED
Age	How old are you? What is your date of birth? What are the ages of your children, if any? (You may ask the prospective worker's age if you suspect that s/he is a minor.)	Are you 18 years of age or older? If not, state your age.
Arrest Record	Have you ever been arrested?	Have you ever been convicted of a criminal offense?
Disability	Do you have a disability? Have you ever been treated for any of the following diseases...? Do you have now, or have you ever had, a drug or alcohol problem?	Can you perform the essential duties of the job with or without reasonable accommodation?
Genetic Predisposition or Carrier Status	Do you have any genetic predisposition to a disease? Do any diseases run in your family? Inquiries as to the health status of parents or other family members.	None.
Religion ( <i>After describing the hours of working for the job in question</i> )	Would working weekends interfere with your religious commitments? Inquiry into applicant's religious denomination, religious affiliations, parish or church, and religious holidays observed.	Will you be able to work the specific hours that this job requires?
Race or Color	Any question relating to race or color should not be asked.	None.
Sex	Any question relating to gender should not be asked.	None.

## Injury Prevention Techniques

The following chart includes examples of ways that certain injuries may be prevented in restaurants.

INJURY	CAUSES	PREVENTION
Slips, Trips & Falls	Wet floors	Mop up spills promptly. Wear correct shoes with slip resistant soles.
	Grease spills	Provide rubber mats in cooking areas.
	Reduced vision when carrying sacks or large boxes on stairs	Make sure stairways are well lit. Place brightly colored hazard tape on top and bottom step.
Cuts and lacerations	Knife cuts	Keep knives sharp; store knives properly.
	Faulty machinery	Inspect regularly to make sure safety devices, such as guards, are in working order.
Burns and scalds	Splattered oil	Make sure food is dry when placed in hot oil. Workers should wear chef jackets (long sleeved) to protect their upper bodies. Wait until the oil in deep fryers is cool before handling or transferring.
	Hot pots and pans	Provide oven mitts or dry towels to handle hot equipment.
Muscle Strains	Improper lifting	Train workers as to proper lifting technique.
	Overhead reaching	Do not store frequently used items above shoulder height.
	Awkward work positions	Redesign counter height and width to reduce continuous stretching.
Assault	Handling money	Count cash in a secure room.
	Dissatisfied customers	Provide training so that workers can defuse potential violence.
Race or Color	Excessive noise	Evaluate noise conditions, and mitigate noise or establish a hearing conservation program.
Harassment	Within staff	Provide confidential ways for workers to report violence or harassment and establish a policy to prohibit and prevent this conduct and to investigate and/or remedy violations.

## New York Labor Code Sections and Associated Regulations

### Labor Code § 193. Deductions from wages<sup>49</sup>

No employer shall make any deduction from the wages of an employee, except deductions which: are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.

No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages under the provisions of subdivision one of this section.

Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, nor with any other law applicable to deductions from wages.

### 12 NYCRR § 195.1 Limitation on wage deductions

Section 193, subdivision 1(b), of the New York State Labor Law permits an employer to make deductions from an employee's wages for certain enumerated items and also for "similar payments for the benefit of the employee". Permitted deductions for all such non-enumerated items shall not exceed, in the aggregate, 10 percent of the gross wages due the employee for a payroll period.

