NEW YORK CITY

RESTAURANT OWNER MANUAL

CITY OF NEW YORK
Mayor's Office of Immigrant Affairs

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Mayor

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NEW YORK CITY RESTAURANT OWNER MANUAL

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NOTICE

THE *NYC RESTAURANT MANUAL* IS OFFERED AS A PUBLIC RESOURCE. IT DOES NOT CREATE NEW LEGAL OBLIGATIONS AND IT IS NOT A SUBSTITUTE FOR THE OFFICIAL SOURCES OF APPLICABLE LAW. EVERY EFFORT HAS BEEN MADE TO ENSURE THAT THE INFORMATION PROVIDED IS COMPLETE AND ACCURATE AS OF THE TIME OF PUBLICATION.

USERS OF THE *MANUAL* ARE PUT ON NOTICE THAT THE SUMMARIES, OPINIONS, SUGGESTIONS AND REPRESENTATIONS CONTAINED HEREIN ARE NOT INTENDED, NOR SHALL THEY BE CONSTRUED, AS CONVEYING LEGAL ADVICE AND SHOULD NOT BE RELIED UPON AS SUCH. IF YOU HAVE A SPECIFIC COMPLIANCE MATTER WE ADVISE YOU TO SEEK LEGAL COUNSEL OR CONTACT THE APPLICABLE GOVERNMENT AGENCY.

This user-friendly manual is designed to help you become familiar with the basics pertaining to wages, hours of work, consumer protection, employment discrimination, public accommodations, and worker health and safety, and more. We're not giving you legal advice, nor will every single law on the books be covered, but you will get essential facts and additional resources to fill in your knowledge and understanding of these laws.

You've probably looked at the table of contents and hit your hand against your forehead exclaiming "Don't I have enough to do running a restaurant in New York City? Do I have to learn all this too?" Don't be overwhelmed. You're probably adhering to a lot of these laws already. With a few complicated exceptions, this stuff is pretty fundamental and you don't have to sit down and read the whole thing at once. You can use this as a resource to go back to if an issue arises and figure out what the appropriate steps to take are, or learn the right places to go for help.

If you're still feeling overwhelmed, remember - ***complying with the law is good for business!*** In producing this manual, we've talked to a lot of employers who make a practice of adhering to employee-protection laws and have found that they have more loyalty and fewer turnovers in their staffs. Employees who are treated well and earn a decent wage tend to be happier and provide better service to customers. But maximizing customer satisfaction is not the only reason to comply with the law. These laws are enforced by a number of federal, state and local government agencies and an employer who is caught breaking the law may be subject to harsh penalties including fines, jail time and license revocation. You'll see many case studies throughout the manual confirming this, so take a look.

It is also good for your business to comply with laws regarding health and safety, food preparation, consumer protection and public accommodations, which are discussed in this manual. Investing in health and safety precautions to comply with the law will likely save your restaurant the high costs of injuries or illnesses. Ensuring food safety and sanitation prevents food-related illnesses and promotes customer satisfaction. Complying with public accommodations and consumer protection laws builds trust and good will toward your restaurant from customers.

In addition to the government agencies and non-profit organizations listed in the back of this manual, we offer monthly training courses for restaurant owners and managers at certain NYC Business Solutions Centers. ***(See page 41).***

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Wages and Hours of Work

Minimum Wage

When do I have to pay my employees?

For restaurant workers, full wages must be paid weekly and no later than 7 days after the end of the week in which they were earned.

If an employee is terminated, wages must be paid to that person no later than the regular payday for the period during which the wages were earned.

What is the minimum wage that I have to provide to my employees?

New York State employers are subject to the State minimum wage, which is higher than the federal minimum wage. Employers are required to pay employees the higher state minimum wage.

Currently, the state minimum wage for NON-TIPPED WORKERS is $6.75 per hour.

On January 1, 2007 it will increase to $7.15 per hour.

Can an employer pay an employee a set daily or weekly amount, e.g. "shift pay"?

Generally, no. The only way this would be possible is if: (1) the employee works the exact same number of hours every day or week, and (2) the employee is getting paid at least the minimum wage and overtime for hours worked in excess of 40, and (3) the employer can prove that the employee has been informed of the hourly rate on which the daily or weekly payment is based.

Tipped Employees

Is the minimum wage different for tipped employees?

No, but an employer may take credit against the minimums for some portion of tips actually earned by the employee as spelled out below.

Tipped employees include food servers and delivery workers.

How much must I pay tipped employees?

If you employ food servers and delivery workers you may deduct a limited amount of money from the statutory hourly minimum wage as a "tip credit" as long as the total earnings of that employee (salary and tips combined) are at least equal to the minimum wage and the hourly rate you pay meets the minimum requirements below.

(Note that minimum wage was $6.00 per hour in 2005; is $6.75 per hour in 2006; and will be $7.15 per hour in 2007).

To pay a reduced minimum wage to tipped employees, you must:

(1) **Keep records of employees' tips and**
(2) **Inform employees that their wage is being decreased under the tip credit provision.**

Food Servers:

Food servers include wait staff, bussers, & runners

Deducting the tip credit, the reduced minimum wage for food servers is $4.35 per hour during 2006.

To qualify for this reduced minimum wage, the food server must make at least $2.40 per hour in tips (in 2006), and the employer must keep records of the tips and inform the worker that their wage is being reduced under the tip credit provision.

Example: A waitress who makes an average of $10 an hour in tips must still be paid at least $4.35 per hour in salary by her employer (in 2006).

On January 1, 2006 the reduced minimum wage for food servers increased to $4.35 per hour, and on January 1, 2007, it will increase to $4.60 per hour.

Delivery workers:

Deducting the tip credit, the reduced minimum wage for delivery workers is $4.60 per hour during 2006.

To qualify for this reduced minimum wage, the food server must make at least $2.15 per hour in tips (in 2006), and the employer must keep records of the tips and inform the worker that their wage is being reduced under the tip credit provision.

On January 1, 2006 the reduced minimum wage for delivery workers increased to $4.60 per hour, and on January 1, 2007, it will increase to $4.85 per hour.

Do I have to pay an hourly wage to employees who earn tips?

Yes. Employers cannot require employees to work only for tips.

Employees must pay minimum wages directly to employees no matter how much money employees receive in tips from customers.

But, my employees earn a lot of money in tips. I think I should be entitled to a portion of it. Can I take a cut of their tips?

No. An employer may not demand or accept any portion of an employee's tips, nor may an employer require that tips be pooled or that tips received by service employees be shared with non-service personnel.

Overtime

To whom must I pay overtime?

Generally any wage earning employee must be paid overtime.

The main exceptions to this rule are supervisors and managerial employees and professional and administrative employees. You should consult an attorney if you have questions about the exemptions.

When do I have to pay overtime?

Whenever an employee works more than 40 hours in a week, the employer must pay that employee 1 1/2 times the normal rate of pay for each additional hour.

Example: if an employee earns the minimum wage of $6.75 per hour, that employee must be compensated at the rate of $10.13 per hour when working overtime.

How much must tipped workers be paid overtime?

Tipped employees must be paid at least 1 1/2 times the full minimum wage minus the tip credit. So the tipped overtime rates for workers making **the tipped minimum wage for 2006** are as follows:

Food Servers = $7.73 **(1 1/2 times $6.75 is $10.13, minus $2.40 tip credit)**

Delivery Workers = $7.98 **(1 1/2 times $6.75 is $10.13, minus $2.40 tip credit)**

On January 1, 2007, it will increase to:

Food Servers = $8.18 **(1 1/2 times $7.15 is $10.73, minus $2.55 tip credit)**

Delivery Workers = $8.43 **(1 1/2 times $7.15 is $10.73, minus $2.30 tip credit)**

My employees want to work more hours, and don't care if they get overtime pay. Are they allowed to waive overtime pay?

No. Overtime pay may not be voluntarily waived by an employee. Even if an employee asks for additional hours of work and agrees to decline overtime pay, the employee is legally entitled to receive time and a half.

Can I require my employees to work overtime?

There is generally no limitation on the number of hours in a day that an adult employee may be required to work as long as the employee is properly compensated. An employer may have to provide special consideration for employees with disabilities[1] and employees whose religious observances are protected by law. These issues are discussed at pages 26-28.

There are limits for the number of hours a minor may work, which are described on page 10.

Breaks, Deductions & Records

When are breaks and time off required to be given?

New York law requires that employees be given one full day off each week.

All employees who work a daytime shift of more than 6 hours must be given a 1/2 hour meal break between 11:00 A.M. and 2:00 P.M.

Employees whose shift begins prior to 11:00 A.M. and ends after 7:00 P.M. must also be given a 20 minute break between 5:00 P.M. and 7:00 P.M.

Employees who work a shift of more than 6 hours between 1:00 P.M. and 6:00 A.M. must be given a 45 minute break midway between the start and end of the shift.

Can I require a deposit from an employee to use expensive equipment?

No. It is illegal to require employees to make deposits to use certain equipment. If an employee takes or damages the employer's property, the employer may not be paid the value of damaged property by withholding all or a portion of the employee's wages. An employer harmed by negligent or criminal behavior may only seek reimbursement after paying the employee, or pursue the matter in a court of law. The employer cannot confiscate wages from an employee without a court order.

What paycheck deductions are permitted?

Employers may not make deductions from an employee's pay, except those required by law or government rules and regulations, such as taxes. Any other deductions must: be explicitly authorized by the employee in writing, be for the benefit of that employee, and be limited to deductions for union dues, insurance premiums, charitable contributions, and other similar payments.

Can I deduct pay for poor performance?

No. It is illegal for an employer to deduct pay as a penalty for poor performance. However, an employer is not required to pay an employee for hours not worked. You may deduct wages for lateness or absences, but only for the value of the time missed.

The employer may take appropriate steps to encourage employees to remedy their problems with lateness, absence, or deficiency in performance.

Can I deduct pay for meals I provide to my employees?

Yes. An employer in the restaurant industry that provides meals to employees may deduct from the basic minimum wage of employees a meal allowance of $1.85 per meal for food service workers (which includes wait staff, runners, or bussers) or $2.05 per meal for all other workers (such as dishwashers and delivery workers).

As of January 1, 2006 the meal allowance for food service workers increases to $2.00 per meal; as of January 1, 2007 it increases to $2.10 per meal.

As of January 1, 2006 the meal allowance for all other workers increases to $2.30 per meal; as of January 1, 2007 it increases to $2.45 per meal.[2]

Do I have to pay for and maintain my employee's uniforms?

It depends. If you require that a uniform be worn by employees, then you must provide it, replace it when necessary and bear the cost of its cleaning and maintenance without charge or expense to the employees, if the cost of purchase or cleaning would bring the employee's wage below the applicable minimum wage.

If your waiters are required to wear black pants and a white shirt, but not a specific uniform, then the employee bears the cost of purchase, cleaning and maintenance.

What should I do if my employee is called for jury duty?

Employees must be allowed time off for jury duty.

Employees may not be fired or penalized in any way at work so long as the employee has given the employer notice of the reason for his/her absence.

If an employer has 10 or more employees, he or she must pay the first $40 of an employee's wages for each day of the first three days of jury service. Other than this requirement, employers may withhold wages for work missed due to jury service.

What record keeping requirements apply to employers?

- **Employers must provide employees a weekly pay stub that shows the following:**
- **Hours worked**
- **Hourly rate paid**
- **Gross wages**
- **Allowances (if any) claimed as part of the minimum wage (e.g. tip credit)**
- **Deductions**
- **Net wages**

AND every employer must establish, maintain, and preserve for at least 6 years weekly payroll records for each employee.[3] These weekly payroll records must show the following for each employee:

- **Name and address**
- **Social security number**
- **Occupational classification and wage rate**
- **Hours worked daily and weekly, including arrival and departure time for split shifts or spread of hours exceeding 10 hours**
- **Amount of gross wages**
- **Deductions from gross wages**
- **Allowances claimed as part of minimum wage (e.g. tip credit)**
- **Money paid in cash**
- **Student classification.**
- **Whether employee uniforms are laundered, cleaned, or maintained by the employer.**

Penalties for Violating Wage & Hour Laws

What can happen to me if I break any of these rules?

CRIMINAL PROSECUTION:

First offense: failure to pay wages in accordance with the Labor Law is a misdemeanor. The maximum penalties can include fines of up to $20,000 and imprisonment for up to one year for each separate violation, and payment of restitution.

Second offense: failure to pay wages a second time within 6 years of prior offense is punishable as a felony, with fines, imprisonment and restitution as above.

CIVIL PROSECUTION:

Employees who have been underpaid may pursue civil remedies in Small Claims or Civil Court.

The New York Attorney General, New York Department of Labor, or U.S. Department of Labor may investigate and/or sue employers for failure to comply with wage and hour laws.

Employers may be made to pay 200% of the wages originally due, among other civil penalties.

Corporate shareholders, owners, and managers may be held personally liable for unpaid wages in some cases.

Who enforces these laws?

Employees have the right to seek enforcement of wage and hour laws through government agencies, private attorneys and worker advocacy groups.

What can happen if a worker is fired after filing a complaint against a restaurant for wage and hour law violations?

It is illegal to retaliate against workers for making a complaint with an enforcement agency or for making a complaint about wages. An employer who does so may be subject to civil and criminal penalties.

Prohibited retaliation includes, but is not limited to, reducing an employee's hours, demotion, termination, change in duties, or change in hours.

Employment of Minors

Who is covered by child labor laws?

