



Your Rights As A Worker

Information On:

- Unemployment Insurance
- Occupational Safety and Health
- Discrimination
- Workers' Compensation
- Unpaid/Underpaid Wages

Your Rights As A Worker



Dear Friend,

One of my highest priorities has been to guarantee the rights of working people.

In March 2007, landmark legislation was enacted to increase workers'

compensation and, for the first time, an on-going maximum benefit rate increase would be indexed.

The New York State Legislature has also focused on removing the many dangers to the health and safety of workers that exist in the modern workplace, including passing the "Workers' Right-To-Know" Law. The Legislature continues to be at the forefront of workers' rights initiatives.

I hope this brochure is helpful. If you need assistance or further information on this or any other matter, please do not hesitate to let me know.

Sincerely,

John T. McDonald III
Member of Assembly

Unemployment Insurance

Employees who are out of work through no fault of their own and are able to demonstrate that they are actively seeking work are entitled to unemployment insurance benefits. Essentially, in order to be eligible for benefits, the employee must have earned \$1,600 in one of the four previous calendar quarters and must have worked in two quarters of that base period. The total wages paid to a claimant must be one and one-half times the claimant's high quarter wages. The claimant's benefit rate is 1/26th of the high quarter wages paid in the base period. If the claimant's high quarter wages are \$3,575 or less, the weekly benefit is 1/25th of the high quarter wages. Claimants are entitled to 26 weeks of benefits, plus any extension of benefits that may be in effect. In certain cases, claimants may also apply for additional benefits if they are enrolled in an approved course of study or training. Visit www.labor.ny.gov for more complete information.

Occupational Safety and Health

■ Toxic Substances in the Workplace

The presence of toxic substances in the workplace is a very serious problem. The first major law to address this issue is commonly referred to as the "Workers' Right-To-Know" Law, which was enacted in 1980. Under this measure, the New York State Department of Health is required to compile lists of toxic substances and to make this information available to employers. In turn, employers are obligated to inform their employees of all known and suspected toxic substances and the effects they may have on the employee. In addition to informing employees of the hazards, employers must institute a training program to educate employees about protective measures necessary for safe use and exposure to toxic substances. If you feel that you are being exposed to toxic substances and your employer has not taken measures to inform you, contact the federal Occupational Safety and Health Administration at 800-321-OSHA (800-321-6742). A "whistle-blower" provision is written into the law which prohibits an employer from discharging or disciplining an employee for asserting rights guaranteed under this measure.

■ Public Employees

Public employees are also protected from occupational safety and health hazards. The state Department of Labor is authorized to set standards for public employers and to investigate compliance with the law.

Important Phone Numbers

NYS Dept. of Labor Local County One-Stop Career Center:

Albany County—Capital Region

175 Central Avenue
Albany, NY 12206
(518) 462-7600, Ext. 162

Rensselaer County—Capital Region

1600 7th Avenue, 4th Floor
Troy, NY 12180
(518) 270-2860

Saratoga County—Saratoga-Warren-Washington-Counties

152 West High Street
Ballston Spa, NY 12020
(518) 884-4170

NYS Division of Human Rights—Albany Office

Agency Building 1, 2nd Floor
Empire State Plaza
Albany, NY 12220
(518) 474-2705 (or 2707)

NYS Workers' Compensation BD District Office (Albany)

District Office Location:
100 Broadway—Menands
Albany, NY 12241
(866) 750-5157

U.S. Dept. of Occupational Safety and Health Administration

401 New Karner Road, Suite 300
Albany, NY 12205-3809
(518) 464-4338

Legislative Office Building
Room 417
Albany, NY 12248
518-455-4474

mcdonaldj@assembly.state.ny.us

Discrimination

New York State continually works to address the problem of discrimination in the workplace. Employees are protected against unwarranted “retaliatory personnel action” from their employers and are given ample opportunity to seek remediation when they feel that discrimination is involved. If an employee has been discriminated against because of race, creed, sex, national origin, age, marital status, disability, military status, sexual orientation, genetic predisposition or carrier status, he/she should file a complaint with the New York State Division of Human Rights. Complaints should be reported to the NYS Division of Human Rights (DHR). Contact this agency at www.dhr.ny.gov, 888-392-3644, 718-741-8400, TDD/TTY: 718-741-8300.

■ Discrimination Due to Sexual Harassment

Sexual harassment in the workplace is a prohibited form of sex discrimination under the New York State Human Rights Act of 1964 and various local laws. It could consist of verbal harassment, unnecessary touching, constant brushing against a person’s body or other manifestations.

■ Discrimination Due to Claim for Compensation

Employees should be able to access Workers’ Compensation when injured on the job without fear that doing so would affect their employment status. Employers are prohibited from taking action against employees who have claimed or attempted to claim compensation or who have testified or plan to testify in a Workers’ Compensation hearing. Complaints of such discrimination should be filed with the Workers’ Compensation Board within two years of the violation. If the board finds that the employee was discharged or demoted because of discrimination, the employer would be subject to a fine of up to \$500.

■ Discrimination Due to Participation in Legal Activities

Employers in New York State are restricted from discriminating against their employees and job applicants on the basis of certain off-work activities. An employee is free to take part in lawful political or recreational activities, use legal consumable products or participate in labor union proceedings during off-work hours. If an employee feels he/she has been discriminated against because of off-the-job activities, he/she is entitled to seek relief and damages.

