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Construction Reporting Pay Act

New York's New Reporting and Cancellation Pay Requirements

Howard Wexler, Kyle Winnick & Meghan Douris | Effective 12/8/2026

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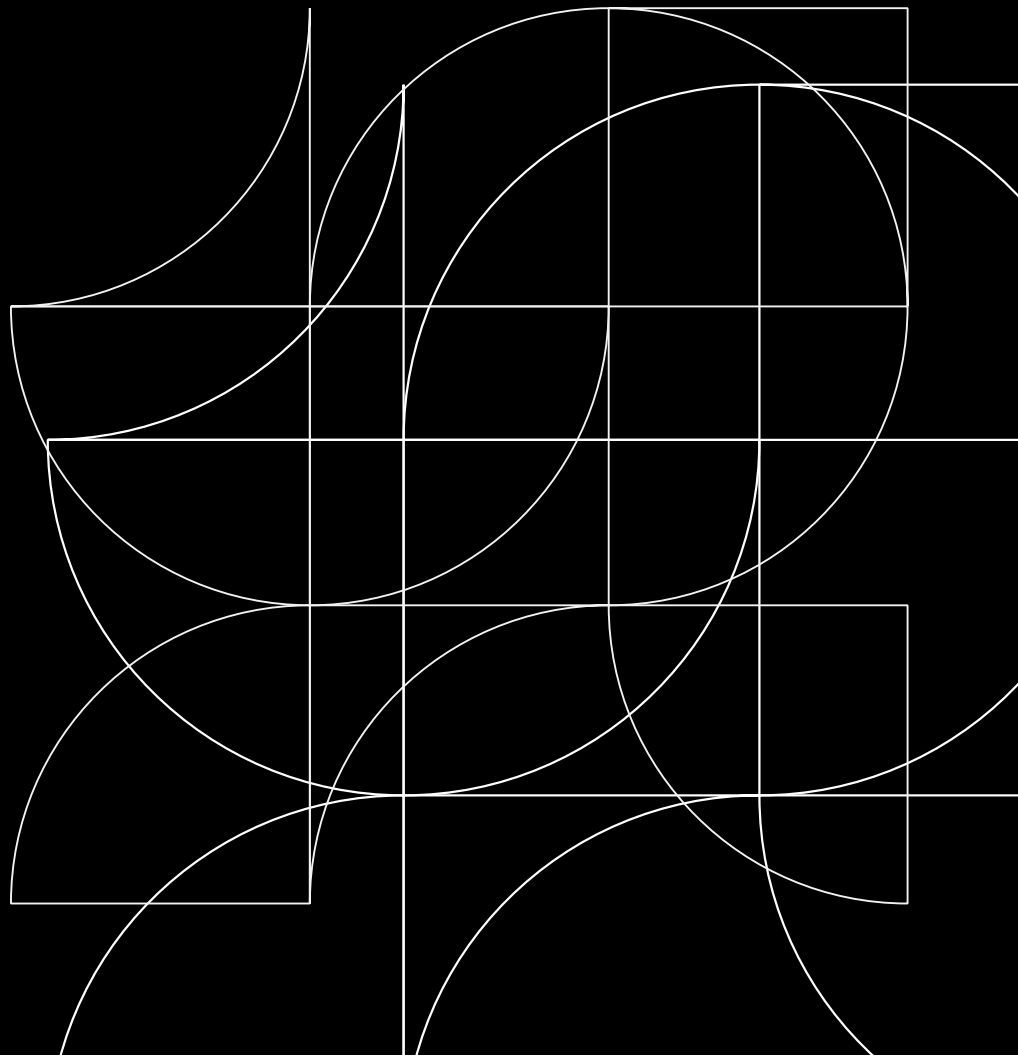