Anyone under the age of 18 is considered a minor. If you suspect that an employee is a minor you must obtain proof of his or her age. (You cannot use ignorance as an excuse for violating child labor laws.)

When may I hire an employee under the age of 18?

Employment of minors under the age of 14 in the restaurant industry is illegal.

Minors must have the proper employment certificate (working papers) from the Chancellor in the city school district of the City of New York.

What hours may my 14 and 15 year old employees work?

When school is in session:

14 and 15 year olds may not work more than 18 hours per week.

They may work a maximum of 3 hours per day on weekdays and 8 hours per day on Saturday, Sunday, and holidays.

They may not work more than 6 days a week.

They may not work at night between 7:00 P.M. and 7:00 A.M.

During school breaks or in the summer:

14 and 15 year olds may work up to 40 hours per week, up to 8 hours a day.

They can work between 7 A.M. and 9 P.M. from June 21st through Labor Day.

They may not work more than 6 days a week.

What hours may my 16 and 17 year old employees work?

16 and 17 year olds can work 4 hours on any day preceding a school day.

They can work 8 hours on Friday, Saturday, Sunday or a holiday,

They may not work more than 28 hours a week;

They may work until 10pm on any day preceding a school day,

They may work until midnight on any day preceding a school day if the employer maintains the written consent of the parent or guardian and a certificate is provided to the employer at the end of each marking period by the minor's school that the minor is in satisfactory academic standing;

They may work until midnight on any day preceding a non-school day if the employer maintains written consent of the parent or guardian;

During school breaks, 16 and 17 year olds can work 48 hr/week, 8 hr/day between 6am and midnight.

16 and 17 year olds who are not attending school may obtain a certificate from school authorities to work full time under certain conditions.

They may not work more than 6 days a week.

18 year olds are subject to the same rules as other adults.

Do I have any additional responsibilities related to employment of minors?

Yes. Employers must maintain employment certificates for all minors on file on the premises at the restaurant and such certificates must be made available for inspection by authorized agents.

When a minor's employment is terminated, the employer must return the minor's certificate.

The employer must make a schedule for all minors employed by the employer, setting forth the hours of beginning and stopping and the time allowed for meals, which must be kept conspicuously posted in the restaurant.

Are there any job-related duties that are prohibited specifically for minors?

Yes. Minors cannot operate washing, slicing, mixing, or other high-risk machines.

Minors cannot drive any vehicle as part of the job.

If you are considering hiring minors to work in a kitchen using any type of machinery, including freezers, first check with the New York Attorney General or with the New York State Department of Labor to make sure such employment is legal.

Employment of Immigrant Workers

How do I determine who is eligible to work?

All new employees must complete an I-9 Employment Eligibility Verification form. The Form I-9 lists documents an employee may produce that are acceptable for establishing an employee's identity and work authorization.

If the employee has provided documents that s/he has chosen from the list of acceptable documents to establish his or her identity and work authorization under the requirements of federal law, the employer may not demand additional documents. The employer may not refuse to accept documents that on their face reasonably appear to be genuine.

An employer may be liable for knowingly hiring an undocumented person, or for accepting falsified documents with the Form I-9 when the government can prove the employer knew the employee was undocumented.[4]

For more information go to the U.S. Citizenship and Immigration Services website: http://uscis.gov. The "Frequently Asked Questions" Section is particularly helpful.

What should be done with completed I-9 forms?

The forms are not filed with the government. The employer must keep them on file for 3 years, or 1 year after the employee's job termination, whichever is later.

What are my responsibilities concerning the authenticity of documents presented to me by employees and prospective employees?

You must examine the document(s) as specified by the Form I-9 and, if they reasonably appear to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be considered unfair employment discrimination on the basis of immigration status.

Employer Ordered to Pay $2,881 in Back Pay For Refusing to Accept Liberian Refugee's Documentation

An employer was alleged to have illegally refused to accept an unrestricted Social Security card and driver's license from a Liberian refugee as proof of employment eligibility for the Form I-9. These documents would otherwise have established her eligibility to work. In the settlement agreement, the employer agreed to provide full back pay to the would-be employee totaling $2,881; a $500 civil penalty to the United States; and other injunctive relief, such as training of its human resources staff by the Office of Special Counsel of the U.S. Department of Justice.[5]

Can I ask my employees to produce work authorization documents at any time?

The I-9 Form should be completed upon initial hire.

If an employee has temporary work authorization, the employer should note the expiration date of that authorization, and re-verify the employee's documents prior to the expiration date.

Re-verifying work authorization during a labor dispute may be considered retaliation. (see section on Unionization)

Are undocumented employees covered by the same laws as other employees?

Yes. Laws concerning minimum wages and overtime, the right to unionize, and protection against harassment and other forms of discrimination apply to undocumented employees.

No-Match Letters

What is a "No-match" letter?

"No-Match" letters are sent by the Social Security Administration (SSA) to employers when social security numbers on a filed W-2 do not match the Administration records. The letter is intended to inform the employee of the discrepancy so that he or she can follow up with the Social Security Administration to ensure that Social Security contributions are credited to the correct account.

Why are SSA no-match letters sent out?

No-match letters are intended ONLY to help SSA make sure its records and database are accurate and to ensure that SSA maintains an accurate earnings record for each employee. A no-match letter does NOT imply that the employer or the employee intentionally provided incorrect information about the employee's name or Social Security number.

Does a SSA no-match letter come from the Department of Homeland Security (DHS) [formerly known as the Immigration and Naturalization Service (INS)][6]?

No. SSA no-match letters do not come from DHS and are not intended to enforce of immigration law.

What am I required to do if I receive a no-match letter?

A no-match letter obligates employers to:

- Check your own records for errors.
- Inform employees of the no-match letter so that employees know that their earnings are not being credited properly.
- Request that employees check their records for errors.
- Refer employees to the local SSA office for assistance.
- Submit any employer or employee corrections to the SSA.

Do I have to take any action if an employee doesn't provide corrected information?

No. Employers are NOT required to take any action if the employee chooses to not provide corrected information. The SSA asks employers to respond to the no-match letter ONLY if they or their employees have corrected information.

Am I required to fire an employee whose name appears on a no-match letter?

No. You are not required to fire an employee whose name appears on a no-match letter; and in fact, the letter from SSA states this clearly. The 2004 SSA 'No Match' letter states:

"This letter does not imply that you or your employee intentionally provided incorrect information about the employee's name or SSN. It is not a basis, in and of itself, for you to take any adverse action against the employee, such as laying off, suspending, firing, or discriminating against the individual. Any employer that uses the information in this letter to justify taking adverse action against

an employee may violate state or federal law and be subject to legal consequences. Moreover, this letter makes no statement about your employee's immigration status."

In some cases, employers

- use the no-match letter as an opportunity to fire or intimidate employees who may be speaking up for their rights on the job. As a reminder, an employer who does any of the following may be violating the law:
- discriminate against employees of certain national origins or ethnic groups
- retaliate against employees because they filed a claim or complaint with an administrative agency or court
- retaliate against employees for union organizing activities or other union protected activities.

Federal Agency Initiates Litigation Against Employer for Firing Employee After Receiving 'No Match' Letter

An employer was alleged to have illegally fired a Mexican worker one day after seeing the worker protest over unjust working conditions in front of the restaurant. The employer claimed to have fired the employee on the basis of receiving a "No-Match" letter from the Social Security Administration. Nevertheless, the National Labor Relations Board (NLRB) initiated litigation against the employer for retaliating against the worker for concerted protected activity. The employer ended up settling the case out of court.

Must I require an employee to bring in proof of their work authorization if I receive a no-match letter?

No. The receipt of a no-match letter, by itself, does not give employers notice that a worker is not authorized to work and does not trigger any duty to ask for such proof.

Am I ever required to terminate an employee for reasons related to work authorization?

Yes. An employer who has "actual or constructive knowledge" that the employee does not have work authorization has an obligation to terminate employment. Receiving a no match letter is not the same as having such knowledge. However, if an employee informs you that he or she is not eligible to work, you have "actual or constructive knowledge," and you are required to terminate that person's employment.

Unionization

Employees have the right to form or attempt to form a union with other employees in a restaurant. Employees have the right to engage in protected concerted activity, including striking, to obtain better working conditions.[7] Employees also have the right to resist union organizing and decline to be a part of the union. You should consult an attorney to understand the rights and obligations of the employer. Employees also have the right to get together with co-workers, and speak to their employer or otherwise attempt to make work better or safer without the assistance of a union (This is known as "protected concerted activity").

What am I prohibited from doing if a union organizing campaign happens at my restaurant?

An employer may not threaten employees with the loss of their job or benefits if they attempt to organize or resist organization, or discourage employees from forming or joining a union.

An employer may not interrogate employees about their union activities, about their status as members of the union, or about their union sympathies or the activities or union sympathies of other employees.

An employer may not spy or attempt to spy on union activities.

An employer may not grant salary raises or make other promises in order to discourage employees from forming or joining a union.

What happens if an employer engages in any illegal action to discourage or prohibit the unionization efforts of the employees?

Illegal actions by employers against employees exercising their freedom of association to engage in concerted action to form a union may be prosecuted by the National Labor Relations Board.

What would happen if an employer called Federal immigration authorities to come and conduct an immigration raid on employees attempting to organize a union?

The employer may be found guilty of an unfair labor practice for calling in Immigration and Customs Enforcement (formerly INS)[8] to block the union's efforts.[9]

If a court or government agency finds that I retaliated against employees for attempting to organize, then what are the possible penalties?

A union or an employee may file an unfair labor practices charge before the National Labor Relations Board. If the employer is found to have retaliated, it may be ordered to reinstate employees with back pay, or otherwise reverse the retaliatory act. Also, the employer may be required to post a Notice to Employees that it may not retaliate.

Anti–Discrimination Laws

Discrimination against employees is prohibited by a host of federal, state, and local laws. Employment discrimination is unlawful when based on the following protected categories:

- **Race**
- **Color**
- **Religion or Creed**
- **National-origin or Ancestry**
- **Sex or Gender (including gender identity)**
- **Pregnancy**
- **Age**
- **Disability**
- **Genetic Predisposition or Carrier Status**
- **Military Status**
- **Marital Status**
- **Partnership Status**
- **Sexual Orientation**
- **Status as a Victim of Domestic Violence, Sex Offense, or Stalking**
- **Arrest or Conviction Records (unless there is a specific relationship between that previous crime and the employment sought)**
- **Lawful Off-duty Activities**
- **Alienage or Citizenship Status**

What kinds of employment practices are affected by laws against discrimination?

It is illegal to discriminate in any aspect of employment, including but not limited to:

- **hiring and firing;**
- **compensation, assignment, or classification of employees;**
- **transfer, promotion, layoff, or recall;**
- **job advertisements;**
- **recruitment;**
- **testing;**
- **use of company facilities;**
- **training and apprenticeship programs;**
- **fringe benefits;**
- **pay, retirement plans, and disability leave; or**
- **other terms, conditions, and privileges of employment.**

Discriminatory practices under these laws also include:

- **harassment on the basis of any of the above-enumerated bases;**
- **retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;**
- **employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals on the basis of any of the above-enumerated bases; and**
- **Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, alienage/citizenship status, or an individual with a disability.**
- **Failure to make reasonable accommodations to enable an employee with a disability, or a person who is a victim of domestic violence, or a victim of sex offenses or stalking, to perform the essential functions of the job.**
- **Failure to make reasonable accommodations for the religious needs of employees**

Who enforces these anti-discrimination laws?

Laws prohibiting most of the forms of discrimination described above are enforced by the U.S. Equal Employment Opportunity Commission (EEOC), the New York State Division on Human Rights ("NYSDHR") and the New York City Commission on Human Rights ("NYCCHR"). In addition, federal law prohibiting discrimination on the basis of military status is enforced by the U.S. Department of Labor.

The laws enforced by these agencies vary. Further information can be found on the agencies' websites:

www.eeoc.gov (U.S. Equal Employment Opportunity Commission)

http://www.dol.gov/vets/programs/userra/ (U.S. Department of Labor)

www.dhr.state.ny.us (New York State Division of Human Rights)

www.nyc.gov/html/cchr (New York City Commission on Human Rights)

Do I have any additional obligations under these laws?

Employers must post notices describing the Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay and disability.

EEOC's poster is available in English, Arabic, Chinese and Spanish. These notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

Employers are required to provide to persons entitled to the rights and benefits under The Uniformed Services Employment and Reemployment Rights Act (USERRA), a notice of the rights, benefits and obligations of such persons and such employers under USERRA. Employers may post the information or provide the notice to employees in other ways that will minimize costs while ensuring that the full text of the notice is provided (e.g., by handing or mailing out the notice, or distributing the notice via electronic mail). A USERRA Poster is provided by the U.S. Department of Labor at http://www.dol.gov/vets/programs/userra/poster.pdf.

Can I possibly be discriminating even if I never intended to do so?

Yes. Not only intentional discrimination, but also practices that have the effect of discriminating against individuals are against the law.

Example: Terminating only higher-paid employees in a layoff may result in a significantly higher percentage of employees over the age of 40 being laid off. Depending on the circumstances, a reviewing court could determine this to be an unintentional adverse impact on older persons and hold the employer responsible for age discrimination.

