

CHECKLISTS AND COMPLIANCE TIPS

FOR NEW YORK CITY HOSPITALITY EMPLOYERS

ONBOARDING CHECKLIST: New Hire Paperwork and Required Notices to Employees

New Hire Documents Prepared by the Employer

(Provide to employees at time of hire and/or as otherwise applicable; maintain in appropriate files)

- Employment Application** (signed and dated by applicant)
 - Include resume, if provided
 - Do not accept photos/headshots
 - Do not inquire about wage or salary history
 - Do not request credit history (unless, for example, position is non-clerical with regular access to high level trade secrets—consultation with counsel is recommended)
 - Do not inquire about arrest/conviction record until after making conditional offer and only in compliance with applicable law—consultation with counsel is recommended
 - Do not inquire about workers' compensation benefits or disability benefits, or ask if applicant is an injured veteran
 - Do not fingerprint applicants or employees
- Offer Letter** (optional)
- Employee Handbook Acknowledgement of Receipt** (containing at-will disclaimer) (signed and dated by employee)
 - Distribution of an employee handbook is highly recommended as certain policies are required by law
- EEO-1 Self-Identification Form** (if 100+ employees)
- Direct Deposit Form** (if applicable)
- Employee Uniform Receipt** (if applicable)
- Tip Policy/Credit Acknowledgement** (if applicable)
- Diversity/Harassment Training Acknowledgement** (if applicable)
- Alcohol Awareness Policy** (if applicable)
- Confidentiality/Non-Disclosure Agreement** (optional)
- Non-Compete and/or Non-Solicitation Agreement** (optional)
 - Generally, not appropriate for rank-and-file employees
- Arbitration Agreement** (optional)

Forms and Notices Required by Government Agencies

(Provide to employees at time of hire and/or as otherwise applicable; maintain in appropriate files)

Federal

- USCIS Form I-9** (Employment Eligibility Verification)
 - Should be completed on the first day of employment by employee and manager (it cannot be completed earlier than the first day)
 - Available at: <https://www.uscis.gov/i-9>
- IRS Form W-4** (Employee's Withholding Allowance Certificate) (signed and dated)
 - Available at: <https://www.irs.gov/forms-pubs/about-form-w-4>
- Fair Credit Reporting Act** (if performing background check)
 - Summary of Rights, available at: <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>
 - Disclosure and Authorization Form
- Children's Health Insurance Program (CHIP)** (if employer maintains group health plan)
 - Employer CHIP Notice regarding premium assistance opportunities must be provided to employees upon hire and annually
 - Do not staple or bind together with other documents
 - Model notice available in English and Spanish at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/chipra>

New York State

- New York State Department of Taxation and Finance Form IT-2104** (Employee's Withholding Allowance Certificate) (signed and dated)
 - Available at: https://www.tax.ny.gov/forms/withholding_cur_forms.htm
- New York State Notice and Acknowledgement of Pay Rate and Payday** (LS 54, LS 55, LS 57)
 - There are different versions for hourly rate employees (LS 54), multiple hourly rate employees (LS 55), and salaried employees (LS 57)
 - Available at: <https://dol.ny.gov/forms-and-publications> (refine results by searching name of form—e.g., "LS 54", "LS 55", and "LS 57")
 - Notice must be provided at time of hire to every employee and at any time there is a change in pay rate, payday, or allowances taken
 - Notice must be provided in English and the employee's primary language if available from the New York State Department of Labor
 - Notice must be retained for six years; penalty of up to \$5,000 per employee for failure to timely provide properly completed notice

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- Sexual Harassment Prevention Policy**
 - Policy must be provided in English and the employee’s primary language (if the New York Labor Commissioner provides a model policy in that language) at time of hire and at every annual sexual harassment prevention training
 - Model materials are available at: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>
- New York State Paid Family Leave**
 - Employers must notify employees of their right to Paid Family Leave
 - Statement of Rights available in multiple languages at: <https://paidfamilyleave.ny.gov/pfl-271s-form-2021>
 - Model Language for Employee Materials available at: <http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/pfl-model-language-for-employee-materials-2021.pdf>
 - Employers should notify employees before collecting any payroll contributions
 - Notice of Paid Family Leave Payroll Deduction Form available at: <http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/pfl-pay-deduction-notice-2021.pdf>
 - Employee Opt-Out of Paid Family Leave Benefits Form (if applicable) available at: <https://paidfamilyleave.ny.gov/pfl-waiver-form>
- New York Correction Law Article 23-A** (if performing background check)
 - Available at: <https://dol.ny.gov/system/files/documents/2021/02/correction-law-article-23a.pdf>

