



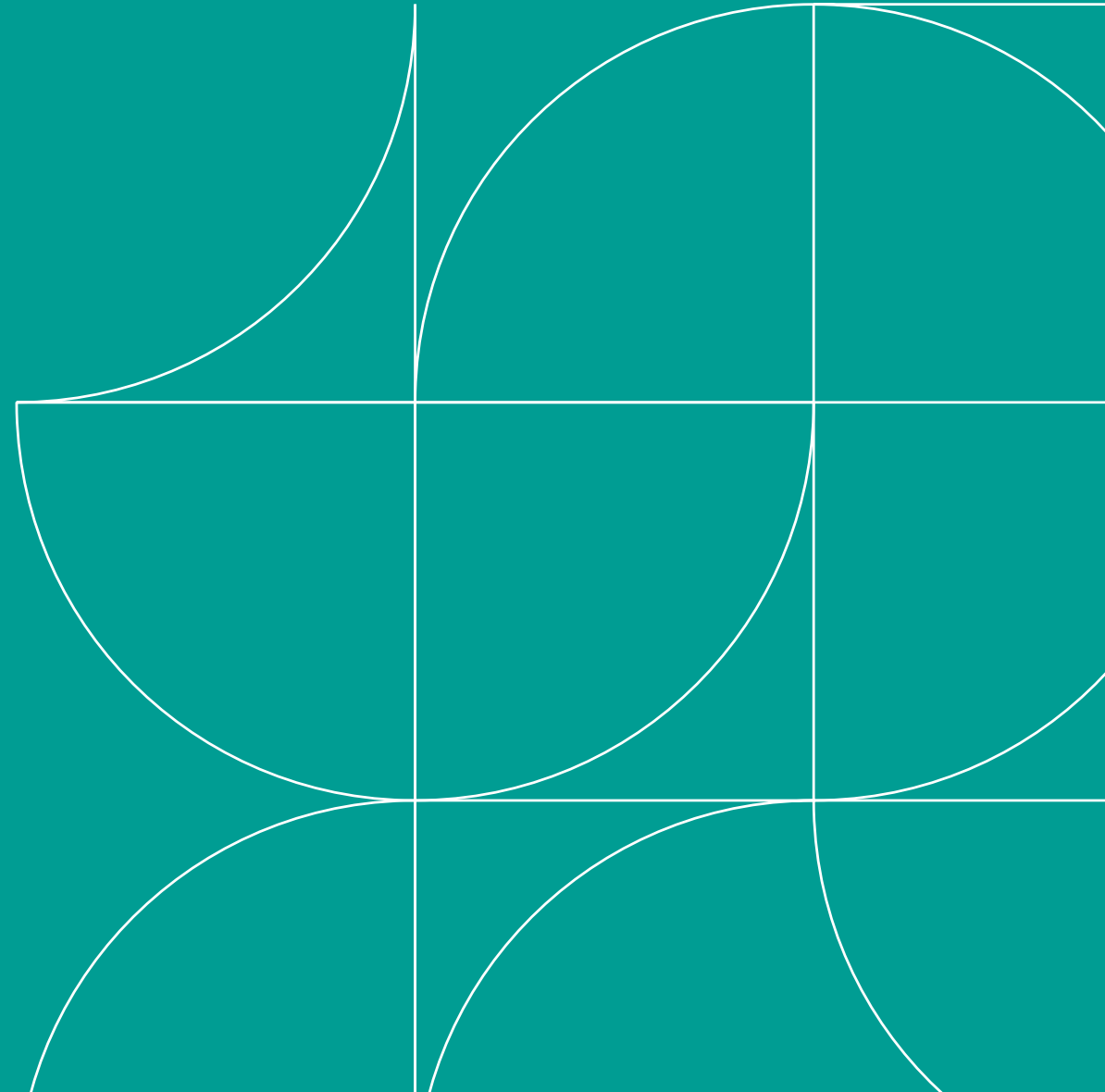
Off the Clock: Quarterly NY Wage & Hour Update

Howard M. Wexler, Kyle D. Winnick
& Cassandra M. Ficano

March 3, 2026

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2026 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Speakers