Retaliation

Anti-discrimination statutes prohibit employers from retaliating against those employees who complain about or object to discrimination or for having filed a Charge of Discrimination with either the Federal, State, City or local agencies even if the charge is later dismissed or rejected by an agency or a court. It is also unlawful to retaliate against an individual who testifies or participates in an investigation, proceeding, or litigation under City, State and Federal anti-discrimination laws.[10]

In addition, New York state law protects "whistleblowers," meaning employees who report to a supervisor or to a public agency their own employer's violation of law which creates and presents a substantial and specific danger to public health and safety, or who refuse to participate in such conduct. A whistleblower can sue his or her employer for reinstatement, back pay and attorney's fees.

What is illegal retaliation?

An action that makes a materially adverse change in the terms or conditions of employment (more than a mere inconvenience or alteration of job responsibilities) in response to the employee's exercising a right to report, complain, or object to employment discrimination. Such adverse actions may include, but are not limited to: reduction of pay, shifts, hours of work available, discipline, denial of benefits, failure to hire or rehire, intimidation, transfers or reassignment of work.

Example: It is illegal to call Immigration and Customs Enforcement or give a false (bad) reference regarding an employee because that employee filed a discrimination charge.

Key Tips for Employers:

Maintain Confidentiality: Charges of discrimination filed with the governmental agencies should be treated confidentially. This may help to prevent charges of retaliation.

Make sure that you and other employees in your employment do not retaliate against the person filing the charge.

Make clear to employees who file charges that their relationship with the company will not be affected.

Hiring, Firing & Promotion

What is discrimination in hiring and firing?

When an employer has two or more equally qualified applicants for the same job, and chooses one over the other based on the person's actual or perceived race, sex, age, etc.

Likewise, an employer may not fire an employee based on a protected category. Firing an employee because of his or her actual or perceived race, sex, age, etc. is also discriminatory.

What is discrimination in relation to promotion?

When an employer has a choice between two or more equally qualified employees, and chooses to promote one over the other based on the person's actual or perceived race, sex, age, etc.

Verbal Abuse and Harassment [11]

A restaurant is a stressful environment to work in. People yell and curse at each other all the time. That's not harassment, is it?

Although shouting or cursing at an employee is not necessarily illegal harassment, it may be depending on the content of what's said, how frequently it occurs, and if all other employees are treated in the same manner.

Example: A manager does not use racial epithets. However, she frequently shouts at employees of a particular nationality, singling them out for such behavior. A jury might find the manager's behavior to be so severe and pervasive that it created a "hostile work environment" for employees of that nationality, in violation of the laws against discrimination.

Key Tips for Employers:

To avoid possible litigation, do not use racially or sexually demeaning words when speaking to employees.

It is also NEVER acceptable to single out a particular employee, group, or groups of employees for harsher treatment based on their race, sex, age, etc.

Types of Discrimination

National Origin

What is national origin discrimination?

It is illegal to discriminate against an individual because of his or her birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

The Immigration Reform and Control Act (IRCA) of 1986 requires employers to assure that employees are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate Title VII and the New York State and New York City Human Rights Laws, as well as IRCA. Verification must be obtained from all new employees.

Employers may not base a hiring decision on a potential employee's ethnic background or country of origin.

Language

Can I forbid my employees to speak languages other than English in the restaurant?

English-only rules may be adopted for nondiscriminatory reasons, such as to promote the safe or efficient operation of the employer's business.

If you choose to institute an English-only rule you should inform your employees about: (1) when they are required to speak English, and (2) what the consequences are for violating the English-only rule.

I have a food runner who speaks with an accent. I'm considering promoting him to waiter but I'm not sure my customers will like him. If I decide not to promote him for this reason, is it discrimination?

An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance. This depends on how understandable the food server is and whether customers can communicate with the server. The fact that customers may not like an employee's accent is not a sufficient reason to decide against promoting an employee. Customer preference is generally not a valid justification for discrimination.

I'm considering making all job applicants for front-of-house positions at my restaurant take an English fluency test. Is this permissible?

Tests with a discriminatory impact, like English fluency tests, may only be imposed if the examination tests skills needed for the job.

The test must also be tailored to the type and level of fluency needed for the position. For example, if only verbal ability in English is needed for the job, the test may not be written.

Religion

Employers may not discriminate against an employee based on his or her religious beliefs. Employers are also required to reasonably accommodate the religious beliefs and practices of employees and applicants unless the accommodation causes undue hardship on the business of the employer.

I have a waiter working for me who insists on wearing a hat even though it's not part of the uniform here and no one else wears one. He says his religion requires that he keep his head covered. Can I make him take it off?

Generally No. An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

Sex/Gender

It is illegal to discriminate against any employee or applicant for employment because of his/her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. The law also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex.

What is sex-based discrimination?

Both intentional discrimination and neutral job policies that disproportionately exclude individuals of a particular sex and that are not job related are prohibited.

Sex-based discrimination also includes:

- **Gender identity discrimination**
- **Sexual harassment**
- **Pregnancy-based discrimination**
- **Unequal levels of compensation because of sex**

What is sexual harassment?

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim and the harasser do not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur even where there is no economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

EEOC has brought a lawsuit against a large New York fast food franchise on behalf of over 500 women who say they were sexually harassed at over half of the restaurants. The harassment consisted of sexual groping, offensive sexual comments, and retaliation against women who complained. For many of the young women, some of whom were teenagers, this was their first employment experience.

Does the law on harassment only apply to sexual harassment?

No. Harassment based on race, color, national origin, religion, age, and disability, sexual orientation, and alienage/citizenship status is also illegal.

Key Tips for Employers:

Prevention is the best tool to eliminate harassment in the workplace.

Employers are encouraged to take steps necessary to prevent harassment from occurring.

Employers should clearly communicate to employees that harassment will not be tolerated. They can do so by providing harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

In 2003, EEOC sued a fast food restaurant in New York on behalf of two women on the basis of race discrimination and sexual harassment. The manager allegedly made derogatory sexual and racial comments, and touched the women inappropriately. The restaurant settled this case by way of a court-enforced, public agreement called a Consent Decree.

Pregnancy

What is pregnancy discrimination?

Employers may not discriminate against a woman on the basis of pregnancy, childbirth, or related medical conditions. Women who are pregnant or affected by related conditions must be treated in the same manner as other applicants or employees with similar temporary limitations in their ability to perform their job.

What if an employee is unable to fulfill the conditions of the job during her pregnancy?

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee.

Example: if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled due to pregnancy to do the same.

Can I require a pregnant employee to obtain a doctor's note verifying her inability to work?

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work.

However, if you require your employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, you may also require employees affected by pregnancy-related conditions to submit such statements.

Can I ask a pregnant employee to take a leave of absence at a certain point?

Pregnant employees must be permitted to work as long **as they are able to perform their jobs.** If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer also may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.

How long do I have to hold open a pregnant employee's job?

Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

Does employer-provided health insurance have to cover pregnancy?

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered.

Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable-and-customary-charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as amounts payable for other conditions. No additional, increased, or larger deductible can be imposed.

Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

EEOC recently settled its lawsuit against a popular brewery on behalf of a female employee who claimed discrimination on the basis of her sex and pregnancy. The owner denied the employee a promotion to manager when he learned she was pregnant..

Equal Pay

Some of the women in my restaurant earn less than the men but they don't do the same job. Is this pay discrimination?

It could be. Employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. The federal Equal Pay Act of 1963 requires that men and women be given equal wages for "equal work performed under similar working conditions and requiring equal skill, effort, and responsibility." Wages include any earnings of an employee for labor or services rendered, including benefits. Claims alleging discriminatory practices affecting compensation may also be brought under the New York State and New York City Human Rights Laws and the New York Labor Law[12].

More information on the Equal Pay Act may be found on the EEOC website at http://eeoc.gov/types/epa.html.

Age

Can I recruit employees in a certain age group?

Federal, State and City laws specifically prohibit employers from using any form of application for employment or making any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age. An age limit may only be specified in the RARE circumstance where age has been proven to be a bona fide occupational qualification (BFOQ).

Denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Employers may request that their employees waive rights or claims under the Age Discrimination in Employment Act of 1967 ("ADEA") either in the settlement of an ADEA administrative charge or court claim or in connection with an exit incentive program or other employment termination program. However, the waiver must comply with the Older Workers Benefit Protection Act of 1990 which amended the ADEA. For more information: See http://www.eeoc.gov/types/age.html.

Disability

The federal Americans with Disabilities Act of 1990 ("ADA") and the New York State and New York City Human Rights Laws prohibit discrimination based on an employee's disability. They protect people who are mentally disabled as well as people who are physically disabled[13]. These laws prohibit employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

What are some examples of reasonable accommodations?[14]

Reasonable accommodation may include, but is not limited to,

- making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- job restructuring; modification of work schedules;
- providing additional unpaid leave; reassignment to a vacant position;
- acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and
- providing qualified readers or interpreters.

- An employer may be required to provide a reasonable accommodation to enable a person with a disability to apply for a job, perform job functions, or enjoy the benefits and privileges of employ-

ment that are enjoyed by people without disabilities.

- An employer is not required to lower production standards as an accommodation.
- An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

What if I can't afford to make the accommodation this applicant or employee would require?

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business facility's size, financial resources, and the nature and structure of its operation.

If a job applicant comes in with a physical disability, what kinds of questions can I ask in the interview to determine whether the applicant can do the job?

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability.

Applicants may be asked about their ability to perform essential job functions (with or without accommodation).

A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category.

For more information about this subject, see the EEOC Publications "Job Applicants and the Americans with Disabilities Act", available on line at http://eeoc.gov/facts/jobapplicant.html, and "Pre-employment Disability-Related Questions and Medical Examinations", available on line at http://eeoc.gov/policy/docs/preemp.html.

In the restaurant industry we have to be very concerned about the medical conditions of employees who handle food. Can I ask employees and applicants for employment whether they have a contagious disease?

The EEOC has issued guidelines on this subject, which can be found in its publication "How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers", available on line at http://eeoc.gov/facts/restaurant_guide.html.

There are different standards for applicants and employees.

You should not ask medical questions to persons who are applying for a job until you have given them a "conditional offer" of employment. After making a "conditional offer" you may ask medical questions, or require medical examinations, as long as you are asking the questions to each person who is applying for the same job. Based on answers to the questions, you may withdraw the conditional offer if you determine that the person has a medical condition that could be transmitted while handling food and either there is no reasonable accommodation that would eliminate the risk of transmitting the disease through food, or any such accommodation would be an undue hardship to your business.

Medical examinations of employees must be job-related and consistent with business necessity.

The U.S. Secretary of Health and Human Services maintains a list of infectious and communicable

diseases which are transmitted through the handling of food. If an individual with a disability is disabled by one of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, you may refuse to assign or continue to assign such individual to a job involving food handling. However, if the individual is a current employee, you must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

Do the laws about disability discrimination protect people who abuse drugs and alcohol?

Employees and applicants currently engaging in the illegal use of drugs are not protected when an employer acts on the basis of such use.

Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

Sex–Based Discrimination Against Minors

Employees under the age of 18 have the same legal protections against sex-based discrimination in the workplace as adults.

Sexual Orientation

State and City anti-discrimination laws protect workers against discrimination based on sexual orientation:

Sexual Orientation is defined as heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.

Gender Identity

New York City Human Rights Law protects individuals from discrimination based on "actual or perceived gender."

"**Gender**" is defined in the City's Human Rights Law to include:

- actual or perceived sex
- gender identity
- self-image
- appearance
- behavior or expression

whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth

"**Gender identity**" is defined as an individual's sense of being either male or female, man or woman, or something other or in-between.

What is gender identity-based discrimination?

Any practice that discriminates against any employee or applicant for employment based upon their actual or perceived gender with regard to recruitment, hiring, firing, promotions, wages, job assignments, training, benefits, and other terms and conditions of employment.

It is also an unlawful discriminatory practice for a place or provider of public accommodation (e.g. restaurants) to directly or indirectly refuse, withhold from, or deny a person any of the accommodations, advantages, facilities, services or privileges of an accommodation based upon the person's actual or perceived gender.

Discrimination may take the form of unwelcome verbal or physical conduct, including, but not limited to, derogatory comments, jokes, graffiti, drawings or photographs, touching or gestures.

How can I prevent gender-identity discrimination from happening in my restaurant?

To avoid the appearance of discrimination, individuals should be addressed with names, titles, pronouns, and other terms appropriate to their gender identity. The refusal to do so is a factor that will be considered by a court or administrative agency when making a finding of whether discrimination has occurred.

If you are uncertain about which name, pronoun (he/she; him/her) or title (Ms./Miss/Mrs./Mr.) to use in addressing or referring to another individual, it is generally appropriate to ask the individual. Requesting proof of an individual's gender, except when legally required, challenging an individual's gender, or asking inappropriate questions about intimate details of an individual's anatomy, are factors that will be considered by a court or administrative agency when making a finding of whether discrimination has occurred.

Ensure that Dress Codes Allow for Expression of Individuals' Gender Identity

When developing and enforcing dress codes that are gender-specific, employers should permit employees to comply with the gender specific provisions in the codes in an appropriate manner that is consistent with their gender identity and gender expression.

Provide Access to Restrooms

Nothing in the Human Rights Law prohibits restrooms from being designated by gender. However, the New York City Commission on Human Rights recommends that, where single occupancy restrooms are available, they be designated as "gender neutral." The Commission also encourages covered entities to provide accommodations to individuals who have concerns about use of public restrooms because of gender identity or gender expression. Such accommodations could include, for example, offering the use of a private restroom to a member of the public. If an individual feels uncomfortable using a particular restroom because of another individual's presence in the restroom, he or she may be encouraged to wait until that individual has left, or to use another restroom.

