**I. REPORTING REQUIREMENTS**

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| **Federal** | **New York** |
| **Federal Employment Identification Number (EIN)**   * Before hiring any employees, the IRS requires employers to obtain an EIN through an online application found [here](https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online). | **New York State Registration**   * Register as an employer in New York State by completing the Form 100 found [here](https://www.labor.ny.gov/formsdocs/ui/nys100.pdf). |
| **IRS Form W-4**   * The employer must complete a W-4 for each employee to designate the appropriate amount of federal tax withholding. The form must be retained for 4 years and can be found [here](https://www.irs.gov/pub/irs-pdf/fw4.pdf). * Generally, employers must withhold the employee’s share of FICA (Medicaid and Social Security) taxes, which the employer remits to the Treasury Department along with the employer’s own share of FICA taxes. * Employers are also responsible for collecting federal unemployment taxes on taxes paid up to a fixed threshold of $7,000 per employee. | **New and Rehired Employees**   * The employer must report new or rehired employees who work in New York to the NYS Department of Taxation and Finance within 20 days of their hiring date [here](https://www.nynewhire.com/#/login). |
| **Form I-9**   * The employer must complete and retain the [Form I-9](https://www.uscis.gov/system/files_force/files/form/i-9-paper-version.pdf) for all employees for the longer of either (a) 3 years from the date of hire or (b) 1 year after the employment ends. * Each new employee must complete Section 1 by the 1st day of work, and Section 2 within 3 days of hire (or on the 1st day for employees working for fewer than three days). * The employer must review employee documents to establish identity and employment authorization. | **New York Wage Theft Prevention Act (WTPA)**   * The employer must provide written notice to each new employee at the time of hire with required wage payments information. The notice must be signed by the employee and retained by the employer for 6 years. The notice can be found [here](https://labor.ny.gov/formsdocs/factsheets/pdfs/p715.pdf). |

**II. FEDERAL & STATE WAGE LAWS**

|  | **Federal** | **New York** |
| --- | --- | --- |
| **General Rule** | Absent an exemption, all employees must receive:   1. Minimum wage; and 2. Overtime pay | Same |
| **Minimum Wage** | $7.25/hour[[1]](#footnote-1) | $11.10/hour1&[[2]](#footnote-2) |
| **Overtime** | 1.5 times pay for > 40 hours/week | Same |
| **Exemptions** |  |  |
| 1. Business Owners |  |  |
| *Does Exemption Apply?* | Yes. An exempt business owner must:   1. Own at least 20% equity interest; and 2. Be actively engaged in the management of the business | No |
| *Minimum Salary Required?* | No | No |
| 2. Executives |  |  |
| *Does Exemption Apply?* | Yes | Yes. To qualify for the Executive employee exception, an individual must meet all of the following tests:   * + 1. The Employee’s primary duty consists of the management of the enterprise     2. The Employee customarily and regularly directs the work of two or more other employees     3. The Employee has the authority to hire or fire other employees     4. The Employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees have particular weight     5. The Employee customarily and regularly exercises discretionary powers |
| *Minimum Salary Required?* | Yes ($455 per week)1 | Yes ($832per week)1&2 |
| 3. Professionals  *Does Exemption Apply?* | Yes | Yes. To qualify as a professional employee, an employee must perform primary duties which include work that:   1. Requires advanced knowledge in the field of science or an education generally acquired by a “prolonged course of specialized intellectual instruction and study”, as mastered from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical processes; 2. Is original and creative in an accepted field of artistic undertaking, and achieves results that mainly depends on the employee’s invention, imagination, or talent; or 3. Is predominantly intellectual and varied in character (as opposed to mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. |
| *Minimum Salary Required?* | Yes ($455 per week)1 | No |
| 4. Administrators |  |  |
| *Does Exemption Apply?* | Yes | Yes. An employee may qualify for the administrative worker exemption if the employee:   1. Has primary duties consisting of the performance of office or non-manual field work directly related to management policies or general operations; 2. Customarily and regularly exercises discretion and independent judgment; and 3. Regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity or who performs under general supervision, work along specialized or technical lines requiring special training, experience or knowledge |
| *Minimum Salary Required?* | Yes ($455 per week)1 | Yes ($832 per week) 1&2 |
| 5. CS & Engineering |  |  |
| *Does Exemption Apply?* | Yes. Employees may qualify for the CS & engineering exemption if they are a “computer systems analyst, computer programmer, software engineer, or other similarly skilled worker,” and their duties meet specified requirements in the statute. | Yes. New York exempts computer systems analysts, computer programmers, software engineers, or other similarly skilled workers from its minimum wage or overtime requirements. |
| *Minimum Salary Required?* | Yes ($455 per week)1 | No |