Howard M. Wexler
Partner
New York
hwexler@seyfarth.com



Kyle D. Winnick
Partner
New York
kwinnick@seyfarth.com



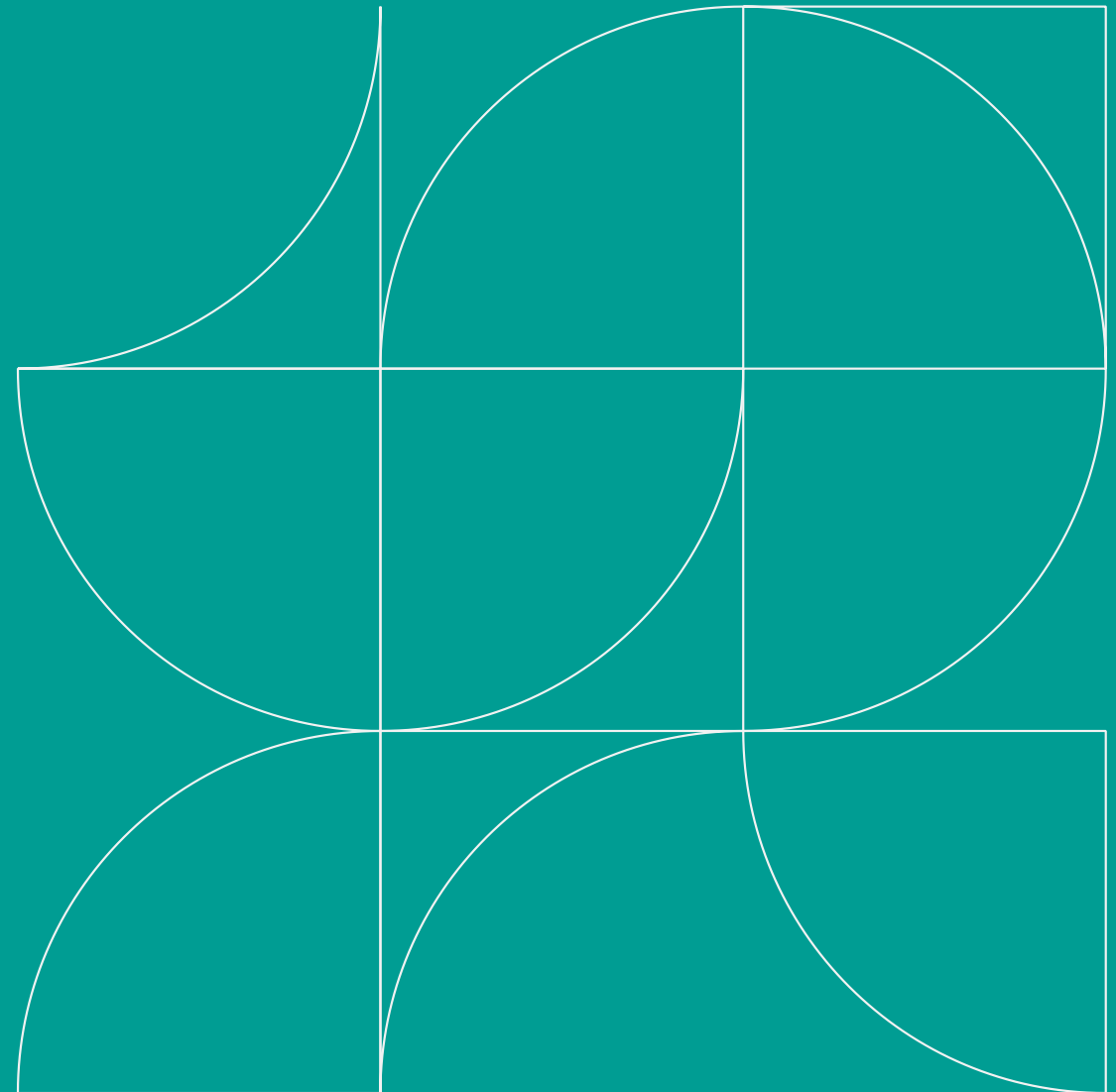
Cassandra M. Ficano
Associate
New York
cficano@seyfarth.com



Agenda

- 1 | Annual Threshold Increases for Minimum Wage and Salaries
- 2 | Federal Developments
- 3 | Increased Enforcement Under the New Mayor
- 4 | Recently Enacted Legislation
- 5 | Litigation Trends
- 6 | Industry Specific Considerations
- 7 | Pending Bills – What's On the Horizon

NYS Minimum Wage and Salary Increases Effective January 1, 2026



2026 New York Minimum Wage

REGION(S)	BASIC MINIMUM WAGE	TIPPED FOOD SERVICE (CASH / TIP CREDIT)	TIPPED SERVICE EMPLOYEES (CASH / TIP CREDIT)
New York City; Long Island; Westchester County	\$17.00/hr	\$11.35 / \$5.65	\$14.15 / \$2.85
Remainder of New York State	\$16.00/hr	\$10.70 / \$5.30	\$13.30 / \$2.70

2026 New York Salary Thresholds for the EAP Exemptions

Administrative and Executive Exemptions (NYCRR § 142-2.14):

- NYC, Long Island and Westchester: \$1,275.00/week (\$66,300/year)
- Remainder of NYS: \$1,199.10 (\$62,353.20/year)