Policy/Training

The Commission recommends that employers and providers of public accommodations implement anti-discrimination policies that address gender identity and gender expression issues and institute training for employees and agents on an ongoing basis.

Victim of Domestic Violence, Sex Offense, or Stalking

Most workers in New York are also protected by the City Human Rights law from discrimination based on status as a victim of domestic violence.

What can I do if I find out an employee is missing work because of domestic violence?

In New York City it is illegal to fire an employee or to penalize an employee in any way if the employee has to miss work to visit a doctor, a lawyer, a domestic violence counselor, or to attend court appointments related to incidents of domestic violence.

Marital Status

The New York State Human Rights Law protects employees against discrimination on the basis of "marital status," which is the condition enjoyed by an individual by reason of his or her having participated or failed to participate in a marriage.

Military Status

The New York State and New York City Human Rights Law protect employees against discrimination on the basis of marital status. An employer may not decide whether to hire, fire, or promote someone because he or she is single, married, divorced, separated or the like.

Discrimination Based on Record of Arrest or Conviction

It is, in most cases, an unlawful discriminatory practice for an employer to:

ask an applicant for employment about arrests other than arrests that are currently pending, or

refuse to hire someone or take other adverse action because of an arrest other than an arrest that is currently pending.

Conviction record. It is unlawful to refuse to hire someone on the grounds that they have been convicted unless:

there is a direct relationship between one or more of the previous criminal offenses and the employment or

the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making such a determination, the employer must consider all of the following factors:

(a) New York's public policy to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the employment sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on the person's behalf, in regard to rehabilitation and good conduct.

(h) The legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public.

Lawful off-duty activity

The New York Labor Law provides that it is generally unlawful for an employer to discriminate on

the basis of:

- an individual's political activities outside of working hours, off of the employer's premises and without use of the employer's equipment or other property, if such activities are legal,
- an individual's legal use of consumable products prior to the beginning or after the conclusion of the employee's work hours, and off of the employer's premises and without use of the employer's equipment or other property;
- an individual's legal recreational activities outside work hours, off of the employer's premises and without use of the employer's equipment or other property; or
- an individual's membership in a union or any exercise of rights granted under the National Labor Relations Act.

An employee's activity is not protected

- if it creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest; or
- where the employer takes action based on the belief either that:
  - — the employer's actions were required by law,
  - — the employer's actions were permissible pursuant to an established substance abuse or alcohol program or workplace policy, professional contract or collective bargaining agreement, or
  - — the individual's actions were deemed by an employer or previous employer to be illegal or to constitute habitually poor performance, incompetency or misconduct.

REVIEW: Interview Questions

The following are examples of different types of questions employers sometimes ask of employees and potential employees. The first column contains recommended questions and the second column contains questions that are not recommended.

SUBJECT

Age	RECOMMENDED Are you 18 years of age or older? If not, state your age.	NOT RECOMMENDED How old are you? What is your date of birth? What are the ages of your children, if any? (You may ask the prospective worker's age if you suspect that s/he is a minor.)
Arrest Record	RECOMMENDED Have you ever been convicted of a criminal offense? (Give details)	NOT RECOMMENDED Have you ever been arrested?
Disability	RECOMMENDED Can you perform the essential duties of the job with or without reasonable accommodation?	NOT RECOMMENDED Do you have a disability? Have you ever been treated for any of the following diseases...? Do you have now, or have you ever had, a drug or alcohol problem?
Genetic Predisposition or Carrier Status	RECOMMENDED None.	NOT RECOMMENDED Do you have any genetic predisposition to disease? Do any diseases run in your family? Inquiries as to the health status of parents or other family members.
Religion *(After describing the hours of working for the job in question)*	RECOMMENDED Will you be able to work the specific hours that this job involves?	NOT RECOMMENDED Would working weekend interfere with your religious commitments?
Race or color	RECOMMENDED None.	NOT RECOMMENDED Inquiry into applicant's religious denomination, religious affiliations, parish or church, religious holidays observed.
Sex	RECOMMENDED None	NOT RECOMMENDED Inquiry as to gender

Health & Safety

Health and safety hazards such as hot kitchens, hot equipment and oil, sharp knives, fire hazards, heavy serving trays, and slippery floors are commonplace in restaurants. The most frequent injuries and illnesses among restaurant workers include sprains and strains, cuts and lacerations, bruises, and burns.

The good news is that the majority of these injuries can be avoided by eliminating or reducing hazards. Many health and safety solutions are simple and low cost, such as worker training and education; others, such as developing a written plan or upgrading old equipment, require greater effort or expense. However, industry experts agree that investing in workplace safety can repay itself many times over by avoiding the full costs associated with injuries and illnesses. One large national chain estimates that for every dollar spent directly on an injury, four dollars are spent on indirect costs such as employee turnover, overtime, accident investigation, and worker's compensation premium increases.

The Occupational Health and Safety Administration (OSHA) writes and enforces federal rules and guidelines on health and safety for all workplaces. OSHA requires employers to provide a work environment which is free from recognized hazards causing or likely to cause death or serious physical harm. The following section highlights some of the key OSHA requirements and OSHA recommendations for improving health and safety conditions in restaurants.[15]

OSHA Requirements:

What are some key OSHA requirements for restaurant employers?

- Keep workplace clean, orderly and in a sanitary condition.
- Keep floors clean and dry. Use non-slip matting, no-skid waxes, or grit-containing materials to create non-slip floor surfaces.
- Provide warning signs for wet floor areas.
- Keep aisles, passageways, and exits free from obstruction. Keep access to exits clear of obstructions at all times.
- Provide appropriate Personal Protective Equipment (PPE). For example, provide gloves, goggles, and splash aprons for employees who handle hazardous chemicals including dishwashing detergents, pesticides. Provide hand protection when hands are exposed to hazards such as cuts, lacerations, thermal burns and extreme temperatures.
- Implement a written Hazard Communication program to provide for worker training, warning labels and access to Material Safety Data Sheets (MSDS) on hazardous chemicals.
- Ensure all machines are properly guarded.
- Keep all electrical equipment and appliances in good repair. Ground all electrical service near sources of water.
- Control accumulations of flammable and combustible waste materials and residues (grease in grill and duct work) to prevent fires. Ensure flammable items (cardboard, paper bags, etc.) are stored away from heat producing equipment.
- Develop and implement Emergency Action and Fire Prevention Plan if fire extinguishers are required or provided, and if employees will be evacuating during a fire or other emergency. Include training.

Are there specific health and safety requirements for workers under 18 years of age?

YES. Workers under 18 years of age are prohibited from:

- Operating or cleaning power-driven equipment such as meat slicers and dough mixers.
- Operating, loading or unloading scrap paper baler or paper box compactors.
- Driving a motor-vehicle.

Workers under 16 years of age are prohibited from:

- Cooking over an open flame or use pressurized fryers.
- Baking other than use of warming devices.
- Cleaning cooking equipment or handling hot oil or grease.
- Loading or unloading goods from a truck or conveyor.
- Working inside a freezer or meat cooler.
- Operating power-driven food slicers or other power-driven machinery such as lawnmowers.
- Working from a ladder.

See work hour restrictions under "Employment of Minors".

OSHA Solutions for Employers

How can I help my employees to avoid strains and sprains?

- Provide serving carts to carry food and to bus containers on, rather than having workers carry trays and containers.
- Decrease the distance that items need to be carried by providing workers with server and bussing stations close to the serving and clean-up areas.
- Provide small containers to be used where possible to carry dirty dishes. Train employees not to overfill containers to avoid lifting excessive weight.
- Choose kitchen utensils, cleaning tools, and other kitchen equipment with good grips.
- Select equipment that will reduce the hazards associated with repetitive overhead and elevated reaches (such as adjustable level rinse nozzles).
- Instruct employees to get help when moving heavy objects, rather than lifting alone.
- Reduce lifting during garbage removal tasks by using garbage handling bags with wheels or garbage cans with wheels for garbage collection when possible.
- Promote easy emptying of garbage cans by using frame versus solid cans or by using anti-cling products to prevent garbage bags from sticking to the inside of cans.

- Limit the size of garbage containers to limit the weight of the load employees must lift and dump.
- Place receptacles in unobstructed and easy-to-reach places. Install dumpsters at or below grade level.

How can I prevent trips and falls in my restaurant?

- Ensure spills are reported and cleaned up immediately.
- Implement a shoe policy program promoting shoes with slip-resistant soles and low heels. Provide non-slip overshoe covers for employees to use when they perform wet or greasy tasks.
- Install non-slip matting in areas that tend to be wet. Ensure they remain clean and in place. As an alternative in greasy areas, use no-skid waxes and floor surfaces coated with grit.
- Alert workers to step-ups and step-downs by using hazard tape or other warning signs.
- Provide mirrors for blind corners.
- Keep passageways and walkways free of clutter and crowding.
- Decrease overcrowding by adding additional supply stations or carts with supplies at convenient locations.
- Provide adequate lighting, especially in serving and preparation areas.
- Provide windows on swinging doors so you can see if someone is coming out. Provide two-way doors, one for only going in, and one for only coming out. Follow a set traffic pattern to avoid collisions.
- Provide stools or footrest bars at work stations.
- Provide height-adjustable workspaces so that workers can keep elbows close to the body.
- Use mechanical aids (such as food processors and mixers) rather than hand chopping or mixing.
- Reduce the amount of chopping tasks by purchasing ready-made and other pre-prepared foods.
- Restructure jobs to reduce repeated motions, forceful hand exertions, and prolonged bending.
- Rotate workers through repetitive tasks.

How can I help my employees to avoid accidental cuts?

- Keep knives sharpened and in good condition.
- Instruct employees on safe handling, use and storage of knives, including designating a location or container to store knives and other sharp equipment.
- Train employees to store knives with the blades all facing one direction.
- Allow only experienced, trained workers to sharpen knives.

How can I help to eliminate electrical hazards?

Ensure electrical equipment is in good repair. Tag out and remove from service all damaged receptacles and electrical equipment.

Ensure that all electrical service near sources of water is properly grounded.

Train employees to not plug or unplug energized equipment when their hands are wet.

Use ground fault circuit interrupters (GFCIs) if the breaker or receptacle type is to be installed in situations where electricity and wetness coexist.

Inform all new workers of electrical hazards and how to avoid these hazards. Inform workers that in the event of an electrical injury, no contact should be made with the victim or the equipment until the current has been shut off.

How can I help to prevent poisoning or chemical burns resulting from contact with hazardous chemicals?

Use cleaning chemicals that are not considered hazardous.

Automate dispensing of cleaning chemicals to avoid employee contact with chemicals.

Provide dishwashing machines with automated detergent dispensers.

- Never remove products from the original bottle without properly labeling the new container.
- Do not store incompatible chemicals stored together (check Material Safety Data Sheets).
- Avoid storing liquid chemicals on top shelves. Store them on lower shelves.
- Provide proper training and equipment (gloves and goggles) for work with chemicals.

How can I help my employees to avoid burns, scalds & heat stress?

- Replace older deep fat fryer models with newer models.
- Use the appropriate quality oil for your fryer to minimize oil splatter.
- Provide an efficient ventilation system or air conditioning to avoid heat stress.
- Install slip-resistant flooring near hot surfaces and cooking appliances.
- Provide guards on dishwashers to prevent accidental scalding by steam and hot water.
- Require use of hand protection when hands are exposed to thermal burn hazards.
- Keep cooking areas as cool as possible using spot cooling fans, evaporative cooling, air conditioning, general ventilation, and local exhaust ventilation at points of high heat production.
- Encourage workers to drink plenty of water.
- Gradually introduce new employees to hot environments to build up heat tolerance.

Lock-In's

Is it illegal to lock employees in the restaurant at night?

Yes. Not only is it illegal to lock employees in the restaurant, it is extremely unsafe. Under no circumstances should you lock employees (porters, cleaning staff, etc.) in the restaurant.

What are some safe alternatives to locking-in employees?

The following is a brief list of remedies that could be implemented by employers:

Increase Supervision. Doors can remain unlocked while managers supervise janitors. Workers have said that knowing they can go home after they finish cleaning is an incentive to get the job done earlier.

Upgrade emergency exits. Outdated emergency exits can pose a severe hazard if a fire ever broke out during hours of operation.

Use Newer Technology. Alarmed doors with push locks that can only be opened from the inside can be used to protect merchandise. If alarm goes off managers and the Police Department will be notified immediately of the disruption.

Examples of Injury Prevention Techniques

The following chart comprises examples of ways that injuries may be prevented in restaurants and illustrates the aforementioned solutions:

INJURY	CAUSES	PREVENTION
Slips, Trips & Falls	Wet Floors	Mop up spills promptly. Wear correct shoes with slip resistant soles.
	Grease Spills	Provide rubber mats in cooking areas
	Reduced vision when carrying sacks or large boxes on stairs	Make sure stairways are well lit. Place brightly colored hazard tape on top and bottom step
Cuts and lacerations	Knife cuts	Keep knives sharp, store knives properly
	Faulty machinery	Inspect regularly to make sure safety devices, such as guards, are in working order
Burns and scalds	Splattered oil	Make sure food is dry when placed in hot oil. Workers should wear chef jackets (long sleeved) to protect their upper bodies. Wait till oil in deep fryers is cool before handling or transferring.
	Hot pots and pans	Provide oven mitts, dry towels to handle hot equipment.
Muscle Strains	Improper lifting	Train workers as to proper lifting technique
	Overhead reaching	Do not store frequently used items about shoulder height
	Awkward work positions	Redesign counter height and width to reduce continuous stretching.
Assault	Handling money	Count cash in a secure room
	Dissatisfied customers	Provide training so that workers can defuse potential violence.
Harassment	Within staff	Provide confidential way for workers to report violence or harassment and have a policy that deals with them.