**III. WORKPLACE POLICIES**

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|  | **Federal** | **New York** |
| **What Polices are Required?** | No written sexual harassment policy is formally required, but best practice is to have a discrimination policy distributed to employees which prohibits:   1. Discrimination on the basis of race, color, and ethnicity (42 U.S.C. § 1981) 2. Sex-based wage discrimination against men or women performing substantially equal work in the same establishment (29 U.S.C. § 206(d)) 3. Discrimination based on citizenship, if the employer employs four or more people; (Pub. L. No. 99-603, 100 Stat. 3359 (1986)) 4. Discrimination based on national origin, if the employer employs between four and 14 people. (Pub. L. No. 99-603, 100 Stat. 3359 (1986)) | All New York employers are required to have a written sexual harassment policy and distribute it to their employees, regardless of size. Electronic distribution of the sexual harassment policy is permitted, as long as the policy is acknowledged by the employees. This law protects independent contractors as well as employees |
| **Do Anti-Discrimination Laws Apply?** | Federal anti-discrimination laws apply to employers who employ more than 15 people, so it is prudent to be aware of this as the business expands. | No |

**IV. NEW YORK INSURANCE AND BENEFITS REQUIREMENTS**

1. **New York Worker’s Compensation Insurance**
   1. Employers must comply with the New York Workers’ Compensation Law (NYWCL) by:
      1. Obtaining and maintaining a workers’ compensation insurance policy covering all employees; or
      2. Qualifying as self-insurance for workers’ compensation (typically only large employers with a lot of liquidity).
   2. Employers must also post the required notice of workers’ compensation coverage in all places of business.
2. **New York Unemployment Insurance**
   1. The NYS Department of Labor determines eligibility for unemployment insurance after an employer completes the Form NYS-100, which is required to register with the state as an employer.
   2. If the employer is liable under the unemployment insurance laws, the employer must:
      1. Electronically submit a Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return, or Form NYS-45, found [here](https://www.tax.ny.gov/pdf/current_forms/wt/nys45_fill_in.pdf).
      2. Refrain from deducting payments for unemployment benefits from employees’ compensation; and
      3. Provide all terminated employees with a Record of Employment
3. **Disability Insurance**
   1. Employers must comply with NYS disability requirements by:
      1. Obtaining disability insurance if the business employs one or more employees for 30 days in a calendar year;
      2. Posting a notice stating that the employer has provided for the payment of disability benefits. There is a required workplace postings chart for New York State which can be found [here](https://labor.ny.gov/workerprotection/laborstandards/employer/posters.shtm).
      3. Supplying any worker who has been disabled for more than even days with a State of Rights under the Disability Benefits Law (Form DB-271S) within five days of learning that the worker is disabled.
4. **Paid Family Leave Benefits**
   1. Employers must provide paid family leave benefits which are funded by payroll deductions.
   2. Employees are eligible for family leave benefits if they have worked for 26 or more consecutive weeks on a regular work schedule of 20 or more hours per week.
   3. Employees with a regular work schedule of less than 20 hours per week are eligible after they have worked for 175 days in a 52-consecutive-week period.

1. All rates are as of 12/31/18. Rates are subject to change. [↑](#footnote-ref-1)
2. Rates are higher in New York City, Long Island & Westchester. [↑](#footnote-ref-2)