

Minimum Wage Order for Miscellaneous Industries and Occupations

Part 142 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the state of New York
(Cited as 12 NYCRR 142)

Promulgated by the Commissioner of Labor Pursuant to the Minimum Wage Act
(Article 19 of the New York State Labor Law)

Statutory authority: State Administrative Procedure Act (SAPA) § 202(6) and Labor Law §§ 21(11) and 659.



As amended
Effective October 6, 2017

PART 142
MISCELLANEOUS INDUSTRIES AND OCCUPATIONS

- Subpart 142-1 Coverage**
Subpart 142-2 Provisions Applicable to All Employees Subject to This Part, Except Employees in Nonprofitmaking Institutions Covered by the Provisions of Subpart 142-3
Subpart 142-3 Provisions Applicable to Employee in Nonprofitmaking Institutions Which Have Not Elected to be Exempt from Coverage Under a Minimum Wage Order

SUBPART 142-1
COVERAGE

Sec.

142-1.1 Coverage of Part.

§ 142-1.1 Coverage of Part

This Part shall apply to all employees, as such term is defined in this Part, except:

(a) employees who are covered by minimum wage standards in any other minimum wage order promulgated by the commissioner; and

(b) employees of a nonprofitmaking institution which has elected to be exempt from coverage under a minimum wage order, pursuant to subdivision 3 of section 652 of the Minimum Wage Act.

SUBPART 142-2
PROVISIONS APPLICABLE TO ALL EMPLOYEES SUBJECT TO THIS PART, EXCEPT
EMPLOYEES IN NONPROFITMAKING INSTITUTIONS COVERED BY THE PROVISIONS OF
SUBPART 142-3

Sec.

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§ 142-2.1 Basic minimum hourly wage rate and allowances.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$11.00 per hour on and after December 31, 2016;
\$13.00 per hour on and after December 31, 2017;
\$15.00 per hour on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$10.50 per hour on and after December 31, 2016;
\$12.00 per hour on and after December 31, 2017;
\$13.50 per hour on and after December 31, 2018;
\$15.00 per hour on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$10.00 per hour on and after December 31, 2016;
\$11.00 per hour on and after December 31, 2017;
\$12.00 per hour on and after December 31, 2018;
\$13.00 per hour on and after December 31, 2019;
\$14.00 per hour on and after December 31, 2020;
\$15.00 per hour on and after December 31, 2021,

(3) *Remainder of state* (outside of New York City and Nassau, Suffolk and Westchester counties)

\$9.70 per hour on and after December 31, 2016;
\$10.40 per hour on and after December 31, 2017;
\$11.10 per hour on and after December 31, 2018;
\$11.80 per hour on and after December 31, 2019;
\$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work: (1)

during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment. Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

§ 142-2.2 Overtime rate.

An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13 of 29 USC 201 et seq., the Fair Labor Standards Act of 1938, as amended, provided, however, that the exemptions set forth in section 13(a)(2) and (4) shall not apply. In addition, an employer shall pay employees subject to the exemptions of section 13 of the Fair Labor Standards Act, as amended, except employees subject to section 13(a)(2) and (4) of such act, overtime at a wage rate of one and one-half times the basic minimum hourly rate. The Fair Labor Standards Act is published in the United States Code, the official compilation of Federal statutes, by the Government Printing Office, Washington, DC. Copies of the Fair Labor Standards Act are available at the following office:

New York State Department of Labor
Counsel's Office
State Office Building Campus,
Building 12, Room 509
Albany, NY 12240-0005

The applicable overtime rate shall be paid for each workweek:

	<i>Non-residential employees</i>	<i>Residential employees</i>
For working time over	40 hours	44 hours

§ 142-2.3 Call-in pay.

An employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage.

§ 142-2.4 Additional rate for split shift and spread of hours.

An employee shall receive one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage required in this Part for any day in which:

- (a) the spread of hours exceeds 10 hours; or
- (b) there is a split shift; or
- (c) both situations occur.

§ 142-2.5 Allowances.

(a) Allowances for meals, lodging and utilities. (1) Meals and lodging furnished by an employer to an employee may be considered a part of the minimum wage, but shall be valued at not more than:

(i) Meals, for work performed in

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$3.80 per meal on and after December 31, 2016;
\$4.50 per meal on and after December 31, 2017;
\$5.15 per meal on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$3.60 per meal on and after December 31, 2016;
\$4.15 per meal on and after December 31, 2017;
\$4.65 per meal on and after December 31, 2018;
\$5.15 per meal on and after December 31, 2019;

(b) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$3.45 per meal on and after December 31, 2016;
\$3.80 per meal on and after December 31, 2017;
\$4.15 per meal on and after December 31, 2018;
\$4.50 per meal on and after December 31, 2019;
\$4.80 per meal on and after December 31, 2020;
\$5.15 per meal on and after December 31, 2021;

(c) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$3.35 per meal on and after December 31, 2016;
\$3.60 per meal on and after December 31, 2017;
\$3.80 per meal on and after December 31, 2018;
\$4.05 per meal on and after December 31, 2019;
\$4.30 per meal on and after December 31, 2020.