Workers Compensation & Disability Benefits

Most employees who have been injured at work are entitled to collect workers compensation insurance benefits if they follow the appropriate steps. An employer should not pay for an employee's medical expenses, whether out of kindness or in an attempt to pressure the employee not to file a worker compensation claim. This can come back to haunt you.

It is illegal to fire or discriminate in any way against an employee who has filed a workers compensation claim or because the employee is injured on the job and medical bills are sent to the restaurant.

Keep an injury log for all injuries/incidents that occur on the job, even if it seems minor. For example, an employee might slip and seem OK, but later incur a back injury. If the worker files a Workers Compensation claim and you do not have a record of the incident, you can be fined.

Workers who file false claims may be required to repay any monies received or paid to their doctors or hospitals, and may be prosecuted for fraud under criminal law.

Family and Medical Leave

Does the Family and Medical Leave Act apply to me?

If you have 50 or more employees you are required to comply with the Family and Medical Leave Act of 1993 which entitles employees to take up to 12 weeks of job-protected unpaid leave each year under certain circumstances:

(1) For birth of a son or daughter, and to care for the newborn child;

(2) For placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; or

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.

Are there other laws requiring job-protected leave?

Leave of absence may be required as a reasonable accommodation for a disability under the Americans with Disabilities Act, and the New York State and New York City Human Rights Laws.

Licensing and Operating Laws

The New York City Department of Health and Mental Hygiene has jurisdiction to regulate all matters affecting health in the city and to perform all those functions and operations that relate to the health of the people of the city. As part of these duties, the Department is responsible for enforcing food safety and sanitation laws. The agency's goal is to reduce food-related illnesses.

Food Safety Inspections and Permits

You must obtain a Department of Health and Mental Hygiene permit to operate a food service establishment. Failure to obtain a permit is illegal and subjects an establishment to immediate closure. Twenty-one days before opening for business, you must schedule a pre-permit inspection. To schedule a pre-permit inspection, call the Bureau of Food Safety and Community Sanitation (BFSCS) at (212) 676-1600, Monday through Thursday. The pre-permit inspection will determine if your facility is suitable for operating a food service establishment (FSE). Once permitted, your FSE will receive regular cyclical inspections to determine if it meets the New York City (NYC) Health and New York State (NYS) Sanitary Codes requirements.

NYC Public Health Sanitarians conduct "unannounced" inspections of food service establishments. During inspections, Sanitarians evaluate food workers' practices, including the manner in which they receive and store foods, how they process foods and the temperatures, at which they cook, cool, hold and reheat food. As a result of the inspections, Sanitarians may issue administrative summons for violations of the NYC Health Code, the NYS Sanitary Code or other applicable laws. The Department posts the results of restaurant inspections on its web site.

Smoke-Free Air Act

The DOHMH enforces the NYC Smoke-Free Air Act (SFAA), Local Law #47 of 2002 (available on line at http://www.nyc.gov/html/doh/downloads/pdf/smoke/tc7.pdf). Smoking in most indoor spaces in New York City, including restaurants, is strictly prohibited. There are limited exceptions for tobacco bars and other bars with designated smoking rooms that comply with stringent requirements established in the law. Restaurants with outdoor space are permitted to allow smoking only in limited areas described in the law.

Posting Requirements

The Smoke-Free Air Act requires that "No Smoking" signs are posted in all indoor public spaces and ashtrays are prohibited in all smoke free areas. Signs in many different languages are available on the DOHMH Website: www.nyc.gov/html/doh/html/rii/procedures.shtml. The SFAA also requires establishments to have and disseminate to employees a smoking policy, a sample of which also is posted on the Department's web site.

Restaurants must also post the following health-related signs:

"Choking first aid" poster.

"Alcohol and pregnancy" warning sign

"Wash hands" signs at the hand wash facilities.

For assistance in understanding what is required by law, please consult the applicable regulations, or contact:

New York City Department of Health and Mental Hygiene
Division of Environmental Health
Bureau of Food Safety and Community Sanitation (BFSCS)
253 Broadway, 6th Floor, Box CN-59A
New York, NY 10007

(212) 676-1600, 1601

The Department maintains a guide to Operating a Food Establishment in NYC on its web site at:
www.nyc.gov/html/doh/html/inspect/iopera.shtml

Included is a Suggested Guide to Food Establishment Design.
www.nyc.gov/html/doh/downloads/pdf/inspect/inspect-guide-2005-part2.pdf

Health Academy: Food Protection Course

The Health Code requires that supervisors of foodservice establishments and non-retail food processing establishments be certified as having completed a course in food protection. A person holding a certificate issued after passing an examination as part of approved Food Protection Course must be on the premises and supervise all food preparation activities during all hours of operations of a food service establishment.

This course costs $105.00 and lasts for five days. It usually starts on Monday and ends Friday. The course is conducted over fifteen hours with classes three hours each day. Whenever Monday is a City holiday, classes begin on Tuesday. In any four-day work week classes last three hours and forty-five minutes every day.

The course is offered continuously. In the daytime, English classes are held in the morning from 9 a.m. to 12 noon, and in the afternoon from 1 p.m. to 4 p.m. In the evening, from 5 p.m. to 8 p.m., two classes are held each month in English, Chinese and Spanish. In addition, in the evening, one class is held each month in Greek and Korean.

Participants who complete the course and are successful at the final examination are issued certificates. Registration for this course is done in person at the Citywide Licensing Center, with the payment of the fee by certified check or money order.

The Citywide Licensing Center is located at:

42 Broadway, 5th floor
New York, NY 10005
(212) 487-4161

The Health Academy is located at:

Riverside Health Center
160 West 100 Street
New York, NY 10025

Public Accomodation Discrimination Laws

Federal, State and local laws prohibit discrimination by public accommodations, including restaurants, on the following grounds:

- **Race**
- **Color**
- **Religion or creed**
- **National-origin or ancestry**
- **Sex or gender (including gender identity)**
- **Age**
- **Disability**
- **Marital Status**
- **Partnership Status**
- **Military Status**
- **Sexual Orientation**
- **Alienage or citizenship status**

The information provided above with respect to your obligations not to discriminate against employees is also relevant to your obligations not to discriminate against customers and persons interested in patronizing your restaurant. It would be unlawful, for example, to refuse to serve someone because of his or her race, national origin, or sexual orientation.

Example: Springfield, Virginia: On September 23, 2001, a Sikh man at a restaurant and pool hall was told by a manager that he would have to remove his turban, due to a policy that barred hats other than baseball caps and cowboy hats. The Sikh man reported to the Civil Rights Division of the Justice Department that prior to September 11, he had worn his turban at the restaurant without objection. After investigation, the Civil Rights Division reached a settlement with the restaurant owners, F & K Management, Inc., d/b/a Hard Times Cafes and Santa Fe Cue Clubs on February 28, 2003. The agreement permits patrons to wear religious headgear at the establishment and requires the owners to post non-discrimination signs at their restaurants, place ads in local newspaper, and hold non-discrimination training for their employees. The settlement also included a formal written apology to the Sikh patron.[16]

Public accommodations are required to make reasonable accommodations for persons with disabilities. This may include removing architectural barriers where that would be necessary to provide accessibility. A restaurant would not be required to remove such barriers if that would cause "undue hardship", which is determined in light of:

- the nature and cost of the accommodation;
- the restaurant's overall financial resources
- the number of persons employed at the restaurant
- the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the restaurant;

- the overall size of the business with respect to the number of its employees, the number, type, and location of its facilities; and
- the type of operation or operations of the restaurant, including the composition, structure, and functions of its workforce of such entity; and the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question.

For more information, see "ADA Guide for Small Businesses" at http://www.usdoj.gov/crt/ada/smbustxt.htm

Special tax benefits are available for qualifying businesses to help defray the cost of making their facilities accessible. For information, see "Tax Incentives Packet on the Americans with Disabilities Act" at http://www.usdoj.gov/crt/ada/taxpack.htm.

Service animals

Generally, a restaurant must modify its policies and practices to permit an individual with a disability to use a service animal. Dogs are the most common, but not the only animal, used by people with disabilities. Service animals assist persons with disabilities in many day-to-day activities, including:

- Assisting persons who are blind or have a sight impairment.
- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.

Example: The U.S. Attorney's Office entered a settlement with a restaurant owner resolving a complaint that at one of the locations an individual accompanied by a service animal was not allowed to enter the restaurant. Under the agreement the owner will ensure access to individuals with disabilities accompanied by service animals, post its nondiscrimination policy at the entrances and employee areas, give a copy of the policy to each employee, and pay $3,500 in damages to the complainant and a $1,000 civil penalty to the U.S. Government.[17] The owner agreed to give the following instructions to employees.

Most of the time an individual with a disability who uses a service animal may be easily identified without any need for questioning. When the customer enters the restaurant with a service animal:

1. Permit the service animal to accompany the individual with a disability to all areas of the restaurant normally used by customers.
2. Do not ask a customer for proof of his or her disability.
3. An animal may be determined to be a service animal where:
   A. The animal is wearing a harness or tag identifying it as service animal; or
   B. The animal has an identification card identifying it as a service animal; or
   C. The person who has the animal tells you that the animal is a service animal and not a pet.
4. Do not require that the customer with a service animal sit in a separate or isolated area away from other customers.
5. Direct any questions or clarifications concerning this policy to appropriate management personnel.
6. Conduct any discussions with a customer in such a manner so as to avoid any possible embarrassment to the customer.
7. Use good judgment in determining whether there is any need to question a customer.

For more information, see "ADA Business Brief: Service Animals"
http://www.usdoj.gov/crt/ada/svcanimb.htm

Consumer Protection Laws

What All New York City Businesses Should Know

The New York City Department of Consumer Affairs (DCA) fosters a marketplace that consumers trust and where honest businesses thrive. The following will provide a snapshot of rules that you need to know so your business complies with City and State law. The DCA licenses more than 60,000 small businesses and enforces consumer protection and weights and measures laws at all retail businesses. For more information, license applications, or to file a complaint, call 311 within the five boroughs (or 212-NEW-YORK outside NYC) or visit DCA online at www.nyc.gov/consumers.

****For restaurants interested in applying for a sidewalk café license, call 311 for a complete application and design guidelines, or download both from the DCA web site at www.nyc.gov/consumers.**

LAWS

The New York City Department of Consumer Affairs enforces the City's licensing, consumer protection, and weights and measures laws, as well as related State laws. We offer free business guides and other information about these laws, designed to give local businesses easy access to the rules they need to know. For free brochures call 311, or go to www.nyc.gov/consumers.

DOES YOUR BUSINESS NEED A LICENSE?

By law, DCA licenses 55 types of small businesses including sidewalk cafes, tobacco retailers, and more. Contact DCA to see if your business requires a license. If you do, the license must be posted in a place that's visible to customers. You can download an application form from www.nyc.gov/consumers.

RESTAURANT SURCHARGES

By law, restaurants are prohibited from adding a surcharge to the cost of items listed on the menu. For example, if they want to raise prices, they must change the individual prices on the menu, not just add a surcharge.

Some surcharges are exempt including: bona-fide service charges for persons sharing one meal, a personal minimum conspicuously posted, and businesses which are solely "take-out."

REFUND RULES

Is your refund policy posted by the cash register, where customers can read it without difficulty? Does it explain all the details that limit a return, such as time limits, required photo ID, or other special conditions? If not, the law says you must give a full refund timely, or risk a violation.

RECEIPTS

Be sure your business name, address, license number (where applicable) and the customer's itemized purchases appear on all receipts. A receipt must be provided for any sale of $20 or more, and upon request for any sale between $5 and up to $20.

SELLING TOBACCO PRODUCTS

All retailers selling cigarettes must be licensed by the DCA. Merchants caught selling tobacco to kids under 18, on more than two occasions within a two-year period, risk high fines and losing their City license, State registration and lottery license.

WEIGHTS AND MEASURES

DCA inspects store scales to make sure they are balanced. Scales must be positioned so consumers can view weight information and the price per pound. The weight of the package, or "tare," must be subtracted from the cost of the weighed item.

VIOLATIONS AND PENALTIES

If DCA finds that you have violated the law, you could be fined. In some cases of repeat or egregious violations, your license may be pulled or your premises may be padlocked. In many cases, if you are issued a violation, you have the right to a hearing before a DCA administrative law judge. Your violation notice will include the date of the hearing, and instructions on how to proceed if you choose to settle before the hearing. For a free copy of DCA's Administrative Hearing Guide, call 311 or go to www.nyc.gov/consumers.

RESOLVING COMPLAINTS

DCA always contacts businesses when a consumer files a complaint against them. Often complaints are settled right away through mediation. If mediation is unsuccessful or a business is unresponsive, charges may be brought to obtain consumer restitution or fines.

Recommended Best Practices

Many restaurant owners and managers have recognized that when they take good care of their employees, the employees take good care of their customers. Happy employees are more likely to provide attentive, friendly, individualized service and good service is a major factor in increasing customer loyalty. The following section is designed to illustrate how employers can do much more than merely avoid breaking the law to ensure that their employees will be well provided for.