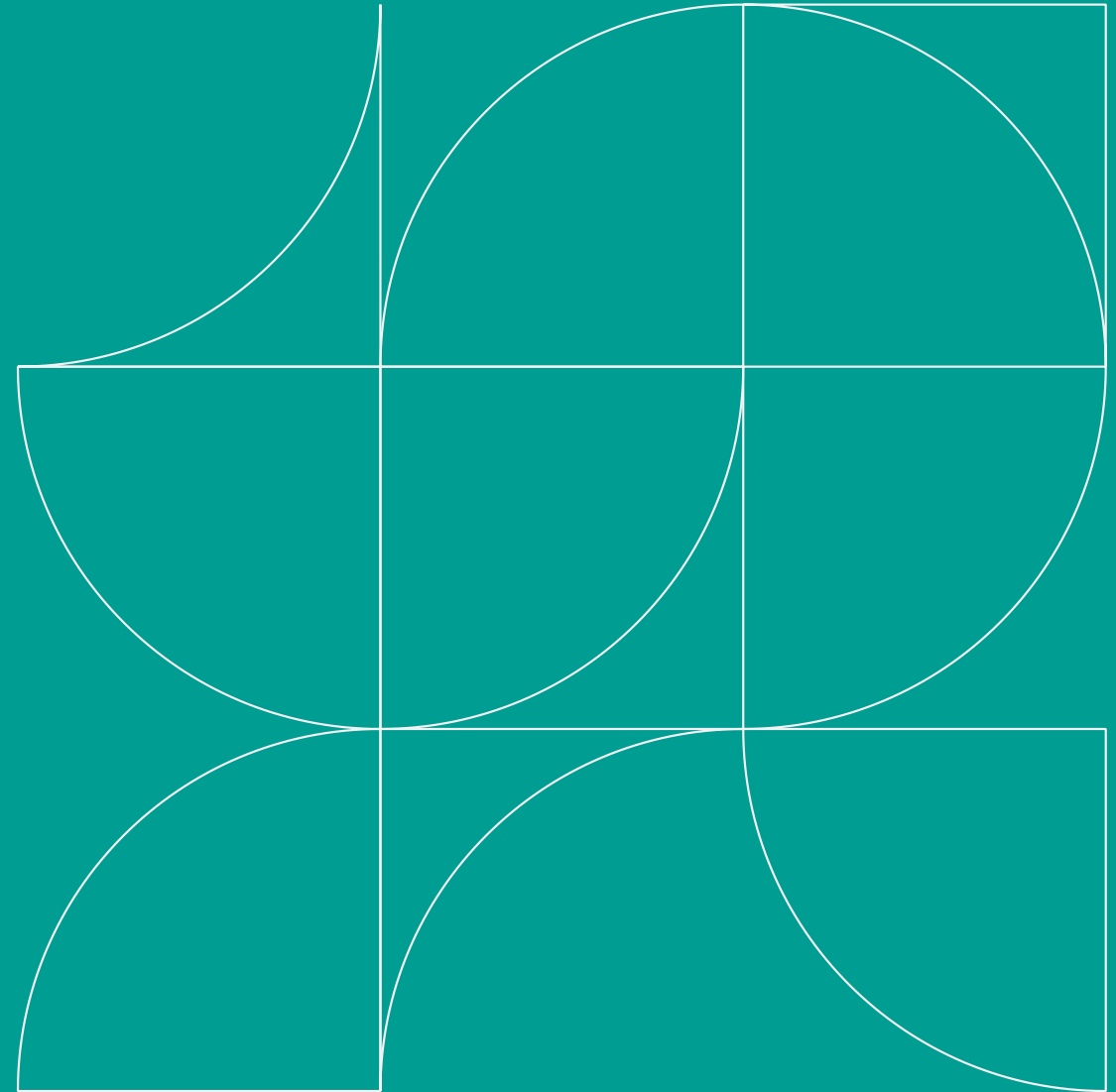
Professional Exemption (defer to FLSA salary threshold):

- \$684.00 per week (\$35,568.00 per year)

Highly Compensated Exemption (defer to FLSA):