### Labor Code § 196-d. Gratuities<sup>50</sup>

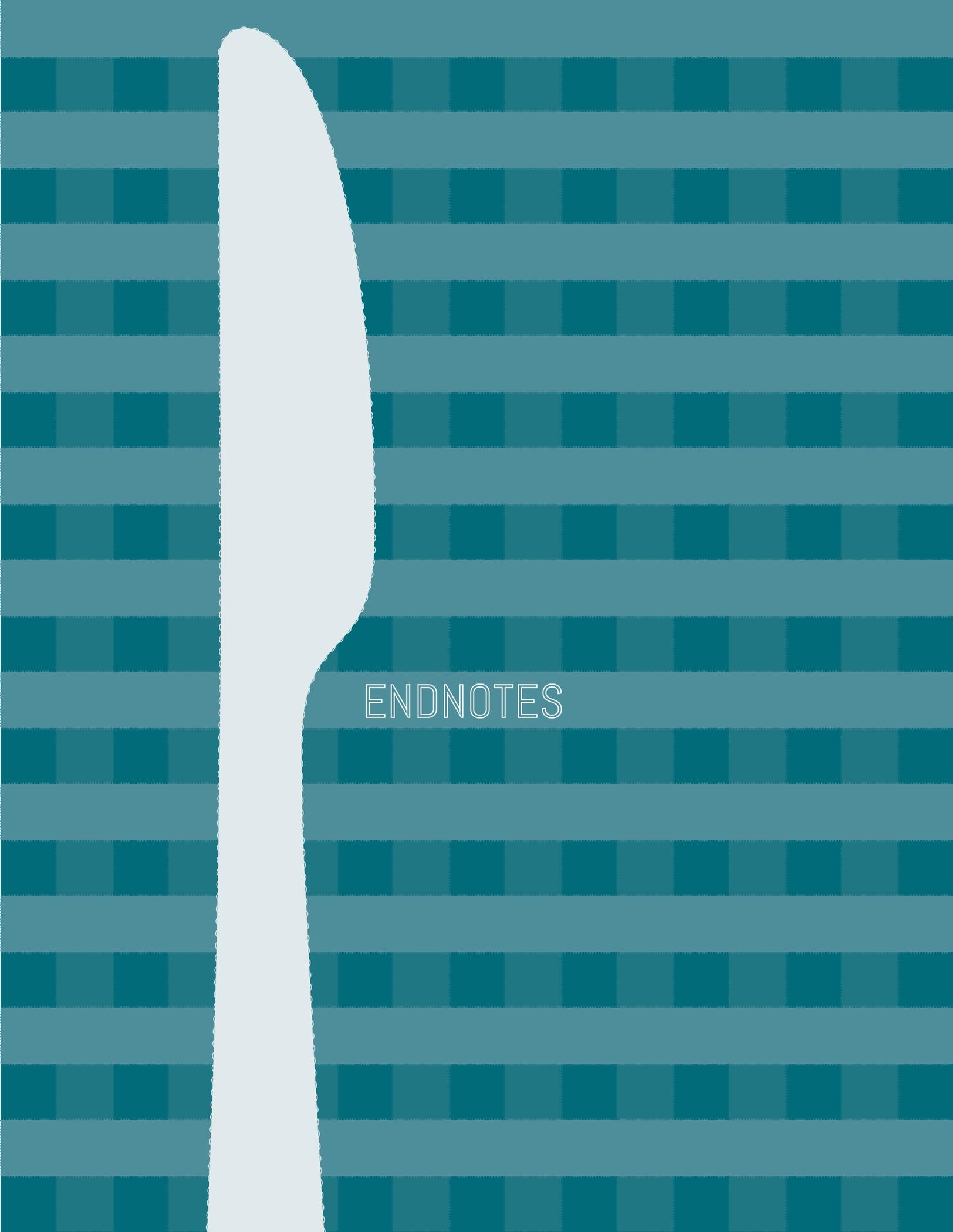
No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. This provision shall not apply to the checking of hats, coats or other apparel. Nothing in this subdivision shall be construed as affecting the allowances from the minimum wage for gratuities in the amount determined in accordance with the provisions of article nineteen of this chapter nor as affecting practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are distributed to employees, nor to the sharing of tips by a waiter with a busboy or similar employee.

The law requires an employer to post notices describing the Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay, and disability. EEOC's poster is available in English, Arabic, Chinese, and Spanish. You may order the poster online at [www1.eeoc.gov/employers/poster.cfm](http://www1.eeoc.gov/employers/poster.cfm).

If you need more than 5 copies of the poster, please contact:



U.S. Equal Employment Opportunity Commission Clearinghouse  
P.O. Box 541  
Annapolis Junction, MD 20701  
Tel: (800) 669-3362; (800) 800-3302 (TTY)  
Fax: (703) 821-2098