(ii) Lodging, for work performed in

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$4.65 per day on and after December 31, 2016;
\$5.50 per day on and after December 31, 2017;
\$6.35 per day on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$4.45 per day on and after December 31, 2016;
\$5.05 per day on and after December 31, 2017;
\$5.70 per day on and after December 31, 2018;
\$6.35 per day on and after December 31, 2019;

(b) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$4.20 per day on and after December 31, 2016;
\$4.65 per day on and after December 31, 2017;
\$5.05 per day on and after December 31, 2018;
\$5.50 per day on and after December 31, 2019;
\$5.90 per day on and after December 31, 2020;
\$6.35 per day on and after December 31, 2021;

(c) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$4.10 per day on and after December 31, 2016;
\$4.40 per day on and after December 31, 2017;
\$4.70 per day on and after December 31, 2018;
\$5.00 per day on and after December 31, 2019;
\$5.30 per day on and after December 31, 2020.

(2) When a house or apartment and utilities are furnished by an employer to an employee, a fair and reasonable amount may be allowed for such facilities, which amount shall not exceed the lesser of either the value of prevailing rentals in the locality for comparable facilities, or the following amounts, for work performed in

(i) *New York City* for

(a) *Large employers* of eleven or more employees

\$8.80 per day on and after December 31, 2016;
\$10.40 per day on and after December 31, 2017;
\$12.00 per day on and after December 31, 2018;

(b) *Small employers* of ten or fewer employees

\$8.40 per day on and after December 31, 2016;
\$9.60 per day on and after December 31, 2017;
\$10.80 per day on and after December 31, 2018;
\$12.00 per day on and after December 31, 2019;

(ii) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$8.00 per day on and after December 31, 2016;
\$8.80 per day on and after December 31, 2017;
\$9.60 per day on and after December 31, 2018;
\$10.40 per day on and after December 31, 2019;

\$11.20 per day on and after December 31, 2020;
\$12.00 per day on and after December 31, 2021;

(iii) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$7.75 per day on and after December 31, 2016;
\$8.30 per day on and after December 31, 2017;
\$8.90 per day on and after December 31, 2018;
\$9.45 per day on and after December 31, 2019;
\$10.00 per day on and after December 31, 2020.

(b) *Allowances for tips.* (1) Tips, or gratuities, may be considered a part of the minimum wage, subject to the following conditions:

(i) the particular occupation in which the employee is engaged is one in which tips have customarily and usually constituted a part of the employee's remuneration;

(ii) substantial evidence is provided that the employee received in tips at least the amount of the allowance claimed. An example of substantial evidence is a statement signed by the employee that he actually received in tips the amount of the allowance claimed; and

(iii) the allowance claimed by the employer is recorded on a weekly basis as a separate item in the wage record.

(2) *Allowances for tips.*

(i) Allowances for tips shall not exceed the Low tip amount listed below for an employee whose weekly average of tips received is between such Low tip amount and the High tip amount listed below, and shall not exceed such High tip amount for an employee whose weekly average of tips received equals or exceeds such High tip amount, for work performed in:

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$1.65 Low, \$2.70 High on and after December 31, 2016;
\$1.95 Low, \$3.20 High on and after December 31, 2017;
\$2.25 Low, \$3.65 High on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$1.60 Low, \$2.55 High on and after December 31, 2016;
\$1.80 Low, \$2.95 High on and after December 31, 2017;
\$2.05 Low, \$3.30 High on and after December 31, 2018;
\$2.25 Low, \$3.65 High on and after December 31, 2019;

(b) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$1.50 Low, \$2.45 High on and after December 31, 2016;
\$1.65 Low, \$2.70 High on and after December 31, 2017;

\$1.80 Low, \$2.95 High on and after December 31, 2018;
\$1.95 Low, \$3.20 High on and after December 31, 2019;
\$2.10 Low, \$3.40 High on and after December 31, 2020;
\$2.25 Low, \$3.65 High on and after December 31, 2021;

(c) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$1.45 Low, \$2.35 High on and after December 31, 2016;
\$1.55 Low, \$2.55 High on and after December 31, 2017;
\$1.65 Low, \$2.70 High on and after December 31, 2018;
\$1.75 Low, \$2.90 High on and after December 31, 2019;
\$1.90 Low, \$3.05 High on and after December 31, 2020.