- \$107,432

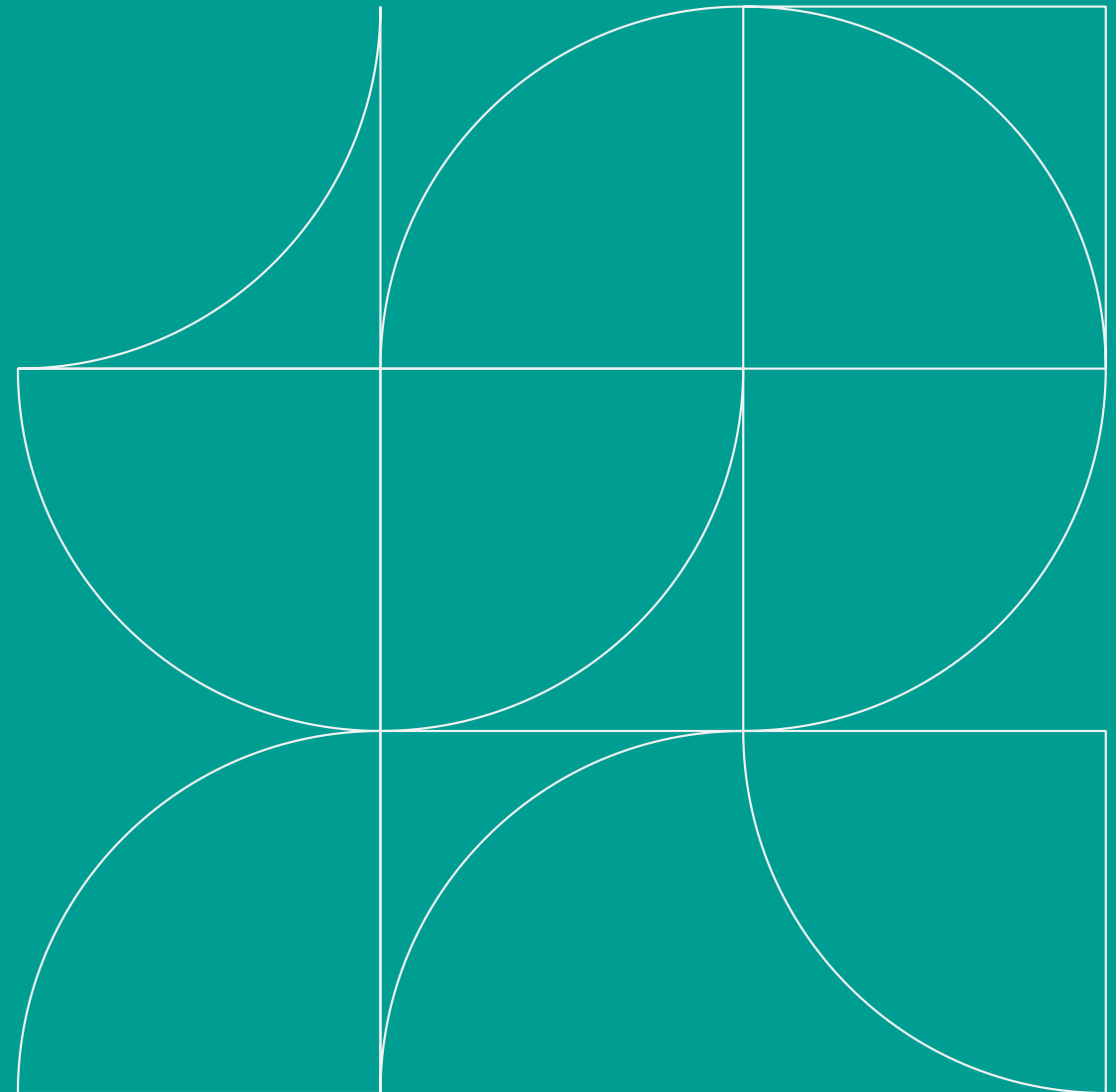
Federal Developments



DOL's Proposed Rule on Independent Contractor Status

- Largely “re-adopts” rule promulgated under FLSA in 2021.
- Embraces the same “core factor” approach used in the 2021 Rule, recognizing the significant weight courts give to the control and profit-loss factors.
- Uses the same three non-exhaustive factors as “additional guideposts,” including: the amount of skill required for the work, the degree of permanence of the working relationship, and whether the work is part of an integrated unit of production.
- Weighs key issues similarly to the 2021 Rule, including by minimizing the probative value of unexercised control; consolidating the investment and opportunity-for-profit-or-loss factors; expressly stating that compliance with specific legal obligations, health and safety standards, customer deadlines, and insurance minimums does not demonstrate employee-type control; and rejecting the relevance of comparing the relative investment levels of putative employers to those of workers.
- Would also apply to the FMLA and MSPA.

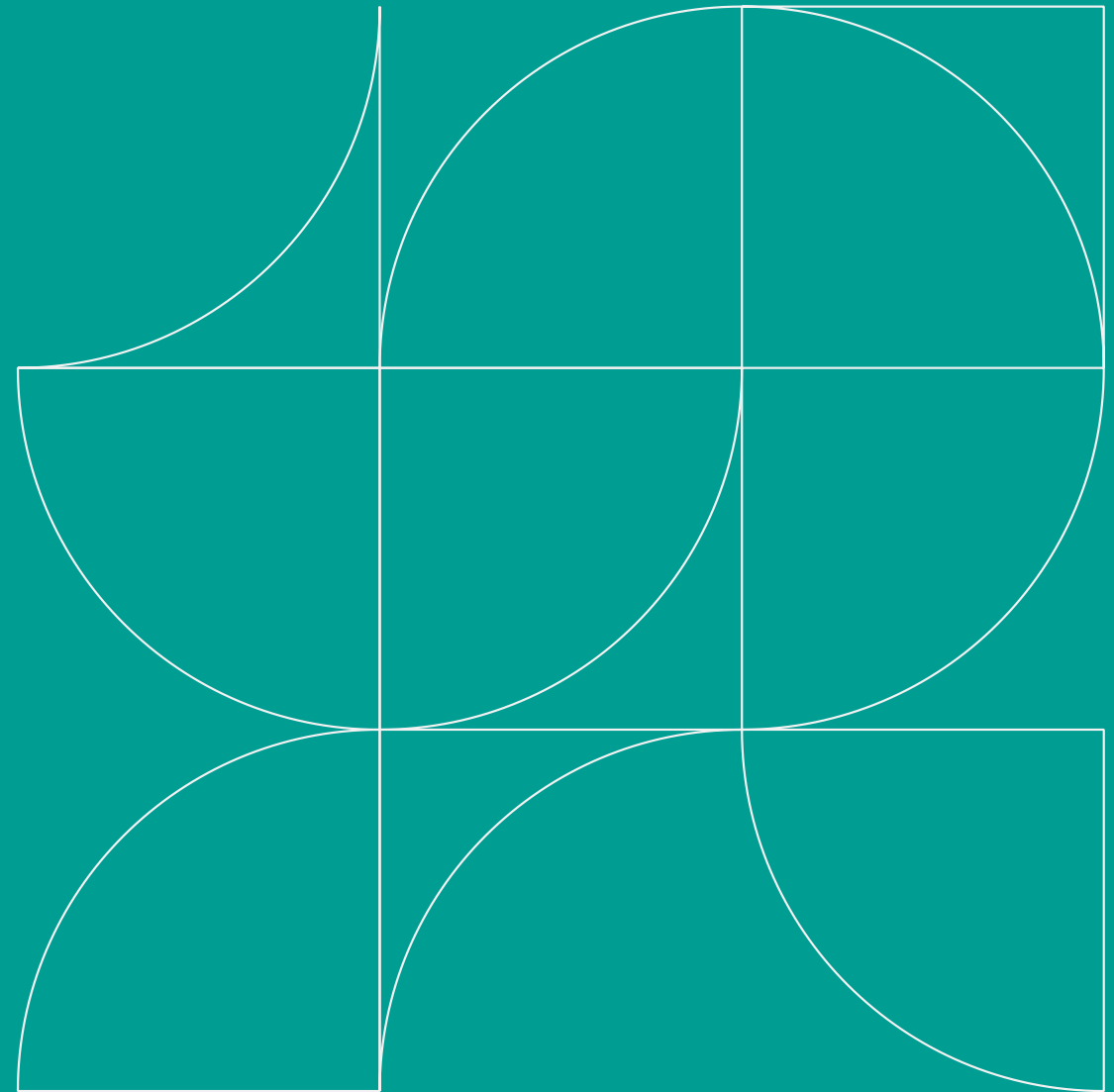
Increased Enforcement Under the New Mayor



What to Expect Under Mamdani's Agenda

- **Pro-Worker Decision-Makers and Legislation**
 - Sam Levine as the New Commissioner of the DCWP.
 - Appointment of former acting U.S. Secretary of Labor Julie Su as a deputy mayor for economic justice.
 - Increased minimum wage to \$30? During his campaign Mamdani proposed raising the City's hourly minimum wage to \$30 by 2030, with automatic increase to follow based on cost of living and other productivity metrics.
- **Increased Proactive Enforcement from the Department of Consumer and Worker Protection (DCWP)**
 - Focus on App-Based Delivery Workers.
 - Settlement with App-based delivery companies for more than **\$5 million** in worker restitution and penalties.
 - Enforcement blitz's (as seen last week with the Time Off Law).