New York City

- New York City Earned Safe and Sick Time Act Notice of Employee Rights**
 - English version available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSafeSickLeave-MandatoryNotice-English.pdf>
 - Available in other languages at: <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>
 - Provide Notice in English and employee’s primary language if made available by the NYC Department of Consumer and Worker Protection
 - Written policy also must be provided to employees at time of hire, within 14 days of any change to the policy, or upon employee request
- New York City Stop Sexual Harassment Act Factsheet**
 - Available in English and other languages at: <https://www1.nyc.gov/site/cchr/media/sexual-harassment-act-factsheet.page>
- New York City Pregnancy and Employment Rights Notice**
 - Available in English at: https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_Posters_2017.pdf
 - Available in Spanish at: https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/Pregnancy_Notice-Sp.pdf
 - Provide Notice in English and employee’s primary language if made available by the NYC Commission on Human Rights
- Commuter Benefits Participation Form** (applicable to employers with 20 or more full-time non-union employees)
 - Available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/about/CommuterBenefits-EmployerComplianceForm.pdf>
 - Available in other languages at: <https://www1.nyc.gov/site/dca/about/commuter-benefits-law.page>
 - Form must be retained for two years
- New York City Fair Chance Act Notice and Procedures** (if performing background check)
 - Available at: <https://www1.nyc.gov/site/cchr/media/fair-chance-act-campaign.page>

**The above lists are not exhaustive and do not include required notices to participants and beneficiaries of employee benefit plans.*

PERSONNEL FILE COMPLIANCE TIPS

Documents to Include in Personnel Files

- Employment application
- Offer of employment letter (if given)
- NYS Notice and Acknowledgement of Pay Rate and Payday form
- Tip policy/credit acknowledgement
- Employee Handbook Acknowledgement of Receipt
- Applicable job description
- IRS Form W-4
- NYS Department of Taxation and Finance Form IT-2104
- Performance evaluations
- Complaints from guests/co-workers
- Disciplinary forms/actions
- Awards or citations for excellent performance
- Notes on attendance
- Voluntary early departure forms
- Any restrictive covenant agreements (e.g., non-disclosure)
- Benefit enrollment documents (other than health insurance)
- Termination forms (including required NYS termination letter)
- Garnishments

Documents to Exclude/Keep in Separate Files

- I-9 forms and documentation (should be stored in one centralized file for all employees)
- Health insurance enrollment and related documents
- Any medical records or documents (all medical records must have limited access)
- Workers’ compensation forms/documentation
- Family and Medical Leave Act forms/documentation
- New York State Paid Family Leave forms/documentation
- New York City Earned Safe and Sick Time Act forms/documentation
- New York State Paid Sick Leave forms/documentation
- New York State COVID-19 Sick Leave forms/documentation
- Families First Coronavirus Response Act forms/documentation
- New York State COVID-19 Vaccination Leave forms/documentation
- COVID-19 Daily Health Screening Records
- COVID-19 Diagnostic Test Results
- COVID-19 Vaccination Records

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POSTING REQUIREMENTS CHECKLIST: Notices to Post at the Workplace

Federal Posters

- OSHA Job Safety and Health: It's the Law**
 - Available at: <https://www.osha.gov/publications/poster>
- EEO is the Law**
 - Available at: <https://www.eeoc.gov/employers/eeo-law-poster>
- Fair Labor Standards Act Minimum Wage Poster**
 - English version available at: <https://www.dol.gov/agencies/whd/posters/flsa>
 - Spanish version available at: <https://www.dol.gov/agencies/whd/posters/flsa/espanol>
 - Available in other languages at: <https://www.dol.gov/agencies/whd/posters>
- Employee Rights and Responsibilities Under the Family and Medical Leave Act** (for employers with 50 or more employees)
 - English version available at: <https://www.dol.gov/agencies/whd/posters/fmla>
 - Spanish version available at: <https://www.dol.gov/agencies/whd/posters/fmla/espanol>
- Your Rights Under the Uniformed Services Employment and Reemployment Rights Act**
 - Available at: https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf
- Employee Polygraph Protection Act Poster**
 - English version available at: <https://www.dol.gov/agencies/whd/posters/employee-polygraph-protection-act>
 - Spanish version available at: <https://www.dol.gov/agencies/whd/posters/employee-polygraph-protection-act/espanol>
- Break Time for Nursing Mothers** (optional/recommended)
 - English version available at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH1527.pdf>
 - Spanish version available at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH1527SPA.pdf>
- IER Right to Work Poster** (required for employers using E-Verify)
 - Available at: https://www.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf
- E-Verify Participation Poster** (required for employers using E-Verify)
 - Available at: <https://www.e-verify.gov/sites/default/files/everify/posters/EVerifyParticipationPoster.pdf>
- Employee Rights Under the H-2B Program** (if hiring non-U.S. citizens with H-2B Visas)
 - Available in English at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/H2B-eng.pdf>
 - Available in Spanish at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/H2B-span.pdf>