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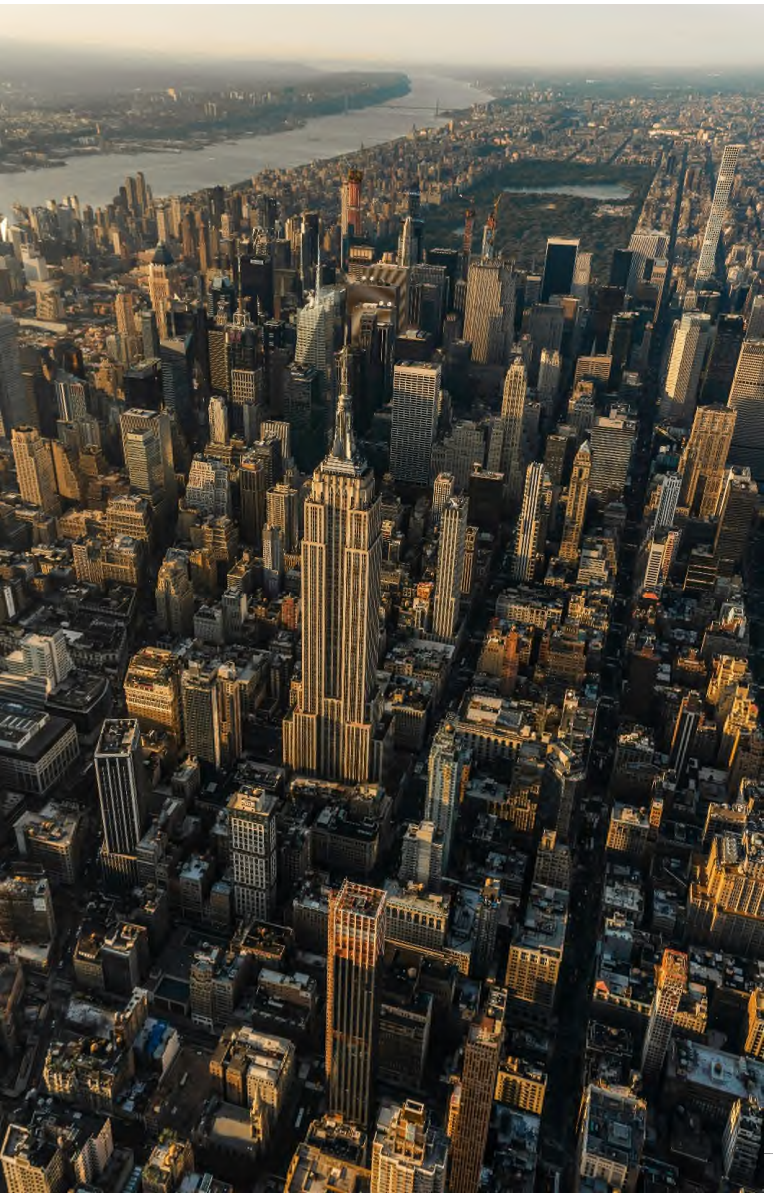

Agenda – Construction Reporting Pay Act

1 | NY call-in pay before the Act

2 | Construction Reporting Pay Act

3 | Risk of non-compliance

4 | Practical compliance and best practices

5 | Other updates in NY employment law

New York's Pre-Existing Call-In Pay Framework

Miscellaneous Wage Order

- Covered employees who report to work must receive at least 4 hours of pay **at minimum wage**, or the scheduled shift if shorter
- Courts and DOL: only minimum wage owed for all hours worked
- Little practical effect for construction employers paying above minimum wage

Hospitality Wage Order

- Minimum pay when employees report for one, two, or three shifts in a day, even if little work is available
- Special rules for calculating hours worked vs. reporting-pay premiums
- May require additional pay even above minimum wage

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Example of Call-in Pay Under Miscellaneous Wage Order

- Worker in NYC is paid $20 per hour.
  – NYC minimum wage is $17 per hour.
- One day in workweek EE reports to work but is sent home, triggering call-in pay provision of Miscellaneous Wage Order.
- EE ends up working 32 hours that week.
- Under Miscellaneous Wage Order, EE must receive at least $544 (32 hours x $17 minimum wage) + $68 (4 hours of call-in pay x $17 min wage) = **$612**.
- Because worker will be paid **$640** (32 hours x $20 per hour), **no** call-in pay is owed.

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Why the Prior Rule Had Limited Impact in Construction

Higher wage rates

Construction employees often earn well above the minimum wage used to calculate traditional call-in pay.

The new Act changes the calculation

Reporting pay is generally tied to the employee's promised hourly wage or the applicable prevailing wage rate, creating meaningful payroll exposure.