Recently Enacted Legislation



A Breakdown of NYC's App-Based Delivery Laws and Regulations

Coverage

N.Y.C. Admin. Code § 20-1501

Applies to workers classified as independent contractors who perform deliveries through “delivery services.”

What are delivery services?

Requirements differ depending on the type of delivery service involved:

- (1) third-party food delivery services
- (2) third-party courier services
- (3) third-party grocery delivery services

Minimum Pay Rate

6 RNYC § 7810

- The Standard Method versus the Alternative Method
- Additional obligations effective July 1, 2026

Tip Regulations

N.Y.C. Admin. Code § 20-1522(b)(3)-(4)

Food and grocery delivery services must:

- allow customers to leave a tip for delivery BEFORE or at the time the customer places an order, and
- include an option for at least 10% of the purchase price.

Delivery Apps cannot use gratuities to offset minimum payments owed.

NYC's App-Based Delivery Laws and Regulations

Pay Frequency and Statements

N.Y.C. Admin. Code 20-1523

- **Timing requirement:** must be paid at least once per pay period, and no later than seven days after the end of the pay period.
- **Pay statements** must be provided to each delivery worker **within 7 days of the pay period**, itemizing gross compensation, net compensation and all permissible deductions for that pay period.
- Must offer at least one form of payment that does not impose any fees on the delivery worker.

Distance & Route Limits

N.Y.C. Admin. Code § 20-1521(a) & 6 RNYC § 7806(b)

- Food and courier delivery services must **allow** workers to set up and update their **maximum distance parameters**, as well as their preferences regarding which NYC bridges and tunnels they are willing to travel over or through.
- Applies to all trips that begin in NYC, end in NYC, or involve picking up good from a business located in NYC.

Civil Penalties

N.Y.C. Admin. Code §§ 20-1508-1511

- **\$500** per worker, per violation, as well as monetary relief to each affected worker for each violation.
- Creates a private right of action for certain violations like the MPR.
- DCWP also has enforcement powers.

Be mindful of anti-retaliation provisions, required disclosures and other obligations.

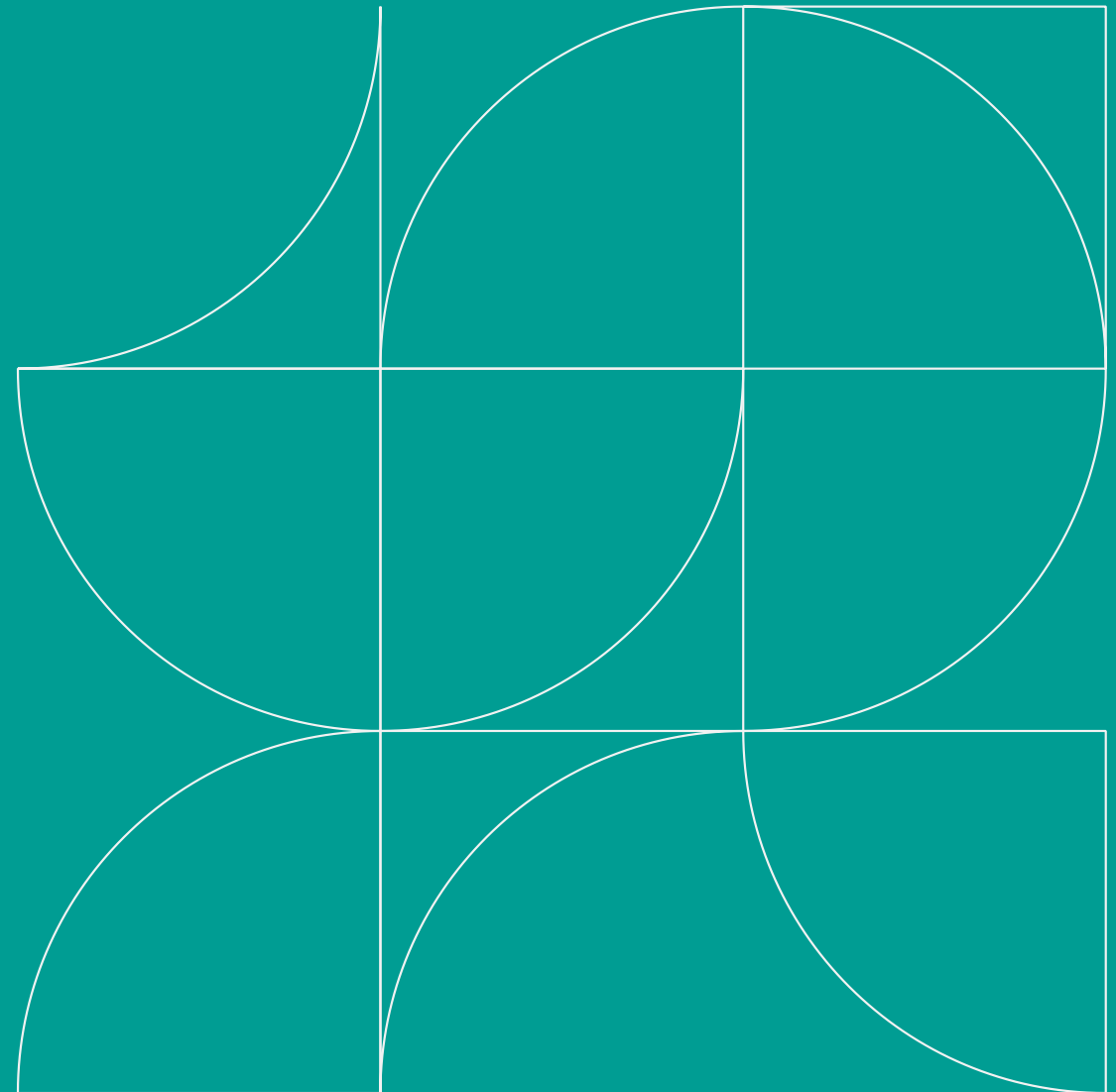
Brief Overview of Expansion of the City's Protected Time Off Law