# ENDNOTES

1. See U.S. Department of Justice, Civil Rights Division, Disability Rights Section, "ADA 2010 Revised Requirements – Service Animals" at [www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm).
2. Degregorio v. Richmond Italian Pavillion Inc., 2009 N.Y. Slip Op 31957U (N.Y. Sup. Ct. Aug. 28, 2009), aff'd 90 A.D.3d 807; 935 N.Y.S.2d 70 (2nd Dept 2011).
3. U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration- Related Unfair Employment Practices, OSC Update, 3rd Quarter 2010, pg. 4.
4. NY CLS Labor §142
1. New York State Labor FAQ found at [www.labor.state.ny.us/workerprotection/laborstandards/PDFs/wage-theft-prevention-actfaq.pdf](http://www.labor.state.ny.us/workerprotection/laborstandards/PDFs/wage-theft-prevention-actfaq.pdf)
2. NY CLS Labor § 195(6)
3. 12 NYCRR § 146-2.3
4. 12 NYCRR § 146-24
5. 12 NYCRR § 146-1.3 (added in 2010)
6. 12 NYCRR § 146-34
7. 12 NYCRR § 146-2.9
8. 12 NYCRR § 146-2.16
9. 12 NYCRR 146-2.15
10. 12 NYCRR 146-2.14(f)
11. 12 NYCRR §146-2.14 & 2.15
12. 12 NYCRR § 146-2.17
13. 12 NYCRR § 146-2.19
14. 12 NYCRR § 146-2.20
15. Internal Revenue Service Bulletin 2012-26 dated June 25, 2012 (Rev. Ruling 2012-18); see also Internal Revenue Service Announcement 2012-50
16. 12 NYCRR 146-2.18
17. 12 NYCRR § 146-14
18. Under the anti-discrimination laws, including the Americans with Disabilities Act, the New York State and New York City Human Rights Laws, an employee with a disability may make a request for reasonable accommodation in the form of reduced hours.
19. 12 NYCRR § 195-4.3(b)
20. NY CLS Labor § 193(1(c))
21. 12 NYCRR § 195-5.1(e)
22. 12 NYCRR § 195-5.1(f)
23. 12 NYCRR § 195-5.1(d)
24. NY CLS Labor § 193(1)(d); see also 12 NYCRR § 195-5.2
25. 12 NYCRR §146 -1.9, NYCRR §146-2.8
26. 12 NYCRR § 146-1.7
27. 12 NYCRR §146-17(b)(4)
28. Judiciary Law § 519
29. 12 NYCRR § 146-2.1
30. NY CLS Labor §198-a
31. NY CLS Labor § 198(4)
32. NY CLS Labor §215
33. The right to organize and other related rights are governed by the National Labor Relations Act (NLRA). The NLRA covers most workers in the private sector, except farm workers, domestic workers, independent contractors, government employees, supervisors and workers employed by their parents or spouse.
34. Smith v. City of Jackson, 544 US 228 (2005)
35. EEOC v. Sonic Drive-In of Los Lunas Ltd and B&B Consultants Inc., 09-CV-953 WPJ/ACT. U.S. Equal Employment Opportunity Commission, Press Release, June 15, 2011.
36. Labor Law 201(d)(4)
37. NYC Administrative Code 8-102(23)
38. Administrative Code Title Eight, Chapter 1, Ad. Code Sec. 8-107(22)
39. 29 CFR 1604 Appx
40. U.S. District Court for the Middle District of Alabama (Civil Action No.2:09-cv-767-MEF). U.S. Equal Employment Opportunity Commission, Press Release, January 8, 2010.
41. 29 CFR § 1910
1. U.S. Department of Labor, Restaurant Safety for Teen Workers, [www.osha.gov/SLTC/restaurant/index.html](http://www.osha.gov/SLTC/restaurant/index.html)
2. Material safety data sheet (MSDS)(also known as PSDS (Product safety data sheet) is a form of Data regarding the properties of a particular substance, and intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner. OSHA requires that MSDS be available to employees for potentially harmful substances handled in workplace under the Hazard Communication regulation.
1. See U.S. Department of Labor, Wage and Hour Division, Family and Medical Leave Act, [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla)
1. New York State Labor Law §193 can be found at [www.codes.lp.findlaw.com/nycode/LAB/6/193](http://www.codes.lp.findlaw.com/nycode/LAB/6/193)
1. New York State Labor Law §196-d can be found at [www.labor.ny.gov/formsdocs/wp/LS204.pdf](http://www.labor.ny.gov/formsdocs/wp/LS204.pdf)