■ Whistle-blowers

Both public and private workers are protected against retaliation or discrimination by their employer for taking action against an employer’s unsafe and unlawful activity. If an employer does something in violation of law, rule or regulation and creates a danger to the public health and safety, the employee can:

- disclose this to a supervisor or public body after giving the employer notice and a reasonable time to cure the problem;
- provide information in a public investigation, hearing or inquiry; or
- refuse to take part in the activity.

If an employer retaliates for these actions, the worker may bring a lawsuit against the employer for relief, including an order for the employer to end the retaliation and reinstatement and reimbursement for lost wages, benefits and costs.

■ Discrimination Due to Display of the American Flag

Employees are protected from discharge or discrimination for displaying the American flag on their person or at their workstation, provided the flag does not interfere with the employee’s job duties. If the Human Rights commissioner finds discrimination, the employer may face a fine of up to \$2,000 and a court can order reinstatement with full benefits.

Workers’ Compensation

Workers’ Compensation benefits equal two-thirds of the worker’s average weekly wage for the previous year, up to \$739.83 for those injured on or after July 1, 2010; \$772.96 for those injured on or after July 1, 2011; and \$792.07 for those injured on or after July 1, 2012. It goes up to two-thirds the average weekly wage for those injured on or after July 1 of each succeeding year. Once the maximum benefit reaches two-thirds of the average weekly wage, the maximum benefit will be indexed annually. A worker who becomes disabled as a result of a job-related injury or illness is entitled to compensation benefits. Injured workers who have questions and concerns about their rights and benefits under the Workers’ Compensation Law can receive assistance directly from the Compensation Board by contacting the Office of Advocate for Labor and Injured Workers at 800-580-6665.

■ Survivors’ Benefits

Survivors who are dependents of workers killed on the job or who die as a result of an occupational injury or disease are also eligible for Workers’ Compensation benefits. A surviving spouse and other dependents may receive benefits of two-thirds of the deceased worker’s wages up to the maximum in effect at the time of death. In some cases, surviving parents or the estate may be entitled to a sum of \$50,000. Funeral expenses may also be paid, up to \$6,000 in metropolitan New York counties; up to \$5,000 in all others.

■ Occupational Diseases

Workers who contract slow-starting occupational diseases may still collect Workers’ Compensation benefits. If the disease develops long after the worker has been exposed to the condition that caused the disease, a claim for benefits may be filed as long as it is done within two years of the time the worker became disabled and discovered the disease arose out of his or her employment.

■ Occupational Health Clinics

New York’s regional occupational health clinics are located throughout the state. They can provide diagnosis of occupation-related illnesses and will investigate the problem’s source to help prevent future illnesses. For information log on to: www.health.ny.gov/environmental/workplace/clinic_network.htm or call: 1-866-807-2130.

■ Disability Benefits

Workers are entitled to disability benefits if they are sick and unable to work for eight or more consecutive days. Some government employees, farm workers, and professionals and teachers employed by religious, charitable and educational institutions may not be eligible for disability benefits.

■ Disability Classifications

An injured worker’s health care provider determines the extent of the disability. Cash benefits are directly related to whether you have a temporary total disability, a temporary partial disability, a permanent total disability, a permanent partial disability or a disfigurement.

■ Pregnancy Disability

Female employees who seek disability leave benefits for pregnancy are entitled to a maximum of 26 weeks. To file a claim for pregnancy disability benefits, the employee should notify the Workers’ Compensation Board within 30 days of becoming disabled in order to receive full benefits. If disability begins during employment or within four weeks of termination of employment, the employee should obtain a Workers’ Compensation DB 450 form from her employer, the employer’s insurance company or her doctor. It should be filed with the employer or the insurance company. Workers on unemployment insurance are entitled to receive pregnancy disability benefits when they are disabled and unable to seek work. If disability begins four or more weeks after termination of employment, the employee should obtain a DB 300 form from the Workers’ Compensation Board District Office or the local Unemployment Insurance Office. Employees with questions concerning eligibility for pregnancy disability benefits should contact the Workers’ Compensation Board.

■ Notice of Rights

Employers and their insurance carriers are required to give employees who may be eligible for Workers’ Compensation benefits or disability benefits written notice of their rights under these two programs. Workers who may be eligible for compensation payments must receive the notice within 10 days of the accident or injury. Workers who are off the job for seven consecutive days due to illness must receive their notice within five days.

For additional information, www.wcb.ny.gov, 877-632-4996

Non-Payment/Underpayment of Wages

Employees are entitled to be paid for all their hours of work. The state Department of Labor’s Division of Labor Standards investigates all complaints of minimum wage, unpaid wage and unpaid wage supplement cases. As passed by the Legislature, the minimum wage now \$7.25 per hour, will increase to \$8.00 per hour on Dec. 31, 2013; to \$8.75 on Dec. 31, 2014 and to \$9 per hour on Dec. 31, 2015. Employees who think they have not been fully paid for their work should contact the Division of Labor Standards, www.labor.ny.gov and type Division of Labor Standards in the “Search” box. Employers who continually violate this law could face felony charges.