- **PTOL = ESSTA, Rebranding only, not a new law.** The Protected Time Off Law (or PTOL) is not a new mandate. The PTOL is the same as the City's ESSTA.
- **Additional Unpaid Leave.** Employers must provide 32 extra hours of unpaid safe and sick time immediately upon hire, regardless of company size.
- **Updated Compliance Practices.** Employers must distribute updated Notice of Employee Rights by March 24, 2026, and adjust policies accordingly.
- **Employer Discretion and Recordkeeping.** PTOL restricts leave usage to specific reasons, requiring strong recordkeeping and clear employee communication.

NYS/NYC Freelance Isn't Free Acts

- **Requirements.** Requires a business to provide any “freelance worker” with a written contract if the freelance work is worth at least \$800, including multiple smaller projects over a 120-day period, and sets a 30-day deadline for payment in full unless another time frame is agreed to.
- **Contract requirements:**
 1. Name and mailing address of both the freelancer and hiring party
 2. Itemization of all services to be provided by the freelancer
 3. Value of the services provided
 4. Rate of compensation
 5. Method of compensation
 6. Pay date
- Provides a civil private right of action for alleged violations of law, or a claimant may file a complaint with the DCWP.
 - February 24, 2026: DCWP announced a **\$528,817 settlement** with a NYC-based creative production company “for systematically violating freelance workers’ legal rights to timely payments.”

Wage-Hour Litigation Trends



Pay Frequency – Where Things Stand

*“Notwithstanding the provisions of this subdivision, **liquidated damages shall not be applicable to violations of paragraph a of subdivision one of section one hundred ninety-one of this article where the employer paid the employee wages on a regular payday, no less than semi-monthly. Such violations shall be subject to damages as follows:***

- (i) no more than one hundred percent of the lost interest found to be due to for the delayed payment of wages calculated using a daily interest rate for each day payment is late based on the annual rate of interest then in effect, as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law for the employer’s first violation.”
N.Y. S.B. 3006.

Limited to Lost Interest, *for now...*

The May 9, 2025 Amendment:

- The NYS Legislature amended Section 198(1-a) of the New York Labor Law as part of the 2026 New York budget’s omnibus legislation to clarify what damages are potentially recoverable for violations of the frequency of pay provisions under NYLL § 191.

Example:

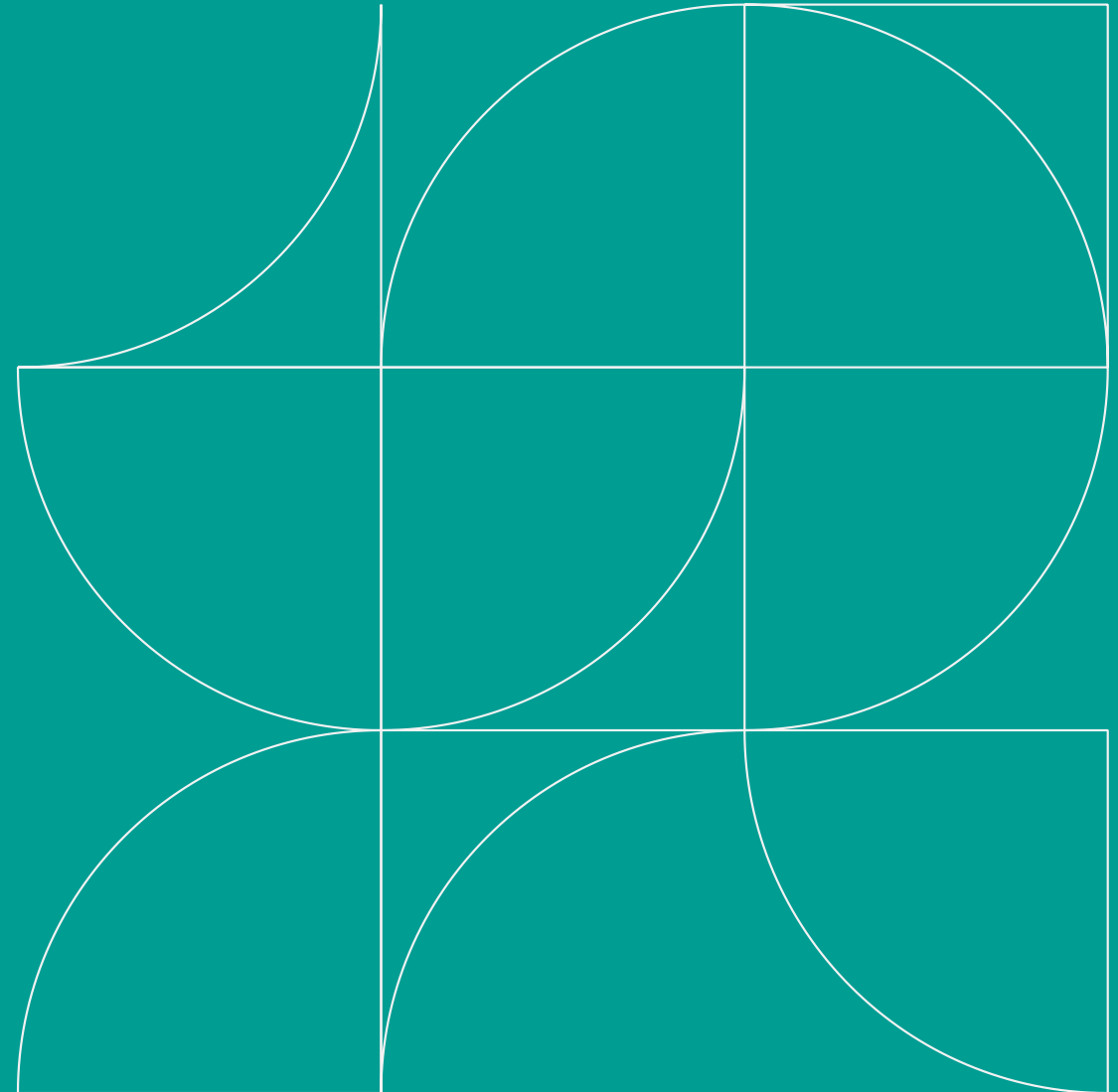
- An employer with \$1 million dollars in late payments.
 - Previous damages available: up to \$1 million
 - Current potential damages (for no previous violations): Calculating damages at 16% interest rate, this now would be **\$3,068.40**
- Recent challenges from the plaintiffs’ bar on constitutionality