1. Maintain Civility in the Workplace

In any relationship, respect generates respect. If you treat your employees well, chances are they will respect you and your customers. Things like raised voices and insults can create an unpleasant work environment, decreased productivity and resentment. Expletives or racial slurs may be discriminatory and should not be used. Managers should be trained to conduct themselves professionally when interacting with the staff, as well as with customers in your restaurant. Do not fire employees publicly "in the heat of the moment" during an argument. Do not threaten employees with demotions or layoffs unless you are truly considering taking such action and have a good reason for doing so.

2. Provide Opportunities for Internal Promotion and Salary Increases

In order to increase employee loyalty and decrease turnover, it is preferable to provide opportunities for advancement of current employees rather than hiring from the outside. In the long run, you will save on training costs if you promote qualified existing employees who are already familiar with your establishment and your clientele, instead of training outside applicants to fill positions when they become available.

Provide financial incentives to employees. Provide opportunities for employees to increase their earnings through seniority or by working their way up the industry ladder. Employees who come to you looking for a way to increase their earnings may be motivated to learn more and take on more responsibility for fair compensation.

3. Avoid a Segregated Workplace

Be aware of who you are hiring for what types of positions. Are your back-of-house employees predominantly immigrants and people of color while your front-of-house staff are mostly native-born and/or white? On what basis did you make those hiring decisions? Were they based on stereotypes and subconscious assumptions about the employee's abilities or who will be viewed as most "attractive" by customers or how well employees with accents can communicate in English? Remember that many types of discrimination are against the law. Try to make hiring and promotion decisions based on actual skill and experience, not on stereotypes and assumptions about people.

4. Provide Adequate Staff Training

For both Back of the House and Front of the House workers, providing adequate job training is essential. For example, workers operating any kind of equipment – cutting machines, freezers, stoves and ovens – should be adequately trained in using them and all employees should be trained in the basic health and safety practices. Regular staff meetings provide opportunities for questions, ongoing training, and more. One portion of each staff meeting should be devoted to health and safety issues.

5. Provide a Voluntary Grievances Process

Establish a procedure by which employees can have their concerns heard and addressed by an owner or senior manager. Distribute this policy in written form to all workers. Also post it in the restaurant in an area that all employees have access to and are likely to see it.

6. Provide Health Insurance for Workers

Provide your workers with health insurance to keep them healthy and working. Contact the following resources to learn more about how to provide low-cost health insurance to your workers.

New York State Insurance Department (NYSID)
(212) 480-6400/ www.ins.state.ny.us.

City department responsible for licensing carriers and monitoring their operations.

New York State Insurance Fund (NYSIF): www.nysif.com

NYSIF specializes only in Workers' Compensation and Disability Insurance and is the largest provider of workers' compensation insurance in New York State.

Health Pass
Accounts Management Department: 212-252-8010 x210

www.healthpass.com

Works with multiple carriers for businesses from 2-50 employees. HealthPass offers over 30+ different health benefit options from five leading carriers: GHI, Health Net, HIP, Horizon Healthcare, PerfectHealth and Dental & EverGuard from Guardian. HealthPass provides access to doctors, hospitals and other health professionals. The small business owner decides exactly how much to contribute to his or her employees' health plan through its defined dollar contribution method.

LIA Health Alliance
Phone: 1-800-431-1290/ www.liahealthalliance.com

The Alliance is designed to give small businesses (2 to 50 employees) the same marketplace advantages enjoyed by major corporations. By bringing insurers together in a competing arena, the Alliance can offer low rates and more choices. The Alliance gives your employees the opportunity to choose the insurer and benefit plan that meet their personal needs. Each employee selects from a menu of benefit plans offered by five competing insurers.

Healthy NY
Phone: 1-866-HEALTHY NY (1-866-432-5849)
www.ins.state.ny.us/website2/hny/english/hny.htm

Coordinated by the Mayor's Office of Health Insurance (Both English and Spanish).

Brooklyn Health Works by Brooklyn Chamber of Commerce:
Michelle Matthews - Phone: 718-596-4550
www.brooklynhealthworks.com

Affordable health insurance for small businesses and sole proprietors in Brooklyn.

Working Today
Phone: 718-222-1099/ www.workingtoday.org

EarnBenefits/Seedco
Jema Cabrias – Phone (212) 513-6446/ www.earnbenefits.org

Direct assistance for your employees to apply for and receive health insurance and other benefits.

7. Maintain Adequate Staffing Levels

Often, high staff turnover, high stress levels, accidents, illness and poor customer service in the workplace result from understaffing. Employees who are trained to do one job should not be forced to "fill-in" on a job for which they are not properly trained because there is no one available who is properly trained for the task. Employees will face less risk of injury or illness if they are only performing tasks for which they are properly trained and if they have adequate back-up.

8. Provide Paid Sick Days and Provide Paid Vacation Time

When employees become ill at work, they should be allowed to leave without losing the day's pay. To allow a sick employee to continue to work handling food, endangers not only the employee's health but the customers' health as well. Employees who know they will forfeit wages by leaving work because of illness may hide the illness from the employer, thus putting everyone at risk. In addition, employees should be granted a number of paid sick-days per year, as they are in other industries. This practice will ensure that employees are not handling food or dishes at any time when they are infectious or contagious. Similarly, providing employees with paid vacation time on an annual basis allows them to rest, take care of personal affairs, and thus be more productive when at work.

9. Provide Employee Handbooks in the Appropriate Languages

Providing an Employee Handbook makes all workplace policies clear and helps you avoid arguments over the ambiguity of management decisions. The handbook should outline all vacation, sick days, and other benefits, and describe unacceptable activities and behavior that lead to discipline or firing. It should also include health and safety training and special instructions for operating equipment. A special orientation should be provided to each new employee to review the handbook, and answer any questions.

If you provide any written materials to your employees (such as handbooks, codes of conduct, written contracts or policies) especially when a signature is required on such documents, these materials should be provided in whatever language the employees speaks. If a written translation is not available then an oral translation of the content should be provided.

10. Avoid Employees' Performing Jobs for Which They are Not Trained

Employees handling multiple jobs at once or doing jobs for which they are not trained can lead to accidents and can also lead employees to do things in the workplace that put both their own safety and the safety of customers at risk. Any worker operating any kind of equipment, including electrical equipment, should be thoroughly trained to do so. OSHA reports that many restaurant employees have been hurt in electrical accidents; this occurs when workers are asked to change light bulbs or conduct other electrical work for which they were neither hired nor trained.

11. Maintain Good Records

To avoid litigation over discrimination and personnel issues, it is essential to maintain good records and an accurate "paper trial." For each employee, maintain a personnel file, and document each interaction over personnel matters. The law requires maintaining a log with regard to any accidents or other health and safety incidents that occur in the restaurant. The law also requires that you maintain complete and accurate wage and hour records.

12. Help Employees to Access Government and Private Benefits

Retain valuable, loyal workers by helping them access benefits that can enhance their wages and help them stay employed.

Examples of benefits include Childcare Subsidies, Food Stamps, Tax Credits, Matched Savings Accounts, and Utility Payment Assistance. Go online at www.earnbenefits.org to learn more about these and other benefits that can save money for you and your employees. Information is provided in both English and Spanish. EarnBenefits is an easy, cost-free way to connect your employees to government and private benefits.

For assistance accessing these benefits, contact Jema Cabrias at 212.513.6446 or jcabrias@seedco.org.

Resources

New York City Department of Small Business Services

The mission at the Department of Small Business Services (SBS) is to support the formation, growth and expansion of New York City's small businesses by providing business assistance, fostering neighborhood development and promoting financial and economic opportunity through government procurement.

New York City Business Solutions Centers operate in all 5 boroughs and provide assistance to business owners in many different areas including financing, business planning, government facilitation, start-up assistance, etc. All of the services are free and any business owner or prospective business owner is eligible for services.

For more information, call 311 or (212) NEW-YORK from outside NYC (for TTY call 212-504-4115) and ask for Small Business Services. Check the Department's website at www.nyc.gov/sbs or visit a NYC Business Solutions Center conveniently located in your borough.

Bronx:

358 East 149th Street, Lower Level

Bronx, NY 10455

718-960-7988

Brooklyn:

9 Bond Street, 5th Floor

Brooklyn, NY11201

718-875-3400

Manhattan (lower):

79 John Street (between William & Gold)

New York, NY 10038

212-618-8914

Manhattan (upper):

215 West 125th Street, 6th Floor

New York, NY 10027

917-493-7243

Staten Island (North Shore):

60 Bay Street, 2nd Floor

Staten Island, NY 10301

718-982-2560

Staten Island (West Shore):

900 South Avenue, Suite 402
Staten Island, NY 10314
(718) 477-1400 x12

Queens:

168-46 91st Avenue, 2nd Floor
Queens, NY 11432
(718) 557-6732

Wage & Hour Law

For more information on Federal Labor Laws contact:

The United States Department of Labor

U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Live assistance is available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern Time by calling, 1-866-4-USA-DOL, TTY: 1-877-889-5627.

For more information on New York State labor laws contact:

The New York State Department of Labor

345 Hudson St., 7th Fl.
New York, NY 10014
(212) 352-6700

www.labor.state.ny.us

New York State Attorney General, Labor Bureau

120 Broadway
New York, NY 10271
(212) 416-8700

www.oag.state.ny.us

Organizing & Labor

For more information about union organizing contact:

National Labor Relations Board

26 Federal Plaza, Room 3614
New York, NY 10278-0104
Regional Director: Celeste Mattina
Hours of Operation: 8:45 am - 5:15 pm (EST)
Tel: (212) 264-0300/Fax: (212) 264-2450

Discrimination

For more information on federal discrimination laws contact:

U.S. Equal Employment Opportunity Commission

P.O. Box 7033
Lawrence, Kansas 66044
Tel: 1-800-669-4000
Fax: 703-997-4890

For the hearing impaired: TTY number is 1-800-669-6820

www.eeoc.gov

Email: Please include your zip code and/or city and state so that your email will be sent to the appropriate office.

info@ask.eeoc.gov

For more information on state discrimination laws contact the

New York State Division of Human Rights

One Fordham Plaza
Bronx, NY 10458
(718) 741-8400

http://www.dhr.state.ny.us/

For more information on local discrimination laws contact the New York City Commission on Human Rights Borough Offices at:

Manhattan:

40 Rector Street, 10th Floor
New York, NY 10006
(212) 306-5070

Brooklyn:

275 Livingston Street, 2nd Floor
Brooklyn, NY 11217
(718) 722-3130

Bronx:

1932 Arthur Avenue, Room 203A
Bronx, NY 10457
(718) 579-6900

Queens:

136-56 39th Avenue, 3rd Floor
Flushing, NY 11354
(718) 886-6162

Staten Island:

60 Bay Street, 7th Floor
Staten Island, NY 10301
(718) 390-8506

Immigration

Additional information about IRCA may be obtained from the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 (voice), 1-800-237-2515 (TTY for employees/applicants) or 1-800-362-2735 (TTY for employers) or at www.usdoj.gov/crt/osc.

EEOC Outreach Program

The EEOC offers a no-cost outreach program where, on a limited basis, an EEOC representative will come to your organization to provide information on general EEOC provisions. The staff is bilingual. The EEOC also conducts free seminars on the Americans with Disabilities Act (ADA) where employers (with 15 to 100 employees) and disabled employees can come to learn about tax incentives, community resources and rights and responsibilities of employers and employees. Contacts for New York are: Nancy Boyd, nancy.boyd@eeoc.gov, (212) 336-3770 (Tel.) or Bryan White, bryan.white@eeoc.gov, (212) 336-3670.[18]

Free publications on laws enforced by the EEOC, facts about discrimination, and enforcement guidelines are available at:

U.S. Equal Employment Opportunity Commission Clearinghouse
8280 Greensboro Drive, Suite 300
McLean, Virginia 22102

Fax: (703) 821-2098
Tel: 1-800-669-3362 (voice) 1-800-800-3302 (TTY)

http://www.eeoc.gov/employers/overview.html.

Family and Medical Leave

For more information on the Family and Medical Leave Act check the United States Department of Labor web site at: www.dol.gov.esa/public/regs/compliance/whd/1421.htm.

Health & Safety

For more information on health and safety laws, compliance and penalties go to www.nyc.gov/health. For more information about occupational health & safety contact:

Occupational Safety and Health Administration

201 Varick Street, Room 670
New York, New York 10014
(212) 337-2378
Fax:(212) 337-2371

New York City Department of Health and Mental Hygiene Bureau of Food Safety and Community Sanitation (BFSCS)

253 Broadway, 6th Floor, Box CN59A

New York, New York 10007

(212) 676-1600

http://www.nyc.gov/html/doh/html/inspect/iopera.html

New York City Department of Health and Mental Hygiene
Bureau of Environmental and Occupational Disease Epidemiology

253 Broadway, 6th Floor, Box CN343
New York, NY 10007
(212) 788-4290

http://www.nyc.gov/html/doh

New York State Workers' Compensation Board

PO Box 5205
Binghamton, NY 13902-5205

http://www.wcb.state.ny.us/

New York Committee on Occupational Safety and Health (NYCOSH)

275 7th Avenue
New York, NY 10001
tel: 212-627-3900, fax: 212-627-9812

www.nycosh.org

Food Safety

The Citywide Licensing Center maintains staff that collects payment for permit fees and registers individuals for Food Protection Courses. In addition, the Citywide Licensing Center is responsible for the issuance of permits.