New York State Posters

- Minimum Wage/New York State Labor Law**
 - Miscellaneous Industry Employees Minimum Wage Poster, available at: <https://dol.ny.gov/system/files/documents/2021/03/ls207.pdf>
 - Hospitality Industry Employees Minimum Wage Poster, available at: <https://dol.ny.gov/system/files/documents/2021/03/ls207.3.pdf>
 - Deductions from Wages, available at: https://dol.ny.gov/system/files/documents/2021/02/ls605_deductions_from_wages.pdf
 - Tip Appropriation, available at: https://dol.ny.gov/system/files/documents/2021/02/ls204_tip_appropriation.pdf
 - Equal Pay, available at: https://dol.ny.gov/system/files/documents/2021/03/ls603_equity_provision.pdf
- Unemployment Insurance/New York State Unemployment Insurance Law**
 - Details for obtaining poster available at: <https://dol.ny.gov/system/files/documents/2021/02/ia132.pdf>
- Workers' Compensation Notice of Compliance/New York State Workers' Compensation Law**
 - Supplied by employer's insurance carrier
- Disability Benefits Notice of Compliance/New York State Workers' Compensation Law**
 - Supplied by employer's insurance carrier
- Paid Family Leave Notice of Compliance**
 - Supplied by employer's insurance carrier
- Discrimination Notice/New York State Human Rights Law**
 - Available at: <https://dhr.ny.gov/posters>
- Time Off to Vote/New York State Election Law**
 - Available at: <https://www.elections.ny.gov/NYSBOE/elections/TimeOffToVoteNotice.pdf>
- Child Labor Law Summary of Work Hours/New York State Labor Law**
 - Required to post schedule of hours of work for minors under 18 years of age
 - Sample schedule available at: https://dol.ny.gov/system/files/documents/2021/02/ls172_minors_work_schedule_sample.pdf
 - Details regarding permitted work hours for minors available at: <https://dol.ny.gov/hours-work-minors>
- Blood Donation Leave/New York State Labor Law**
 - Available at: <https://dol.ny.gov/system/files/documents/2021/03/ls703.pdf>

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- ❑ **Criminal Conviction Records/New York Correction Law**
 - Available at: <https://dol.ny.gov/system/files/documents/2021/02/correction-law-article-23a.pdf>
- ❑ **Notice of Time Off and Work Hours/New York State Labor Law**
 - Employers must notify employees in writing or by publicly posting their policy on sick leave, vacation, personal leave, holidays, and hours
 - Details available at: <https://dol.ny.gov/system/files/documents/2021/03/ls606.pdf>
- ❑ **No Smoking/New York State Clean Indoor Air Act**
 - Employers must post “No Smoking” signs or the “No Smoking” symbol in every place where the act prohibits or restricts smoking
 - Details available at: <https://www.health.ny.gov/publications/3402/>
 - Printable signs available at: https://www.health.ny.gov/prevention/tobacco_control/clean_indoor_air_act/
- ❑ **Right of Nursing Mothers to Express Breast Milk/New York State Labor Law**
 - Available at: https://dol.ny.gov/system/files/documents/2021/02/ls702_guidelines_regarding_the_rights_of_nursing_mothers_to_express_breast_milk_in_the_work_place.pdf
 - Alternatively, the notice can be provided individually to each employee
- ❑ **Sexual Harassment Prevention Policy Notice (optional/recommended)**
 - English version available at: https://www.ny.gov/sites/ny.gov/files/atoms/files/sexualharassmentpreventionposter_English_handfill.pdf
 - Available in other languages at: <https://www.ny.gov/combating-sexual-harassment-workplace/combat-harassment-translations>