(ii) No allowance for tips or gratuities shall be permitted for an employee whose weekly average of tips is less than the applicable Low tip amount listed above in the preceding subparagraph (i) of paragraph (2) of subdivision (b) of section 142-2.5 of this Subpart.

(c) No allowance for the supply, maintenance or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform, he shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages. Where an employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein at the weekly rate set forth below, based on the number of hours worked, where employees who work over 30 hours per week shall be paid the High rate, employees who work more than 20 hours but fewer than 30 hours shall be paid the Medium rate and employees who work 20 hours or fewer shall be paid the Low rate for work performed in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2016;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2017;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$13.05 High, \$10.35 Medium, \$6.25 Low on and after December 31, 2016;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2017;
\$16.80 High, \$13.30 Medium, \$8.05 Low on and after December 31, 2018;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$12.45 High, \$9.85 Medium, \$5.95 Low on and after December 31, 2016;
\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2017;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2018;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2019;
\$17.40 High, \$13.75 Medium, \$8.30 Low on and after December 31, 2020;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2021;

(3) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 High, \$9.55 Medium, \$5.75 Low on and after December 31, 2016;
\$12.95 High, \$10.25 Medium, \$6.20 Low on and after December 31, 2017;
\$13.80 High, \$10.90 Medium, \$6.60 Low on and after December 31, 2018;
\$14.70 High, \$11.60 Medium, \$7.00 Low on and after December 31, 2019;
\$15.55 High, \$12.30 Medium, \$7.45 Low on and after December 31, 2020.

REGULATIONS

§ 142-2.6 Employer records.

(a) Every employer shall establish, maintain and preserve for not less than six years, weekly payroll records which shall show for each employee:

(1) name and address;

(2) social security number;

(3) wage rate;

(4) the number of hours worked daily and weekly, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10;

(5) when a piece-rate method of payment is used, the number of units produced daily and weekly;

(6) the amount of gross wages;

(7) deductions from gross wages;

(8) allowances, if any, claimed as part of the minimum wage;

(9) net wages paid; and

(10) student classification.

(b) In addition, for each individual permitted to work as a staff counselor in a children's camp, or in an executive, administrative or professional capacity, an employer's records shall show:

(1) name and address;

(2) social security number;

(3) description of occupation; and

(4) for individuals working in an executive or administrative capacity, total wages, and the value of allowances, if any, for each payroll period.

(c) For each individual for whom student status is claimed, an employer's records shall contain a statement from the school which the student attends, indicating such student:

(1) is a student whose course of instruction is one leading to a degree, diploma or certificate; or

(2) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

(d) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at the place of employment.

§ 142-2.7 Statement to employee.

Every employer covered by this Part shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages.

§ 142-2.8 Posting.

Every employer covered by this Part shall post in a conspicuous place in his or her establishment a notice issued by the Department of Labor summarizing minimum wage provisions.

§ 142-2.9 Basis of wage payment.

The minimum and overtime wage provided by this Part shall be required for each week of work, regardless of the frequency of payment, whether the wage is on a commission, bonus, piece rate, or any other basis.

§ 142-2.10 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

- (1) deductions for spoilage or breakage;
- (2) deductions for cash shortages or losses;
- (3) fines or penalties for lateness, misconduct or quitting by an employee without notice.

(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer.

§ 142-2.11 Student obtaining vocational experience.

A student is not deemed to be working or to be permitted to work if, in order to fulfill the curriculum requirements of the educational institution which such student attends, such student is required to obtain supervised and directed vocational experience in another establishment.

§ 142-2.12 Learner and apprentice rates.

No learner or apprentice shall be paid less than the minimum rate prescribed in this Part.

§ 142-2.13 Rehabilitation programs.

For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such program shall be deemed to meet the requirements of this Part.

DEFINITIONS

§ 142-2.14 Employee.

(a) *Employee* means any individual employed, suffered or permitted to work by an employer, except as provided below.

(b) Employee does not include any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) Employee also does not include any individual permitted to work in, or as:

(1) Baby-sitter; companion.

(i) The term *baby-sitter* means an individual in service as a part-time baby-sitter in the home of the employer.

(ii) The term *companion* means someone who lives in the home of an employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping.

(2) Booth renter. The term *booth renter* means someone who leases or rents space in a beauty establishment or shop and who operates as an owner or an independent contractor.

(3) Labor on a farm. Farm employees are covered under the provisions of the minimum wage order for farm workers, Part 190 of this Title, promulgated by the Commissioner of Labor pursuant to article 19-A of the New York State Labor Law.

(4) Executive, administrative or professional capacity.