Wage-Hour Litigation Trends

What Kind of Claims Are We Seeing Plaintiffs Bring Most These Days?

- Meal breaks
- Uniform reimbursement pay
- Misclassification
- Tip credit/pooling violations
- OT calculations
- Derivative wage notice and statements

Industry Specific Considerations



Uniforms: *What Constitutes a Uniform Under the Law?*

Hospitality Wage Order

UMP is not required when uniforms:

- (1) are made of “wash and wear” materials;
- (2) can be routinely washed and dried with other personal garments;
- (3) do not require ironing, dry cleaning, daily washing, commercial laundering, or other special treatment; and
- (4) are furnished to the employee in sufficient quantity to match the average number of days worked per week.

Miscellaneous Wage Order

Generally, be paid if requiring employees to launder or maintain a uniform would reduce their hourly wage below the minimum wage.

- Note that some NY courts have found otherwise.



Spread of Hours Pay – Is it Always Required?

Trigger: The time elapsed from the beginning to the end of a shift (or multiple shifts) exceeds 10 hours.

Payment Obligation: One additional hour of pay at the **basic minimum hourly rate** (not the employee's regular rate if higher).

Hospitality Wage Order – Yes

- Employers must pay this premium regardless of how high the employee's regular hourly rate is.

Example: An employee works a split shift, 8:00 AM–11:00 AM, then 4:00 PM–8:00 PM. Total work is 7 hours, but the spread is 12 hours. They are owed 7 hours of pay + 1 hour of minimum wage.

Miscellaneous Wage Order – Not Always

- The spread of hours requirement may be offset if the employee is paid well above the minimum wage (i.e., if their hourly rate exceeds the minimum by enough to cover the extra hour).

Tip Practices

Hospitality Wage Order

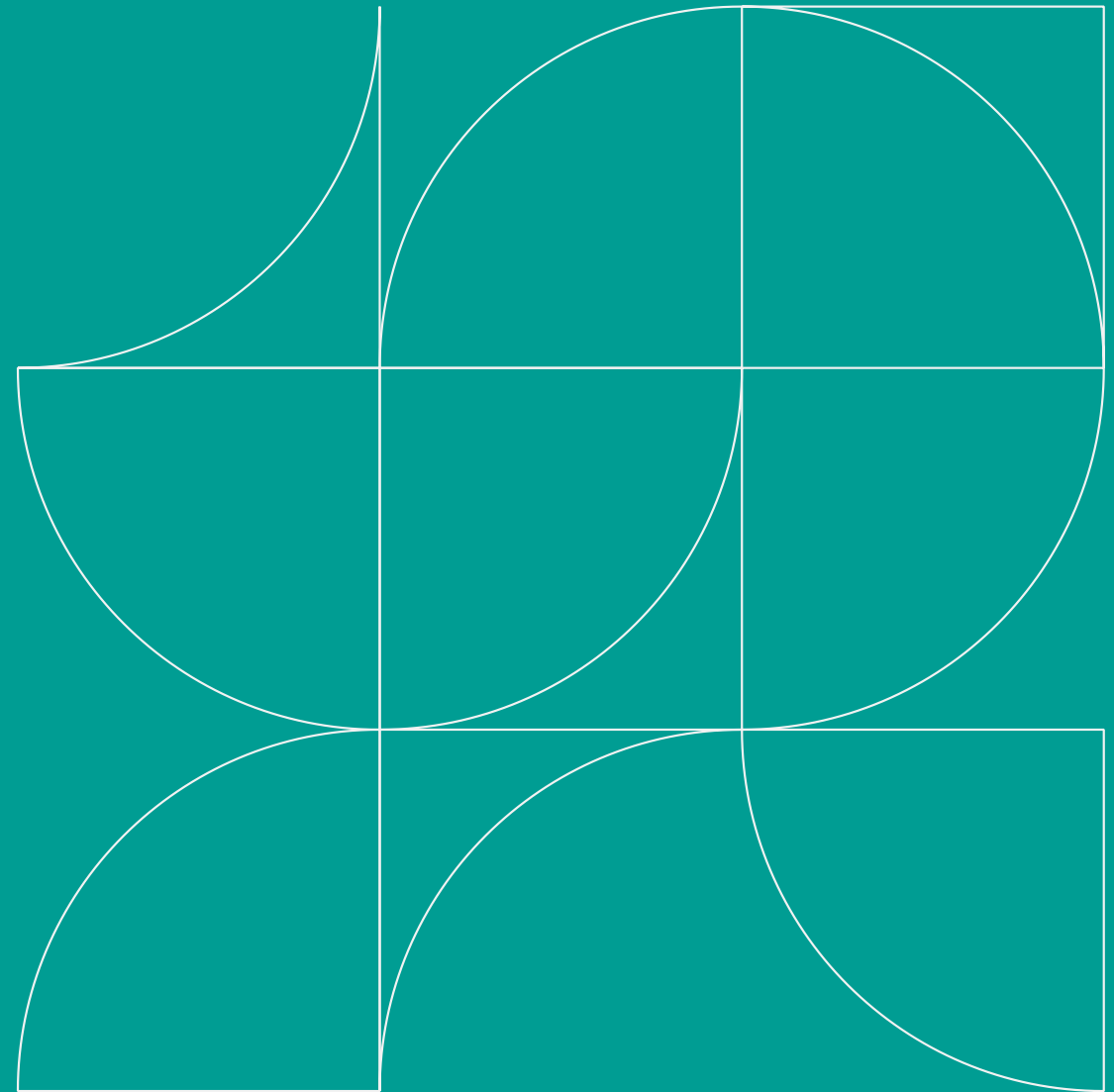
- **Tip Credit Eligibility:** Available for food service workers and service employees who receive notice, with certain limits.
 - **The 80/20 Rule:** Employers cannot take a tip credit for any day in which the employee spends more than 20 percent or two hours, whichever is less, of the workday performing non-tipped duties (e.g., cleaning, food prep).
- **Tip Pools:** must be restricted to employees who “customarily and regularly receive tips” (e.g., waiters, bussers, bartenders).
 - Owners, managers, and supervisors are prohibited from participating.