New York City Posters

- ❑ **New York City Earned Safe and Sick Time Act Notice of Employee Rights**
 - English version available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSafeSickLeave-MandatoryNotice-English.pdf>
 - Available in other languages at: <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>
- ❑ **Stop Sexual Harassment Act Notice**
 - Notice must be posted in English and Spanish
 - Available at: <https://www1.nyc.gov/site/cchr/law/sexual-harassment-factsheets-posters.page>
- ❑ **New York City Pregnancy and Employment Rights**
 - Available in English at: https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_Poster_2017.pdf
 - Available in Spanish at: https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/Pregnancy_Notice-Sp.pdf
- ❑ **New York City Temporary Schedule Change Law Notice of Rights**
 - Notice must be printed on 11” x 17” paper and posted in English and in any primary language of at least 5 percent of the employees
 - English version available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/TemporaryScheduleChange-Notice-English.pdf>
 - Versions in other languages may become available at: <https://www1.nyc.gov/site/dca/workers/workersrights/temporary-schedule-change-law-employees.page>
- ❑ **New York City Fair Workweek Law Notice** (applicable to covered “fast food” employers with 30 or more establishments nationally)
 - Notice must be posted in English and in any primary language of at least 5 percent of the workers (if made available by NYC)
 - English version available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/FastFood-FairWorkweek-Notice-English.pdf>
 - Available in other languages at: <https://www1.nyc.gov/site/dca/businesses/fairworkweek-deductions-laws-employers.page>

NEW YORK STATE WAGE THEFT PREVENTION ACT COMPLIANCE TIPS

Notice of Pay Rate Forms

- Use the correct version of the notice for hourly rate employees, multiple hourly rate employees, and salaried employees
- Ensure that all fields are completed and that the employee checks the appropriate box in the employee acknowledgement section, prints the employee’s name, and signs and dates the notice
- List the full minimum and overtime wage rates for tipped employees (not the tipped rates)
- List any tip credits and meal credits as “allowances taken”
- Provide the notice in the employee’s primary language if it is available from the New York State Department of Labor
- Provide the notice at the time of hiring and at least 7 days in advance of any change to the employee’s pay rate, allowances claimed (*e.g.*, tip credit, meal credit, etc.), or payday
- Maintain the notice for a minimum of six years (the employer should keep the original and provide the employee a copy)

Wage Statements

- Specify all allowances claimed as part of the minimum wage, including any tip credits and/or meal credits
- For tipped employees, the recommended “best practice” is to list the full minimum and overtime wage rates and then deduct any tip credits claimed
- State the total number of credits per pay period, the rate of the credit, the total amount (value) of credits taken per pay period, and the total amount (value) of credits taken year to date
- For example, if a New York City “food service worker” is paid at the full tip credit rate for 30 hours during a pay period, the wage statement should specify 30 tip credits at a tip credit rate of \$5.00 per hour for a total amount of \$150.00 in tip credits claimed
- State the total amount of safe/sick leave the employee accrued and used during the pay period and the employee’s total balance of accrued safe/sick leave (as required by New York City law)

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EMPLOYEE HANDBOOK CHECKLIST: Mandatory and Recommended Policies

I. Employment Policies

- Employment-At-Will** (except for covered “fast food” employers)
 - Equal Employment and Anti-Discrimination Policy**
 - Anti-Harassment Policy**
 - Sexual Harassment
 - Stop Sexual Harassment Act Factsheet
 - Sexual Harassment Complaint Form
 - Reporting Violations/Open-Door Policy**
 - Anti-Retaliation Policy**
 - Reasonable Accommodation**
 - Disabilities
 - Pregnancy
 - Religious Beliefs
 - Gender Identity/Expression
 - Non-Discrimination and Harassment Towards Guests and Other Third Parties**
 - Accommodating Guests**
 - Accessibility
 - Special Dietary Needs
 - Service Animals
 - Immigration Compliance**
 - Personnel Records**
 - Personal Belongings**
 - Removal of Property**
 - Phone Usage**
 - Solicitation and Distribution**
 - Smoking Policy**
 - Alcohol and Drug Abuse Policy**
 - Minimum Age Requirements for Alcohol Service**
 - Cash/Credit Card Handling**
-

II. Safety and Health

- Work-Related Injuries, Illnesses and Accidents**
 - Safety and Health Policies and Testing**
 - Safety Precautions**
 - COVID-19 Procedures and Precautions**
 - Food Safety**
 - Workplace Searches**
 - Video Monitoring**
 - Workplace Security**
 - Firearms and Other Weapons**
-