(i) Executive. Work in a *bona fide executive... capacity* means work by an individual:

(a) whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof;

(b) who customarily and regularly directs the work of two or more other employees therein;

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(d) who customarily and regularly exercise discretionary powers; and

(e) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(ii) *Administrative*. Work in a *bona fide... administrative... capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of such individual's employer;

(b) who customarily and regularly exercises discretion and independent judgment;

(c) who regularly and directly assists an employer, or an employee employed in a *bona fide* executive or administrative capacity (e.g., employment as an administrative assistant); or who performs, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(iii) *Professional*. Work in a *bona fide... professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes; or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine 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.

(5) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

- (i) making sales;
- (ii) selling and delivering articles or goods; or
- (iii) obtaining orders or contracts for service or for the use of facilities.

(6) Taxicab driver. The term *driver engaged in operating a taxicab* means an individual employed to drive an automobile equipped to carry no more than seven passengers, which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis, and the use of which is generally limited to a community's local transportation needs and which is not operated over fixed routes, or between fixed terminals, or under contract.

(7) Student in or for a college or university fraternity, sorority, student association or faculty association. A student is not deemed to be an employee if he or she is permitted to work in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university.

(8) Staff counselor in a children's camp. (i) A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision and care of campers in a children's camp, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes, but is not limited to: head counselor, assistant head counselor, specialist counselor instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(ii) *Children's camp* means any establishment which, as a whole or part of its activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs of supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play schools, or by any other name. The term children's camp does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year.

§ 142-2.15 Voluntary absence.

Voluntary absence includes any absence from work not directed by the employer or the employer's agent and not designed or planned by the employer or the employee to evade minimum wage standards. Voluntary absence does not include any absence contemplated in the employment contract or incurred as a condition of continued employment; or at the direction or suggestion of the employer or his agent; or recurrent or periodic absence, except such absence for medical treatment under a doctor's care.

§ 142-2.16 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece work basis, salary, or any basis other than hourly rate, the regular hourly wage rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 142-2.17 Split shift.

A *split shift* is a schedule of daily hours in which the working hours required or permitted are not consecutive. No meal period of one hour or less shall be considered an interruption of consecutive hours.

§ 142-2.18 Spread of hours.

The *spread of hours* is the interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals off duty.

§ 142-2.19 Meal.

A *meal* shall provide adequate portions of a variety of wholesome, nutritious foods, and shall include at least one of the types of foods from all four of the following groups:

(a) fruits or vegetables;

(b) cereals, bread or potatoes;

(c) eggs, meat, fish or poultry;

(d) milk, tea or coffee; except that for breakfast, group (c) may be omitted if both cereal and bread are offered in group (b).

§ 142-2.20 Lodging.

Lodging includes room, house or apartment, and means living accommodations which meet generally accepted standards for protection against fire, and all structural, sanitation and similar standards in State and local laws, codes, regulations and ordinances applicable to the premises.

§ 142-2.21 Tips.

Tips, or *gratuities*, shall mean voluntary contributions received by the employee from a guest, patron, customer or other person for services rendered. No gratuities or tips shall be deemed received for the purpose of this Part if their acceptance is prohibited by the employer or prohibited by law.

§ 142-2.22 Required uniform.

A *required uniform* shall be that clothing worn by an employee, at the request of the employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of an employee's ordinary wardrobe.

§ 142-2.23 Student.

A *student* means an individual who is enrolled in and regularly attends a course of instruction at a state-licensed educational institution of learning leading to a degree, certificate or diploma, or who is completing residence requirements for a degree.

SUBPART 142-3

PROVISIONS APPLICABLE TO EMPLOYEES IN NONPROFITMAKING INSTITUTIONS WHICH HAVE NOT ELECTED TO BE EXEMPT FROM COVERAGE UNDER A MINIMUM WAGE ORDER

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MINIMUM WAGE AND REGULATIONS

§ 142-3.1 Basic minimum hourly wage rate.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$11.00 per hour on and after December 31, 2016;

\$13.00 per hour on and after December 31, 2017;

\$15.00 per hour on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$10.50 per hour on and after December 31, 2016;

\$12.00 per hour on and after December 31, 2017;

\$13.50 per hour on and after December 31, 2018;

\$15.00 per hour on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$10.00 per hour on and after December 31, 2016;

\$11.00 per hour on and after December 31, 2017;
\$12.00 per hour on and after December 31, 2018;
\$13.00 per hour on and after December 31, 2019;
\$14.00 per hour on and after December 31, 2020;
\$15.00 per hour on and after December 31, 2021,

(3) *Remainder of state* (outside of New York City and Nassau, Suffolk and Westchester counties)

\$9.70 per hour on and after December 31, 2016;
\$10.40 per hour on and after December 31, 2017;
\$11.10 per hour on and after December 31, 2018;
\$11.80 per hour on and after December 31, 2019;
\$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors. Such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer-- shall not be deemed to be permitted to work or required to be available for work:

(1) during his or her normal sleeping hours solely because such employee is required to be on call during such hours; or

(2) at any other time when he or she is free to leave the place of employment.

Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

§ 142-3.2 Overtime rate.

An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13 of 29 U.S.C. 201 *et seq.*, the Fair Labor Standards Act of 1938, as amended, provided, however that the exemptions set forth in section 13(a)(4) shall not apply. In addition, an employer shall pay employees subject to the exemptions of section 13 of the Fair Labor Standards Act, as amended, except employees subject to section 13(a)(4) of such act, overtime at a wage rate of one and one-half times the basic minimum hourly rate. The Fair Labor Standards Act is published in the *United States Code*, the official compilation of Federal statutes, by the Government Printing Office, Washington, DC. Copies of the Fair Labor Standards Act are available at the following office:

New York State Department of Labor
Counsel's Office
State Office Building Campus
Building 12, Room 509
Albany, NY 12240-0005

The applicable overtime rate shall be paid for each workweek:

	<i>Non-residential employees</i>	<i>Residential employees</i>
For working time over	40 hours	44 hours

This provision shall not apply to residential house parents in children's homes.

§ 142-3.3 Call-in pay.

An employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage.

§ 142-3.4 Additional rate for split and spread of hours.

An employee shall receive one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage required herein for any day in which:

- (a) the spread of hours exceeds 10 hours;
- (b) there is a split shift; or
- (c) both situations occur.

§ 142-3.5 Allowances.

(a) *Allowances for meals, lodging and utilities for all employees except employees in children's camps.*

(1) Meals and lodging furnished by an employer to an employee may be considered a part of the minimum wage, but shall be valued at not more than:

(i) Meals, for work performed in

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$3.80 per meal on and after December 31, 2016;
 \$4.50 per meal on and after December 31, 2017;
 \$5.15 per meal on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$3.60 per meal on and after December 31, 2016;
 \$4.15 per meal on and after December 31, 2017;
 \$4.65 per meal on and after December 31, 2018;
 \$5.15 per meal on and after December 31, 2019;

(b) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$3.45 per meal on and after December 31, 2016;

\$3.80 per meal on and after December 31, 2017;
\$4.15 per meal on and after December 31, 2018;
\$4.50 per meal on and after December 31, 2019;
\$4.80 per meal on and after December 31, 2020;
\$5.15 per meal on and after December 31, 2021;

(c) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$3.35 per meal on and after December 31, 2016;
\$3.60 per meal on and after December 31, 2017;
\$3.80 per meal on and after December 31, 2018;
\$4.05 per meal on and after December 31, 2019;
\$4.30 per meal on and after December 31, 2020.

(ii) Lodging, for work performed in

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$6.55 per day on and after December 31, 2016;
\$7.75 per day on and after December 31, 2017;
\$8.90 per day on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$6.25 per day on and after December 31, 2016;
\$7.15 per day on and after December 31, 2017;
\$8.05 per day on and after December 31, 2018;
\$8.90 per day on and after December 31, 2019;

(b) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$5.95 per day on and after December 31, 2016;
\$6.55 per day on and after December 31, 2017;
\$7.15 per day on and after December 31, 2018;
\$7.75 per day on and after December 31, 2019;
\$8.30 per day on and after December 31, 2020;
\$8.90 per day on and after December 31, 2021;

(c) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$5.75 per day on and after December 31, 2016;
\$6.20 per day on and after December 31, 2017;
\$6.60 per day on and after December 31, 2018;
\$7.00 per day on and after December 31, 2019;
\$7.45 per day on and after December 31, 2020.

(2) When a house or apartment and utilities are furnished by an employer to an employee, a fair and reasonable amount may be allowed for such facilities, which amount shall not exceed the lesser of either the

value of prevailing rentals in the locality for comparable facilities, or the following amounts, for work performed in

(i) *New York City* for

(a) *Large employers* of eleven or more employees

\$13.70 per day on and after December 31, 2016;
\$16.20 per day on and after December 31, 2017;
\$18.65 per day on and after December 31, 2018;

(b) *Small employers* of ten or fewer employees

\$13.05 per day on and after December 31, 2016;
\$14.95 per day on and after December 31, 2017;
\$16.80 per day on and after December 31, 2018;
\$18.65 per day on and after December 31, 2019;

(ii) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$12.45 per day on and after December 31, 2016;
\$13.70 per day on and after December 31, 2017;
\$14.95 per day on and after December 31, 2018;
\$16.20 per day on and after December 31, 2019;
\$17.40 per day on and after December 31, 2020;
\$18.65 per day on and after December 31, 2021;

(iii) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 per day on and after December 31, 2016;
\$12.95 per day on and after December 31, 2017;
\$13.80 per day on and after December 31, 2018;
\$14.70 per day on and after December 31, 2019;
\$15.55 per day on and after December 31, 2020.