Citywide Licensing Center

42 Broadway, 5th Floor
New York, NY 10004
(212) 487-4104/05

The Health Academy offers Food Protection Courses.

Certificates are issued and replacements for lost certificates can also be obtained at the Health Academy.

Health Academy

160 West 100 Street
New York, NY 10025
(212) 280-9211

Note: Offices are closed during City/Public Holidays.

Licensing and Consumer Protection

For more information about licensing contact:

The New York City Department of Consumer Affairs

42 Broadway
New York, NY 10004

For more information about the DCA call 311 or go to www.nyc.gov/consumers

Other Reference Organizations & Institutions

New York State Restaurant Association (NYSRA)

New York City Regional Office
1001 Avenue of the Americas, 3rd Floor
New York, NY 10018
Tel: (212) 398-9160
Fax: (212) 398-9650

Restaurant Opportunities Center of New York (ROC-NY)

99 Hudson St., 3rd Floor
New York, NY 10013
(212) 343-1771

Asociación Mexico Americana de Trabajadores (AMAT)

39 West 14th St., Room 206
New York, NY 10025
Tel: (646) 259-5474/(212) 633-6646
Fax: (212) 633-2889

APPENDIX A: WAGE & HOUR SUMMARY FOR RESTAURANTS

NON-TIPPED WORKERS (WHEN REGULAR RATE IS MINIMUM WAGE)

Wage	Effective 1/1/05	Effective 1/1/06	Effective 1/1/07
Minimum Hourly Rate	$6.00	$ 6.75	$ 7.15
Minimum Overtime Rate	$9.00	$10.13	$10.73

TIPPED WORKERS REDUCED MINIMUM HOURLY RATE

Wage	Effective 1/1/05	Effective 1/1/06	Effective 1/1/07
Type of Worker			
Food Service Workers*	$3.85 (tips at least $2.15)	$4.35 (tips at least $2.40)	$4.60 (tips at least $2.55)
Other Workers (i.e. delivery)	$4.10 (tips at least $1.90)	$4.60 (tips at least $2.15)	$4.85 (tips at least $2.30)

REDUCED MINIMUM OVERTIME RATE (WHEN REGULAR RATE IS MINIMUM WAGE)

Wage	Effective 1/1/05	Effective 1/1/06	Effective 1/1/07
Type of Worker			
Food Service Workers*	$6.85	$7.73	$8.18
Other Workers (i.e. delivery)	$7.10	$7.98	$8.43

PER MEAL ALLOWANCE

	Effective 1/1/05	Effective 1/1/06	Effective 1/1/07
Type of Worker			
Food Service Workers*	$1.85	$2.00	$2.10
Other Workers (e.g. delivery)	$2.05	$2.30	$2.45

* A "food service worker" means an employee primarily engaged in the serving of food and beverages to guests, patrons or customers in the hotel or restaurant industry, including, but not limited to, waitstaff, bartenders, captains and busing personnel; and who regularly receive tips from such guests, patrons or customers.

Note: The information above applies to all restaurant workers regardless of immigration status.

APPENDIX B: RESTAURANT SAFETY CHECKLIST

Location/Contact: _____ **Date:** _____

Combustibles		**Y N N/A**
1	Are flammable/combustible liquids (solvents, paints, etc.) stored in a safety cabinet or outside?	
2	Are combustibles stored at least 30 feet from any heat sources?	

Exits		**Y N N/A**
3	Are all exits marked, illuminated, and clear of obstructions?	
4	Are all exits unlocked during business hours?	
5	Are non exits identified?	

Automatic Fire Extinguishers		**Y N N/A**
6	Are automatic dry-chemical extinguishing systems over ranges, grills, and fat fryers present?	
7	Do the automatic Ansul extinguishing systems have current inspection tags?	
8	Are extinguishing heads capped to prevent clogging?	
9	Are extinguishing system's manual pulls located away from the range, grill, or fryer?	
10	Will the fuel supply for ranges, grills, and fryers automatically shut-off if the extinguishing system turns on?	
11	Are the automatic temperature shut -offs on the fryer(s) operational?	

Filters		**Y N N/A**
12	Are exhaust filter(s) cleaned at least once a day?	
13	Are exhaust system(s) cleaned on a quarterly basis by a qualified contractor?	

Portable Fire Extinguishers		**Y N N/A**
14	Are the portable fire extinguishers the proper type for a kitchen environment?	
15	Are fire extinguishers properly wall-mounted?	
16	Is there at least 3 feet of clearance around the portable fire extinguishers?	
17	Are employees trained in the proper use of extinguishers (both portable and dry-chemical)?	

Sprinklers		**Y N N/A**
18	Are sprinkler system control valves secured in the open position?	
19	Is there at least 18 inches of clearance between the sprinkle heads and any stored materials?	
20	Is there at least 3 feet of clearance around the sprinkler system main control valve?	
21	Is there a written record of all annual sprinkler system tests/maintenance?	
22	Is the water pressure indicated on the sprinkler system's lower gauge?	

Emergency Response		**Y N N/A**
23	Is there a written record of annual emergency response training for all employees?	
24	Are doors mount to swing outwards?	
25	Two flashlights are available and working?	
26	Is the first aid kit available and in good condition?	

Freezers		Y	N	N/A
1	Do walk-in coolers or freezers have an interior-release mechanism or alarm?			
2	Are floors free of water and/or ice?			
3	Are floors textured so that they will not be slick when wet?			
4	Are light covers in place?			
5	Are heavier, frequently used items are stored on lower shelves?			
6	Are racks secure and stable?			
7	Are pathways clear of trip hazards?			

Storage Rooms		Y	N	N/A
1	Are supplies securely stacked?			
2	Supplies have 18” of clearance from sprinklers and xx from hot water heater?			
3	Are racks secure and stable?			
4	There are no foot prints to indicate employees are climbing on shelves?			
5	Are heavier, frequently used items are stored on lower shelves?			
6	Are step stools or ladders readily available, if needed?			
7	Are bulk items less than 25 lbs?			
8	Are pathways clear of trip hazards?			

Electrical Equipment		Y	N	N/A
1	Do all portable electrical equipment and extension cords have a grounding prong?			
2	Are extension cords used for less than 60 days at a time (permanent wiring)?			
3	Are extension cords appropriate (Amps/Outdoor) for the task?			
4	Are all breaker switches properly marked?			
5	Are all breaker boxes accessible? Clearance of at least 30 inches needed?			
6	Are documented inspections of switches, boxes, and outlets performed?			
7	Do all outlets have their face plates?			
8	Do all light fixtures contain bulbs and have covers?			
9	Are all breaker boxes enclosed with no gaps larger than a person’s finger?			
10	Are GFCI installed on all outlets within 6 feet of a water source?			
11	Is malfunctioning or out of use equipment tagged and removed?			

Floors & Walking Areas		Y	N	N/A
1	Are the floors around the fryer(s) free of grease?			
2	Are the floors around the dishwashing area dried on a regular basis?			
3	Portable “wet floor” signs available?			
4	Are the floors around the soft-drink syrup tanks free of sticky build-up?			
5	Are floors free of boxes, food, or other trip hazards?			
6	Are floors in good condition? (No broken tiles, loose mats, torn carpets, etc.)			
7	Do stair treads have a non skid surface?			
8	Are drainage holes covered and even with the floor?			
9	Are steps, sloops, or ramps a different color from the surrounding flooring?			
10	Are door mats at all entrances?			
11	Are all areas properly illuminated?			
12	Are handrails present and secure?			
13	Are ice cubes on the floor beneath the ice machine?			
14	Are slip resistant shoes required?			
15	Are spills cleaned up immediately?			

Preventing Cuts		Y	N	N/A
1	Are unused knives stored in a designated drawer or rack?			
2	Are the guards in place on the meat-slicer?			
3	Is the meat-slicer returned to “zero” when not in use?			
4	Are knifes kept out of the sinks?			
5	Are knives sharpened by an outside contractor on a regular basis?			
6	Are employees trained how to sharpen knives as needed?			
7	Is a scoop and not glasses used to dispense ice?			
8	No employee steps on or sticks their hand in the trash?			
9	Is a broken glass (sharps) container available for safe disposal?			

Illumination and Paths		Y	N	N/A
1	Are parking lots and trash bins well illuminated?			
2	Are steps and pathways free from tripping hazards (cracks, holes, etc.)?			

Hazard Training		Y	N	N/A
1	Are all new employee trained in proper chemical use?			
2	Are MSDS available?			
3	Are gloves and safety glasses available?			
4	Are compressed gas tanks chained?			

Hygiene		Y	N	N/A
1	Are “employee hand washing” signs posted?			
2	Are mops stored upright?			

Workplace Violence		Y	N	N/A
1	Are security cameras in place and operating?			
2	Is a drop safe available or is the register skimmed frequently?			
3	Are bank deposits made with varying times and routes?			
4	Is the back door locked from the outside?			
5	Is there documented employee training on workplace violence at least annually?			

Functional Workplace Attire		Y	N	N/A
1	Are slip resistant shoes required?			
2	Is long hair tied back?			
3	Is dangling jewelry and rings removed?			

APPENDIX C: POSTING REQUIREMENTS

TOPIC	POSTER	SOURCE	STATUTE
Discrimination	*Discrimination based on Race, Creed, Age, Color, Disability, National Origin, Sex or Marital Status is Prohibited...* (in English and Spanish combined)	New York State Division of Human Rights 1-718-741-8459	New York State Human Rights Law (Executive Law, Article 15)
Minimum Wage	*Attention Employees Minimum Wage Information* (in English and Spanish combined) Every employer engaged in the sale or service of food or beverages must post Section 193 and 196-d of the NYS Labor Law.	New York State Department of Labor, Division of Labor Standards Tel. (212) 352-6700 Minimum Wage Poster: www.labor.state.ny.us/workerprotection/laborstandards/PDFs/LS207.pdf	New York State Labor Law
Deductions from Wages	Every employer engaged in the sale or service of food or beverages must post a copy of New York Labor Code section 193 and the associated regulations	12 NYCRR § 195.1 (2005) see below for text	New York State Labor Law
Gratuities	Every employer engaged in the sale or service of food or beverages must post a copy of New York Labor Code section 196d	see below for text	New York State Labor Law
Safety & Health	OSHA 3165 (Employees' right to a safe and healthy working environment)	www.osha.gov/Publications/osha3165.pdf Recommended posters and stickers for youth workers: www.youthrules.dol.gov/posters.htm	The Occupational Safety and Health Act
Leave Policy	Notification in writing or by publicly posting the employer's policy on sick leave, vacation, personal leave, holidays, and hours	Employer-created	New York State Labor Law

Unemployment Insurance	*Notice to Employees* (IA 133)	New York State Department of Labor, Registration Subsection State Office Building Campus Albany, NY 12240-0339 Phone: (518) 485-8589 Fax: (518) 485-8010	New York State Unemployment Insurance Law
Workers' Compensation and Disability Benefits	*Notice of Compliance* (White) for Workers' Compensation *Notice of Compliance* (Blue) For Disability Benefits	Supplied by employer's insurance carrier.	New York State Workers' Compensation Law
Misc.	Exit signs, alcohol, cigarettes, hand-washing, fire safety, etc	http://nysra.affiniscape.com/associations/2487/files/Signs%20Permits%20R	Various

APPENDIX D: Earn Benefits Programs and Services

	Benefit or Service	What is it?	Who Gets it?	What is it worth? [i]
HEALTHCARE	Transitional Medicaid	Free healthcare for 1 year	Adults coming off public assistance with minor children	$2,400 - $4,800
	Medicaid (for adults or children)	Free healthcare	Adults with limited income[ii] or their children	$1,200 - $4,800
	Family or Child Health Plus	Free or low-cost healthcare	Adults with limited income, or their children, who do not qualify for Medicaid	$1,200 - $4,800
	Healthy New York	Reduced cost health insurance	Sole proprietors or working individuals who are not eligible for employer coverage AND have limited income	$1,200 - $4,800
CHILDCARE	Transitional Child Care	Free or low-cost childcare services	Adults coming off public assistance with minor children	Avg. $5,200
	Childcare Subsidy	Free or low-cost childcare services	Families with limited income	Avg. $5,200
	Liberty Zone Childcare Voucher	Subsidy for childcare services	Low-income families who live or work in Lower Manhattan, with children under 13	Avg. $5,200
	Universal Pre-K	Free Pre-K education program	Families with 4 year old children	Avg. $3,000 per child
MONEY SAVERS	Food Stamps	Monthly food allowance	Working people with limited income	Avg. $2,220
	WIC	Monthly allowance for nutritious foods	Pregnant women, recent mothers and their children	Avg. $576
	Home Energy Assistance Program	Cash assistance to pay for heating, gas or electricity bills	Families with limited income	$100 - $485
	Lifeline	Discounts on local telephone service, through Verizon only	Families receiving additional benefits or low income families	Avg. $180
	School Lunch	Free and reduced meals for children	Families with limited income with children in NYC public schools	Avg. $250
TAX	Tax Credits	Tax credits for families or individuals	Families or individuals with limited income	Approx. $4,000 (Up to $527 for individuals)
	Tax Filing	Free tax preparation and filing	Individual income less than $20,000 and family income less than $40,000 a year	$150 per filing
FINANCIAL HELP	Citibank Checking and Savings Account	Free checking and savings accounts	Working individuals whose employer offers direct deposit	$50
	Matched Savings Account	Savings program to help purchase an asset (cars, appliances, education, home, small business)	Individuals working at least 20 hours a week with limited income	$250 - $2,000
	Financial Literacy Training	Workshops on money management, credit, more	Open to all	$50 per workshop
	Family Loan Program	Low-interest loans	Individuals with children under 18 years, work at least 25 hours/wk, worked at least 6 months and are low-income	Up to $3,000

i Amounts are calculated on an annual basis.

ii Definition of "low-income" may differ for each program.