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The Construction Reporting Pay Act

Purpose	Requirements	Effective Date
• Predictable schedules for construction employees • Shift the cost of schedule changes on employers	• Up to 4 hours of pay when employees report but no work is provided • 2 hours of pay if a shift is canceled with under 12 hours' notice	• December 8, 2026 • Applies to construction employers statewide • Practical effect: payroll cost when work is canceled or cut short

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Scope of the Act

- Applies to employers in the construction industry employing workers who perform covered construction work in New York.
- Covered work includes construction, reconstruction, excavation, rehabilitation, repair, renovation, alteration, and improvement work.
- Potentially affects contractors, subcontractors, construction managers, staffing companies, and other entities employing construction workers.
- Employers must determine whether a project is subject to prevailing wage requirements because the applicable rate and statutory section differ.

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One Act, Two Frameworks

Prevailing Wage Projects

– Pay at the prevailing wage rate, including supplements
– 4-hour minimum for reporting
– 2-hour minimum if shift canceled with under 12 hours' notice

vs.

Non-Prevailing Projects

– Pay at the "promised hourly wage"
– At least 4 hours, or the scheduled shift if shorter
– 2 hours if shift canceled with under 12 hours' notice

First step: identify which framework applies to each project.

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Prevailing Wage Projects: Labor Law § 224-g

Reporting Pay

- Worker reports at the employer's request or permission
- Minimum 4 hours of pay
- Prevailing wage rate, including supplements

Shift Cancellation

- Shift canceled with less than 12 hours' notice
- Minimum 2 hours of pay
- Prevailing wage rate, including supplements

Treatment of Pay

- Payments count as prevailing wages or supplements
- Greater benefits in a prevailing wage schedule control

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Non-Prevailing Work: Labor Law § 196-e

Reporting Pay

- Employee reports at the employer's request or permission
- At least 4 hours, or the scheduled shift if shorter
- Paid at the "promised hourly wage"

Shift Cancellation

- Shift canceled with less than 12 hours' notice
- 2 hours of pay
- Paid at the "promised hourly wage"

Treatment of Pay

- Expressly treated as wages
- Full NY wage-hour remedies apply, including liquidated damages and DOL enforcement

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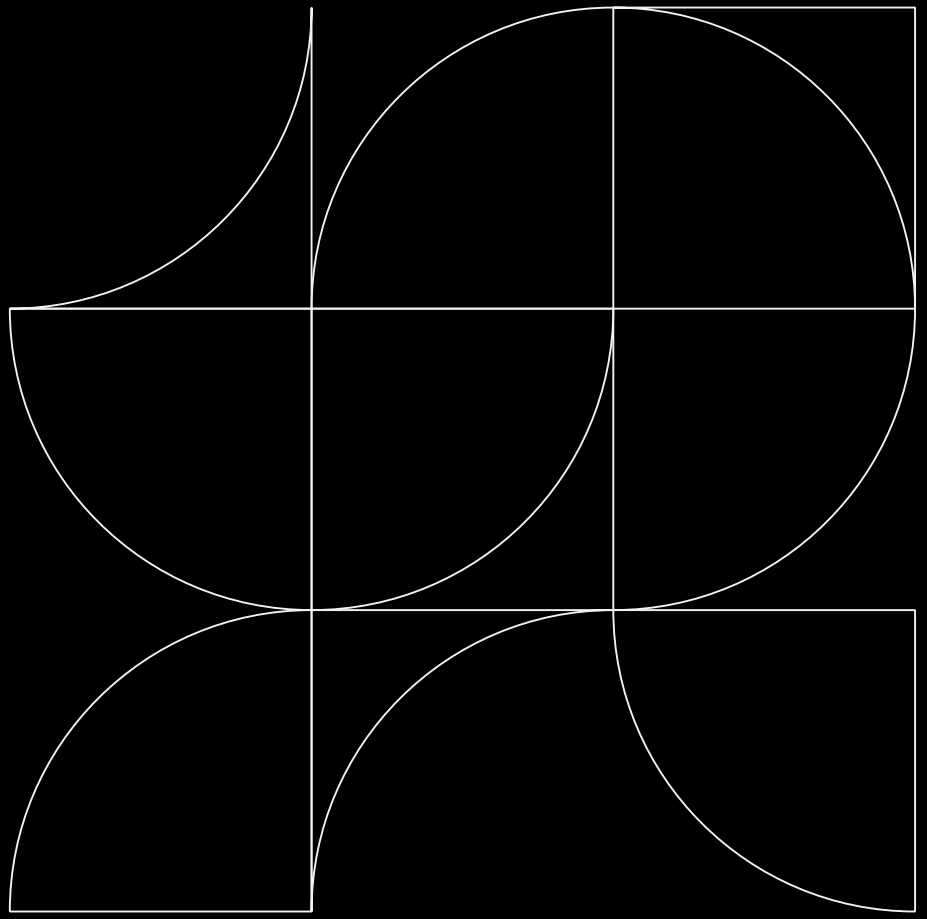
Risk of Non-Compliance: Wage-Hour Class Actions in NY