(b) *Allowances for meals and lodging for employees in children's camps.* Meals and lodging furnished by an employer to an employee may be considered a part of the minimum wage, but shall be valued at not more than:

(1) Meals, for work performed in

(i) *New York City* for

(a) *Large employers* of eleven or more employees

\$3.80 per meal on and after December 31, 2016;
\$4.50 per meal on and after December 31, 2017;
\$5.15 per meal on and after December 31, 2018;

(b) *Small employers* of ten or fewer employees

\$3.60 per meal on and after December 31, 2016;
\$4.15 per meal on and after December 31, 2017;
\$4.65 per meal on and after December 31, 2018;
\$5.15 per meal on and after December 31, 2019;

(ii) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$3.45 per meal on and after December 31, 2016;
\$3.80 per meal on and after December 31, 2017;
\$4.15 per meal on and after December 31, 2018;
\$4.50 per meal on and after December 31, 2019;
\$4.80 per meal on and after December 31, 2020;
\$5.15 per meal on and after December 31, 2021;

(iii) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$3.35 per meal on and after December 31, 2016;
\$3.60 per meal on and after December 31, 2017;
\$3.80 per meal on and after December 31, 2018;
\$4.05 per meal on and after December 31, 2019;
\$4.30 per meal on and after December 31, 2020.

(2) Lodging, for work performed in

(i) *New York City* for

(a) *Large employers* of eleven or more employees

\$0.55 per hour on and after December 31, 2016;
\$0.65 per hour on and after December 31, 2017;
\$0.75 per hour on and after December 31, 2018;

(b) *Small employers* of ten or fewer employees

\$0.55 per hour on and after December 31, 2016;
\$0.60 per hour on and after December 31, 2017;
\$0.70 per hour on and after December 31, 2018;
\$0.75 per hour on and after December 31, 2019;

(ii) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$0.50 per hour on and after December 31, 2016;
\$0.55 per hour on and after December 31, 2017;
\$0.60 per hour on and after December 31, 2018;
\$0.65 per hour on and after December 31, 2019;
\$0.70 per hour on and after December 31, 2020;
\$0.75 per hour on and after December 31, 2021;

(iii) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$0.50 per hour on and after December 31, 2016;
\$0.55 per hour on and after December 31, 2018;
\$0.60 per hour on and after December 31, 2019;
\$0.65 per hour on and after December 31, 2020.

(c) *Required uniforms.* No allowance for supply, maintenance or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform, he shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages. Where an employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein at the weekly rate set forth below, based on the number of hours worked, where employees who work over 30 hours per week shall be paid the High rate, employees who work more than 20 hours but fewer than 30 hours shall be paid the Medium rate and employees who work 20 hours or fewer shall be paid the Low rate for work performed in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2016;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2017;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$13.05 High, \$10.35 Medium, \$6.25 Low on and after December 31, 2016;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2017;
\$16.80 High, \$13.30 Medium, \$8.05 Low on and after December 31, 2018;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$12.45 High, \$9.85 Medium, \$5.95 Low on and after December 31, 2016;
\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2017;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2018;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2019;
\$17.40 High, \$13.75 Medium, \$8.30 Low on and after December 31, 2020;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2021;

(3) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 High, \$9.55 Medium, \$5.75 Low on and after December 31, 2016;
\$12.95 High, \$10.25 Medium, \$6.20 Low on and after December 31, 2017;
\$13.80 High, \$10.90 Medium, \$6.60 Low on and after December 31, 2018;
\$14.70 High, \$11.60 Medium, \$7.00 Low on and after December 31, 2019;
\$15.55 High, \$12.30 Medium, \$7.45 Low on and after December 31, 2020.

§ 142-3.6 Employer payroll records requirements for nonprofitmaking institutions.

(a) Every nonprofitmaking institution shall establish, maintain, and preserve for not less than six years, records for each employee; and these records shall contain the following data:

(1) name and address;

(2) social security number, if any;

(3) wage rate;

(4) a record of hours worked daily and weekly during each payroll period, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10; and

(5) a record for each payroll period of:

(i) the amount of gross wages;

(ii) deductions, if any;

(iii) allowances, if any; and

(iv) net wages paid.