Miscellaneous Wage Order

- **Tip Credit Eligibility:** As of Jan. 1, 2021, employers under the Miscellaneous Wage Order (e.g., nail salons, car washes) cannot take a tip credit.



Pending Bills – What's On the Horizon



Hot Bills in New Jersey - *Following New York's Lead*

S2664: New Jersey Fair Workweek Act

- As proposed, the law would apply to employers with 250 or more employees worldwide, particularly in low-wage occupations like retail, hospitality and warehousing.
- Requires covered employers to provide certain written notice in relation to employee schedules, and any changes to same. Also requires “predictability pay” for changes made to work schedules within 14 days.

S2681 and A1161 / S2136: Bills Addressing Job Postings

- **S2681**: requires employers in New Jersey with 10 or more employees to include specific compensation and benefits information in their job postings and advertisements, whether the postings are on platforms they control or third-party sites.
 - ***Must-Haves***: minimum and maximum salary or hourly wage range, any supplemental compensation like bonuses, a description of benefits such as paid leave, health and dental plans, and any retirement plans offered.
 - What is an advertisement?
- **A1161 / S2136**: requires employers who publicly advertise job openings to disclose in the posting whether it's for an existing position and, if so, an estimated timeframe for filling it, and also mandates that employers remove job postings within two weeks of a position being filled, notifying any third-party job posting entities if they posted it independently.
 - Expected to be enforced by the Department of Labor and Workforce Development who will have audit powers.

New Jersey Hot Bills Cont'd

A1044 / S2110: Amendment to the New Jersey State Wage and Hour Law

- This bill increases penalties for employers who violate the New Jersey State Wage and Hour Law, which governs minimum wage and overtime pay obligations.

Violation	Minimum Fine: Current vs. Proposed	Maximum Fine: Current vs. Proposed
First	Current: \$100 / Proposed: \$500	Current: \$1,000 / Proposed: \$1,000
Second	Current: \$500 / Proposed \$1,000	Current: \$1,000 / Proposed: \$2,000
Third or Subsequent	Current: violations were considered disorderly person offenses with lesser penalties / Proposed: a crime of fourth degree, \$2,000 fine + imprisonment for 18 months	Current: violations were considered disorderly person offenses with lesser penalties / Proposed: a crime of fourth degree, \$10,000 fine + imprisonment for 18 months

New Jersey Hot Bills Cont'd

- **A3408 / S1435**: This bill amends the New Jersey State Wage and Hour Law to mandate paid meal and rest breaks for all employees, requiring a **30-minute paid meal break for shifts longer than five continuous hours** and a 15-minute paid rest break for shifts longer than four continuous hours, with these breaks counting as time worked.
- It also introduces regulations for work quotas in warehouse distribution centers, defining terms like “employee work speed data,” “warehouse employer,” and “quota” to ensure that quotas are quantifiable, do not lead to unfair wages or unsustainable workloads, and do not interfere with required breaks or accommodations for health, safety, or anti-discrimination laws. There will be certain notice requirements.



SCAN ME

CLE ATTENDANCE VERIFICATION FORM

Please scan the QR code to complete the digital attendance verification form to receive CLE credit for this program.

QR code directs you to our electronic form which can also be found in the calendar invite that was sent to you for this program.

You will need:

1. **Title:** Off the Clock: Quarterly New York Wage & Hour Update
2. **Date Viewed:** March 3, 2026
3. **Attendance Verification Code:** SS3062

State-specific CLE credit information can be found in the form.

Questions?

Thank You

For more information please contact:

Howard Wexler

Email: hwexler@seyfarth.com

Phone: (212) 218-3332

Kyle Winnick

Email: kwinnick@seyfarth.com

Phone: (212) 218-5510

Cassandra Ficano

Email: cficano@seyfarth.com

Phone: (212) 218-3317

www.Seyfarth.com