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Wage-Hour Class and Collective Actions

Number of FLSA lawsuits filed by state.

State	2025
NY	1269
FL	870
TX	419
IL	270
PA	207
OH	236
AZ	231
GA	245
TN	142
CA	158
MI	144
NJ	139
MD	107
VA	101
WI	98
IN	90
CO	92
MO	49

State	2025
AL	60
MA	65
NC	56
LA	63
NV	53
OR	31
DC	33
SC	55
CT	36
AR	20
KY	30
UT	22
KS	33
NM	24
OK	30
MS	36
WA	30
MN	24

State	2025
RI	20
WV	14
IA	16
DE	21
NE	8
ID	5
PR	2
HI	6
ME	7
NH	7
ND	4
MT	5
N M.I.	1
AK	7
SD	2
WY	2
VT	3

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Wage-Hour Class Actions Against Construction Companies

$43.9 million

judgment

Herman v. [Construction Company]

Prevailing wage and benefit underpayments on public works

$4.5 million

settlement

Perez v. [Construction Company]

Unpaid wages and overtime on construction projects

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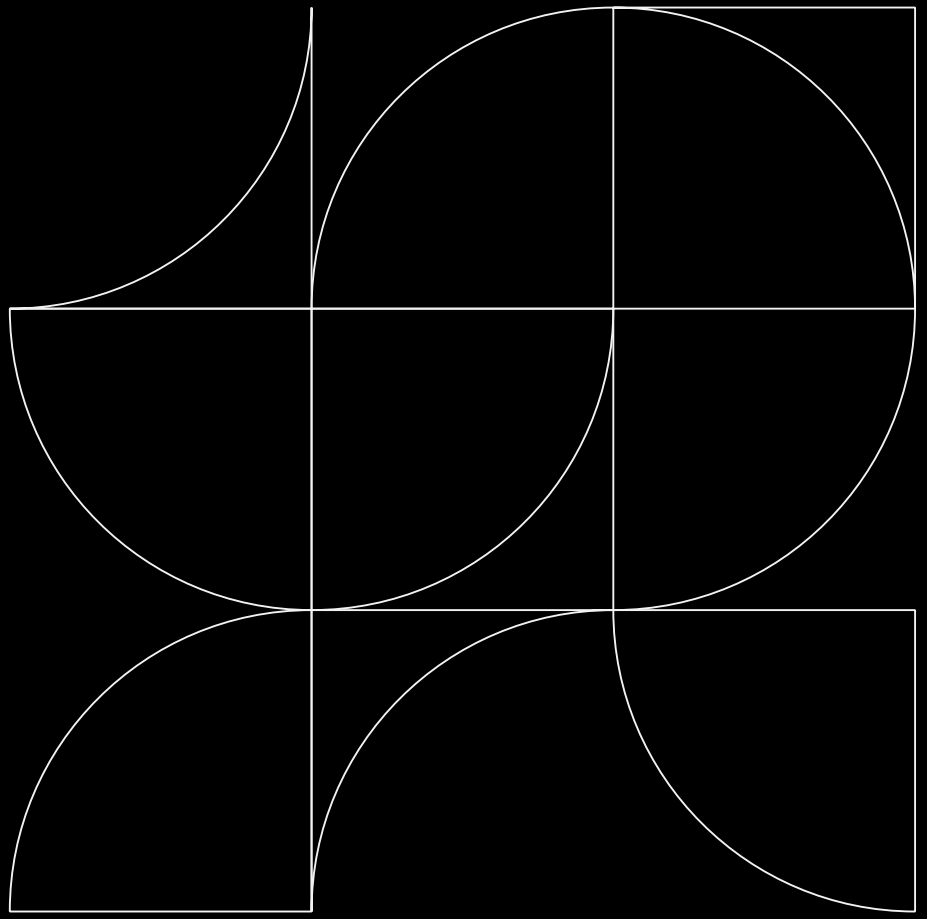
Practical Compliance Issues and Best Practices