(b) Every such institution employing persons in an executive or administrative capacity shall establish, maintain and preserve for not less than six years, records which show for each such individual:

(1) name and address;

(2) social security number, if any; and

(3) total wages, and the value of allowances, if any, for each payroll period.

(c) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at a place within New York State specified by the commissioner.

§ 142-3.7 Required personnel records for nonprofitmaking institutions.

(a) Every nonprofitmaking institution shall establish, maintain and preserve for not less than six years, records with respect to each individual permitted to work:

(1) as an apprentice;

(2) as a learner;

(3) in an executive, administrative or professional capacity;

(4) if the individual is a student;

(5) if the work performed is not under any express contract of hire and is incidental to or in return for charitable aid conferred on such individual;

(6) if the earning capacity of such individual is impaired by age, physical or mental deficiency or injury;

(7) in or for a summer camp or conference in not more than 13 calendar weeks in a calendar year; or

(8) as a staff counselor in a children's camp.

(b) These records shall contain the following data:

(1) the date of commencement of work;

(2) a statement indicating the classification under which the employee is permitted to work;

(3) the nature of work performed; and

(i) for an apprentice, a copy of the apprentice program and agreement;

(ii) for a learner, a statement as to the nature and extent of the instruction and supervision;

(iii) for a student, a statement from the school which the student attends indicating whether or not:

(a) he or she is a student and his or her course of instruction is one leading to a degree, diploma or certificate; or

(b) he or she is completing residence requirements for a degree;

(iv) for an individual permitted to work in return for charitable aid conferred, a statement as to the dates, nature and extent of the charitable aid conferred;

(v) for an individual permitted to work whose earning capacity for such work is impaired by age, physical or mental deficiency or injury:

(a) a statement as to the age;

(b) a report from a doctor or other competent authority concerning the nature and extent of the deficiency or injury;

(c) a statement as to the manner in which, and extent to which age, deficiency or injury impairs the earning capacity for the work to which such individual is assigned.

§ 142-3.8 Statement to employee.

Every employer covered by this Part shall furnish to each of his employees a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions, and net wages.

§ 142-3.9 Posting.

Every employer covered by this Part shall post in a conspicuous place in his establishment, a notice issued by the Department of Labor summarizing minimum wage provisions.

§ 142-3.10 Basis of wage payment.

The minimum wage provided by this Part shall be required for each payroll period, whether the wage is on a commission, bonus, piece rate, or any other basis.

§ 142-3.11 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

- (1) deductions for spoilage or breakage;
- (2) deductions for cash shortages or losses;
- (3) fines or penalties for lateness, misconduct, or quitting by an employee without notice.

(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by his employer.

DEFINITIONS

§ 142-3.12 Employee.

(a) *Employee* means any individual permitted to work by an employer, except as provided below.

(b) *Employee* also does not include any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) *Employee* also does not include any individual permitted to work in, or as:

(1) Labor on a farm. Farm employees are covered under the provisions of the minimum wage order for farm workers. Part 190 of this Title promulgated by the Commissioner of Labor pursuant to article 19-A of the New York State Labor Law.

(2) Executive, administrative or professional capacity.

(i) Executive. Work in a *bona fide... executive capacity* means work by an individual:

(a) whose primary duty consists of the management of the institution in which such individual is employed or of a customarily recognized department or subdivision thereof;

(b) who customarily and regularly directs the work of two or more other employees therein;

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(d) who customarily and regularly exercises discretionary powers; and

(e) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(ii) *Administrative. Work in a bona fide... administrative... capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of his or her employer;

(b) who customarily and regularly exercises discretion and independent judgment;

(c) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (*e.g.*, employment as an administrative assistant), or who performs, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

(1) *New York City* for

(i) *Large employers* of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) *Small employers* of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(iii) *Professional*. Work in a *bona fide... professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes; or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends primarily on the invention, imagination or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine 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.

(3) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

- (i) making sales;
- (ii) selling and delivering articles or goods; or
- (iii) obtaining orders or contracts for service or for the use of facilities.

(4) Taxicab driver. The term *driver engaged in operating a taxicab* means an individual employed to drive an automobile equipped to carry no more than seven passengers, which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis, and the use of which is generally limited to a community's local transportation needs and which is not operated over fixed routes, or between fixed terminals or under contract.

(5) Volunteer. The term *volunteer* means a person who works for a nonprofitmaking institution under no contract of hire, express or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions of work.

(6) Learner. (i) The term *learner* means a person in a nonprofitmaking institution who is participating in a bona fide training program for an occupation in which such person is employed, the required training period for which is recognized to be at least two weeks.

(ii) A bona fide training program is one which must involve either formal instruction or on-the-job training, during a period when the learner is entrusted with limited responsibility and is under supervision or guidance.