III. Payroll, Time and Attendance

- Employee Classifications**
 - Work Schedules and Attendance**
 - Time and Attendance Records**
 - Rest and Meal Periods**
 - Overtime**
 - Paycheck**
 - Direct Deposit**
 - Payroll Deductions**
 - Loans and Advances**
 - Safe Harbor Policy for Exempt Employees**
 - Pay Notice**
-

- Notice of Wage Rates and Tip Credit for “Food Service Employees” and “Service Employees”**
 - Gratuities**
 - Tip Reporting
 - Tip Pooling/Sharing
 - Tip Credit Notice
 - Credit Card Fees
 - Pay Adjustments**
-

IV. Employee Benefits and Leaves of Absence

- Paid Time Off/Paid Safe and Sick Leave** (State and City)
 - New York COVID-19 Sick Leave**
 - New York COVID-19 Vaccination Leave**
 - Family and Medical Leave** (if 50+ employees)
 - New York Paid Family Leave**
 - Holidays** (if offered)
 - Health Benefits** (if offered)
 - Commuter Benefits**
 - Workers’ Compensation**
 - Short Term Disability**
 - Unemployment Benefits**
 - Lactation Breaks/Lactation Room**
 - Time Off for Voting**
 - Military Leave**
 - Family Military Leave**
 - Bereavement Leave** (if offered)
 - Jury Duty**
 - Crime Victims, Domestic Violence Victims, and Criminal Proceeding Leave**
 - Blood and Bone Marrow Donation Leave**
 - Volunteer Emergency Responder Leave**
-

V. Use of Computers and Related Technologies

- Computer and E-Mail Usage**
 - Internet Usage**
 - Employee Blogging and Social Network Use**
-

VI. Confidentiality and Media Inquiries

- Confidentiality**
 - Media Policy**
-

VII. Standards of Conduct and Personal Appearance

- Standards of Conduct**
 - Fraternization and Employment of Family Members**
 - Personal Appearance**
 - Bullying**
-

VIII. Separation of Employment

- Termination/Resignation**
 - Return of Property**
 - Final Payment of Wages and Termination of Benefits**
-

IX. Acknowledgement of Receipt

- Employment-At-Will Acknowledgement**
- Tip Credit Acknowledgement**

**Not every policy is required or applicable to every employer. Consultation with counsel is recommended.*

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SEPARATION CHECKLIST: Notices to Departing Employees

Individual Termination or Resignation

Termination Letter

- New York employers must provide written notice of termination within five business days of termination of employment
- Notice must include exact date of termination and exact date of cancellation of employee benefits
- For covered “fast food” employers (30+ establishments nationally), the notice should provide the reason for the employee’s termination

Record of Employment Form

- Available at: https://dol.ny.gov/system/files/documents/2021/02/ia12_3.pdf

COBRA/New York State Insurance Law Election Notice (if applicable)

- Notice must be provided within 14 days of termination of employment
- Notice must describe the employee’s rights to continuation coverage and how to make an election of continuation coverage

Separation Agreement (optional)

Certain Group Terminations

New York State Worker Adjustment and Retraining Notification (NY WARN)

- Applicable to employers with 50 or more full-time employees in New York State
- Covered employers must provide notice if they:
 - Close an establishment, resulting in an “employment loss” for 25 or more full-time employees during any 30-day period; or
 - Order a mass layoff of 25 or more full-time employees affecting at least 33 percent of the full-time employees at the worksite or 250 full-time employees in total*
- Generally, notice must be provided at least 90 days prior to any planned “plant closing” or “mass layoff” to:
 - All affected employees
 - Any employee representatives (*i.e.*, labor union)
 - The New York State Department of Labor
 - The Local Workforce Investment Board
 - The chief elected official of local government and school district(s)
 - Each locality providing police, firefighting, emergency medical or ambulance services, or other emergency services to the work site

Federal Worker Adjustment and Retraining Notification (WARN)

- Applicable to employers with 100 or more full-time employees
- Covered employers must provide notice if they:
 - Close an establishment, resulting in an “employment loss” for 50 or more full-time employees during any 30-day period; or
 - Order a mass layoff of 50 or more full-time employees affecting at least 33 percent of the full-time employees at the worksite or 500 full-time employees in total*
- Generally, notice must be provided at least 60 days prior to any planned “plant closing” or “mass layoff” to:
 - Employees or their representatives
 - The state dislocated worker unit
 - The chief elected official of local government

*NY WARN and/or WARN also may apply to certain reductions in work hours or an employer’s relocation. Because these laws are complex and fact-specific, employers are urged to consult with counsel for further details regarding their particular situations.

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