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Practical Challenges for Construction Employers

- Schedules depend on factors outside the employer's control
  - Weather and inspections
  - Permitting and material deliveries
  - Utility interruptions and site access
- The Act shifts part of that risk to employers
- Employers should promptly review:
  - Scheduling and shift-notification procedures
  - Weather-related cancellation protocols
  - Timekeeping and payroll systems
- Collective bargaining agreements and prevailing wage schedules

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Practical Compliance: Best Practices

1

Schedule and Notify

- Review scheduling practices
- Update shift-notification procedures

2

Weather Protocols

- Revisit cancellation protocols
- Plan for inspections and AHJ scheduling

3

Pay Systems

- Timekeeping
- Payroll procedures
- CBAs and wage schedules

4

Cancel Early

- Give notice more than 12 hours ahead whenever practicable

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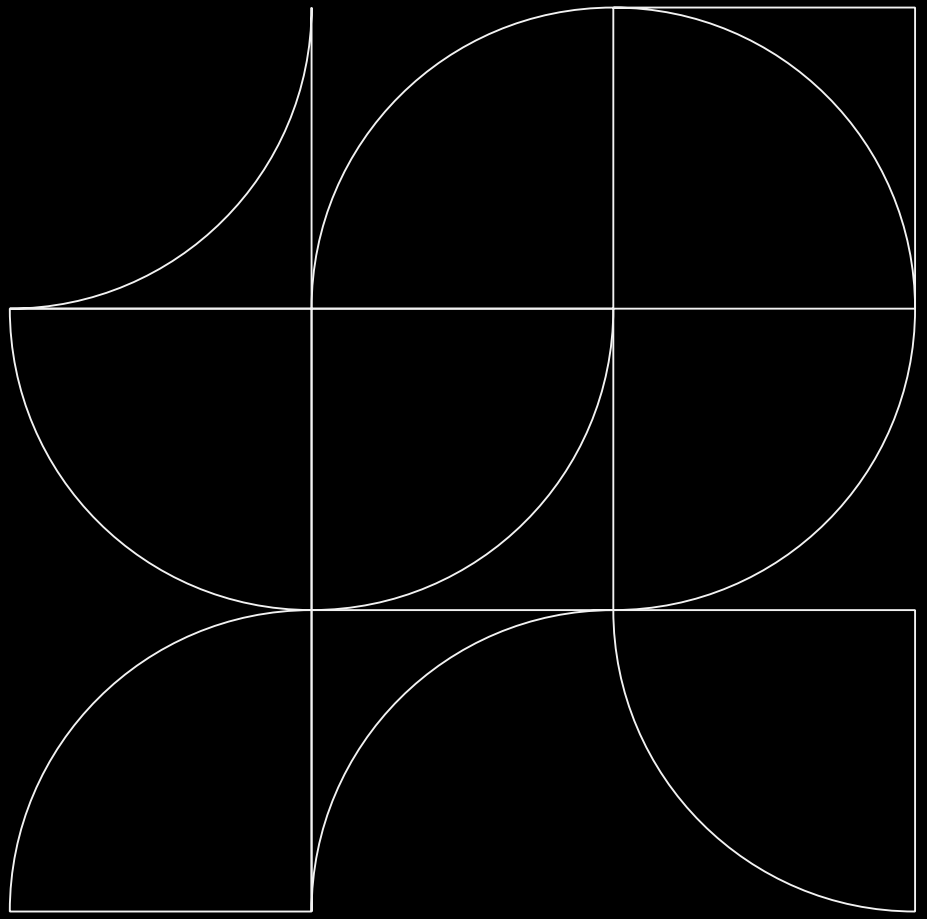
Other Updates in NY Employment Law



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Other Updates in NY Employment Law

- New York's Employee Personnel Records Access Law
  Effective November 8, 2026
- Expansion of NYC's Protected Time Off Under the Earned Safe and Sick Time Act
  Effective February 22, 2026
- Trapped at Work Act
  Effective December 19, 2026
- New York's Freelance Isn't Free Act
  Effective August 28, 2024

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thank you

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