(iii) No person shall be deemed a learner at an institution in an occupation for which he or she has completed the required training; and in no case may a person be deemed a learner in such an occupation at an institution after 10 weeks of such training, except that a person may be deemed a learner for a longer period if the commissioner finds after investigation that for the particular occupation a minimum of proficiency cannot be acquired in 10 weeks.

(7) Apprentice. (i) The term *apprentice* means a person in a nonprofitmaking institution whose work at an institution (a) is in an apprenticeable trade or occupation, and (b) is part of a bona fide training program leading to qualification as a journeyman in the trade or occupation.

(ii) No such apprentice training program shall be deemed bona fide unless it meets all of the following:

(a) it is for an occupation which is on either the Federal or New York State list of apprenticeable trades and occupations or is commonly recognized as such, but shall not include any of the following:

- (1) occupations in the distributive field;
- (2) managerial occupations;
- (3) clerical occupations;

(4) professional or semiprofessional occupations (occupations for which entrance requirements customarily include education of college level);

(b) it requires at least two years (4,000 hours) of work experience;

(c) it provides for a schedule of work processes or operations in which experience is to be given the apprentice on the job;

(d) it involves the development of skill sufficiently broad to be applicable in like occupations rather than to be limited to the requirements of one institution; and

(e) the employer keeps and makes available written evidence of the apprenticeship agreement or a detailed schedule of work processes and wages.

(8) Member of a religious order. The term *religious order* means a group of persons who are joined together under the authority of a religious leader, and are dedicated to the performance of religious works.

(9) Sexton. The term *sexton* means an individual who works as a caretaker at a place where religious services are held, or whose duties at such place are solely of a religious nature, or whose duties are partly religious and partly as a caretaker.

(10) Person who works in return for charitable aid. The term *work... incidental to or in return for charitable aid conferred* means any work or duties performed by a person who is not under any express contract of hire, in or for a nonprofitmaking religious or charitable institution, as a means of discharging an obligation to such an institution for charitable aid given to the worker.

(11) Student in or for a nonprofitmaking institution. The term *student* means an individual who is enrolled in and regularly attends during the daytime a course of instruction leading to a degree, certificate or diploma, offered at an institution of learning, or who is completing residence requirements for a degree. A person is deemed to be a student during the time that school is not in session if such person was a student during the preceding semester.

(12) Person whose earning capacity is impaired. The phrase *earning capacity... is impaired by... age, or by physical or mental deficiency or injury*, applies to a person in a nonprofitmaking institution whose earning capacity for the work to which he or she is assigned to perform is impaired by age, or by physical or mental deficiency or injury; but a person's earning capacity may not be deemed impaired by age until such person's 65th birthday.

(13) Staff counselor in a children's camp. (i) A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision and care of campers in a children's camp, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes but is not limited to: head counselor, assistant head counselor, specialist counselor or instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(ii) *Children's camp* means any establishment which, as a whole or part of its activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs or supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play school, or by any other name. The term *children's camp* does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year.

(14) In or for a summer camp or conference for not more than three months annually.

(i) A person who works in not more than 13 calendar weeks in a calendar year in or for a summer camp or conference is deemed to have worked for *not more than three months annually*. A person who works in more than 13 calendar weeks in a calendar year is deemed to be an employee for the entire period of employment.

(ii) A *summer camp or conference* means a camp or conference which is open any part of the period from June 21st to September 21st, and which is operated by a nonprofitmaking institution.

§ 142-3.13 Nonprofitmaking institution.

A *nonprofitmaking institution* means any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 142-3.14 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece-rate, salary or any basis other than hourly rate, the regular hourly wage rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 142-3.15 Split shift.

A *split shift* is a schedule of daily hours in which the working hours required or permitted are not consecutive. No meal period of one hour or less shall be considered an interruption of consecutive hours.

§ 142-3.16 Spread of hours.

The *spread of hours* is the interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals of duty.

§ 142-3.17 Meal.

A *meal* shall provide adequate portions of a variety of wholesome, nutritious foods, and shall include at least one of the types of food from all four of the following groups:

(a) fruits or vegetables;

(b) cereals, bread or potatoes;

(c) eggs, meat, fish or poultry; and

(d) milk, tea or coffee; except that for breakfast, group (c) may be omitted if both cereal and bread are offered in group (b).

§ 142-3.18 Lodging.

Lodging includes room, house or apartment, and means living accommodations which meet generally accepted standards for protection against fire, and all structural, sanitation and similar standards in State and local laws, codes, regulations and ordinances applicable to the premises.

§ 142-3.19 Required uniform.

A *required uniform* shall be that clothing worn by an employee, at the request of an employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of employee's ordinary wardrobe.