Restaurant employers are required to post a copy of New York Labor Code Sections 193 and 196d and associated regulations:

Labor Code § 193. Deductions from wages

No employer shall make any deduction from the wages of an employee, except deductions which:

are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or

are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.

No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages under the provisions of subdivision one of this section.

Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, nor with any other law applicable to deductions from wages.

12 NYC RR § 195.1 Limitation on wage deductions

Section 193, subdivision 1(b), of the New York State Labor Law permits an employer to make deductions from an employee's wages for certain enumerated items and also for "similar payments for the benefit of the employee". Permitted deductions for all such non-enumerated items shall not exceed, in the aggregate, 10 percent of the gross wages due the employee for a payroll period.

Labor Code § 196-d. Gratuities

No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. This provision shall not apply to the checking of hats, coats or other apparel. Nothing in this subdivision shall be construed as affecting the allowances from the minimum wage for gratuities in the amount determined in accordance with the provisions of article nineteen of this chapter nor as affecting practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are distributed to employees, nor to the sharing of tips by a waiter with a busboy or similar employee.

ENDNOTES

1 Under anti-discrimination laws, including the Americans with Disabilities Act and the New York State and New York City Human Rights Laws, an employee with a disability may make a request for reasonable accommodation in the form of reduced hours.

2 See DOL summary of wage order rates and allowances. http://www.labor.state.ny.us.

3 See 12 NYCRR § 137-2.1(a) for additional details.

4 U.S. Citizenship and Immigration Services website, Employee Eligibility Verification, Frequently Asked Questions. http://uscis.gov/graphics/howdoi/EEV.htm.

5 U.S. Department of Justice website, Office of Special Counsel for Immigration-Related Unfair Immigration Practices available at http://www.usdoj.gov/crt/osc/, last visited April 18, 2005.

6 The former Immigration and Naturalization Service (INS) was dissolved in 2003 and its functions were split among U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), divisions which play a law-enforcement role, and U.S. Citizenship and Immigration Services (CIS), which handles immigration benefits matters such as visa renewals and naturalization. All three of these offices are bureaus in the U.S. Department of Homeland Security.

7 The right to organize and other related rights are governed by the National Labor Relations Act (NLRA). All workers are covered by the NLRA except farm workers, domestic workers, independent contractors and government employees.

8 See footnote 6.

9 In December 1996, the INS adopted a revised internal guideline regarding immigration raids and labor disputes. Operating Instruction ("OI") 287.3a (reprinted in Interpreter Releases, January 27th, 1997). The OI provides that if INS suspects a tip may involve the agency in a labor dispute, it must consult with federal and state labor and employment agencies before conducting a raid, and if INS learns of a labor dispute only after it conducts a raid, it must notify state and labor employment agencies.

10 U.S. Equal Employment Opportunity Commission website available at http://www.eeoc.gov/types.

11 For more information published by the Equal Employment Opportunity Commission on this subject, see "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors" http://eeoc.gov/policy/docs/harassment.html.

12 New York Labor Law §194.

13 The Federal, State and City laws each define "disability" differently, and the broadest definition (the one which protects the most people) is in the City law. For more information on the laws, see the bibliography in this manual.

14 The EEOC has posted information on "Small Employers and Reasonable Accommodation" at http://eeoc.gov/facts/accommodation.html.

15 See U.S. Occupational Health and Safety Administration Standards, 29 CFR §1910 available through Teen Worker Safety in Restaurants eTool (http://www.osha.gov/SLTC/youth/restaurant/index.html).

16 http://www.usdoj.gov/crt/legalinfo/discrimupdate.htm

17 http://www.usdoj.gov/crt/ada/blueplate.htm

18 *Id. available* at http://www.eeoc.gov/outreach/coordinators.html, last visited April 13, 2005.

The law requires an employer to post notices describing the Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay, and disability. EEOC's poster is available in English, Arabic, Chinese, and Spanish. You may order up to 10 copies of the poster from the website www.eeoc.gov.

If you need more than 10 copies of the poster, please contact:

U.S. Equal Employment Opportunity Commission Clearinghouse
8280 Greensboro Drive, Suite 300
McLean, VA 22102

Fax: (703) 821-2098
or call: 1-800-669-3362 (voice)
1-800-800-3302 (TTY)

TAXES

Restaurant owners must collect and pay sales taxes based on their customers' purchases.

In addition, restaurant owners must pay the following taxes, as applicable:

- **Sales and use taxes (on their own purchases other than merchandise held for resale)**
- **Corporation tax or unincorporated business tax**
- **Withholding tax (on employees' earnings)**
- **Alcohol beverage tax**
- **Beverage container tax**
- **Cigarette and tobacco products tax**

More information about these taxes is available at the website of the New York State Department of Taxation and Finance: http://www.tax.state.ny.us/sbc/.

SIMPLE SOLUTION

NYC BUSINESS SOLUTIONS

Health Insurance

I want to offer my employees health insurance. What are my options?

- You may contact an insurance agent or broker who will work with you to find a plan that best meets the needs of you and your workforce.
- You should also explore the FIVE health insurance options designed specifically for small businesses, sole proprietors, and working individuals in the NYC area:
    - Brooklyn HealthWorks
    - Freelancers Union
    - HealthPass
    - Healthy New York
    - LIA Health Alliance

Please refer to the table below for more information on these options.

What factors should I consider when selecting a health insurance plan?

Whether you are searching for yourself or your employees, some factors to consider include:

- Range of choice in benefit options
- Types of coverage offered by the health plans or carriers and coverage limitations
- Access to preferred hospitals and health care providers in and out of the plan's network
- Maximum annual and lifetime benefit amounts
- Coverage options for dependents (children and spouses/domestic partners)
- Affordability:
    - Cost usually depends on the type of plan selected. In addition to monthly premium charges, you should consider other applicable costs, including out-of-pocket expenses (e.g., co-payments and deductibles).
- Special program policies, such as pre-existing condition limitations that may restrict coverage for some people
- Ease of enrollment and billing processes
- Availability of customer service

Frequently Asked Questions

Small Businesses:

Why should I provide health insurance to my employees?

There are many benefits to providing health insurance to employees, including 1) reducing the amount of taxes you and your employees pay, 2) attracting and retaining high quality employees, and 3) reducing business disruptions and the costs associated with employee absenteeism and turnover.

Do I have to pay for the entire premium cost?
No. Many employers share the cost of the premiums with their employees. Employees pay whatever part of the premium you don't pay through payroll deductions.

Can I select which types of employees get health insurance?
Yes. You can decide that you'd like to cover all your employees, or you may determine that you only want to cover a subgroup of your employees, e.g., employees who work more than 20 hours per week. Most plans will allow you to set this eligibility criterion.

Do a certain number of employees have to buy health insurance in order for my business to qualify?
Most plans require a certain percentage of employees to enroll in order for a business to qualify for coverage –

normally 70 or 75%.

Do employees' families get coverage? Who pays for it?
You may decide to offer family coverage, and an employee may choose to enroll a spouse/domestic partner and/or children. Who pays for family coverage is up to you; most employers pay for at least part of the cost of family coverage.

Can my coverage be cancelled because of too many claims?
No. As long as you qualify for coverage as a small business and pay your monthly bill, your coverage cannot be cancelled.

I can't offer my employees health insurance right now. What other options do they have?
Eligible individuals may enroll in one of the private health insurance options discussed below. And depending upon family income, individuals and their family members may also be able to get coverage through public health insurance programs. Call 311 or visit http://www.nyc.gov/healthstat for more information on these options. The Website also contains pre-screening calculators to assist users determine if they qualify for public or private health insurance options.

Sole Proprietors & Working Individuals:

What can I be charged for individual health coverage?
Prices vary by plan, but the cost of the coverage is based on a "community rate," which is the average cost offered to all individuals seeking the same coverage from the same plan in a geographic region. In New York State, it is illegal for individual health plan premiums to vary due to age, gender, health status, or occupation.

Can my individual health insurance policy be cancelled because I submit a lot of claims?
No. Your coverage cannot be cancelled because you get sick. This is called "guaranteed renewability." As long as you pay the premiums, the insurer cannot cancel your policy.

Can I buy a policy that covers my family?
Yes. In New York State, insurers that sell individual health insurance must offer family coverage to persons who are interested in purchasing it. Insurance carriers may also offer employee-spouse/domestic partner plans and parent-children plans.

Are pre-existing conditions covered?
Many health insurance carriers exclude coverage for up to a year for conditions that were diagnosed and treated within six months prior to the date of the application for coverage. The waiting period may be reduced if an individual was previously covered and applied within 63 days of the expiration of that coverage. For this reason, it is important for individuals to not let their insurance coverage lapse beyond this period of time.

For more information about health insurance for small businesses, sole proprietors and working individuals, visit the Website of the Mayor's Office of Health Insurance Access: http://www.nyc.gov/healthstat. You may also visit the New York State Insurance Department's Website at: http://www.ins.state.ny.us

HEALTH INSURANCE OPTIONS FOR NEW YORK CITY'S SMALL BUSINESSES, SOLE PROPRIETORS, AND WORKING INDIVIDUALS

	Brooklyn HealthWorks	***Freelancers Union***	***HealthPass***	***Healthy New York***	***LIA Health Alliance***
Option	An initiative of the Brooklyn Chamber of Commerce, Brooklyn HealthWorks is a low-cost health insurance option designed for Brooklyn's small businesses that have not provided health insurance during the last 12 months, sole proprietors, and workers whose employers do not provide health insurance.	Working Today's Freelancers Union offers group health insurance options to independent workers (e.g., freelancers, temps, consultants, contingent workers, contract workers, and sole proprietors) in NYC and surrounding counties.	A program of the City of New York and the New York Business Group on Health, HealthPass is designed to meet the varied needs of NYC's small businesses. Employers decide how much to contribute towards the cost of insurance and pay one simple bill each month. Employees choose from over 30 available benefit options.	A New York State program designed for small businesses that have not provided health insurance during the last 12 months, sole proprietors, and workers whose employers do not provide health insurance.	Affiliated with the Long Island Association, LIA Health Alliance gives small business employees in NYC, Long Island, and surrounding counties the opportunity to choose from seven insurers and a full menu of HMO, EPO, POS, PPO, HRA and HSA benefit options with one simple bill for employers. Sole proprietors may choose from five insurers and a menu of HMO, POS, PPO and HSA benefit options.
Coverage	Offers one insurance carrier. Broad medical coverage, including prescription drugs. Coverage excludes mental health services, home health care, hospice, chiropractic care, alcohol and substance abuse treatment, and physical therapy.	Choice of two insurance carriers and 5 benefit options. Coverage options include comprehensive medical care plus prescription drugs, dental, and vision care.	Choice of five insurance carriers and 30+ benefit options. Coverage options include comprehensive medical care plus prescription drugs, dental, and vision care.	Choice of 12 insurance carriers in NYC. Broad medical coverage, including the option for prescription drugs. Coverage excludes mental health services, home health care, hospice, chiropractic care, alcohol and substance abuse treatment, and physical therapy.	Choice of seven insurance carriers and numerous benefit options. Coverage options include comprehensive medical care plus prescription drugs, dental, and vision care.
Eligibility	The three groups that may be eligible for this option are: 1- Small businesses located in Brooklyn with 2-50 employees, where at least 30 percent of employees earn $34,000 or less annually 2- Sole proprietors 3- Working individuals Sole proprietors and working individuals must reside in Brooklyn, not be eligible for employer coverage or Medicare, and must meet certain income guidelines.	Individuals must live or work in NYC or one of the surrounding counties (Nassau, Orange, Rockland, Suffolk, and Westchester) and: • Be an independent worker • Have EITHER earned $10,000 in the last 6 months **OR** worked 20 hours a week in each of the last 8 weeks • Work in one of 8 eligible industries or occupations: 1) arts & entertainment; 2) technology; 3) financial services; 4) media & advertising; 5) nonprofit; 6) skilled computer users; 7) traditional & alternative health care providers; or 8) home-based child care providers.	Small businesses with 2-50 employees. Business must have an active address in one of the 5 boroughs of NYC or one of the surrounding counties (Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, and Dutchess). Groups must meet a "loose" 75% participation requirement (75% of eligible employees must enroll in HealthPass or have other coverage).	The three groups that may be eligible for this option are: 1- Small businesses located in New York State with 2-50 employees, where at least 30 percent of employees earn $34,000 or less annually 2- Sole proprietors 3- Working individuals Sole proprietors and working individuals must reside in New York State, not be eligible for employer coverage or Medicare, and must meet certain income guidelines.	Two groups qualify for this option: 1- Small businesses (2-50 employees) 2- Sole proprietors To be eligible, an employee must work more than 20 hours for an eligible employer in a regular scheduled work week. The business or sole proprietor must be located in NYC, Long Island or in Westchester or Rockland County.

Go to https://a069-webapps3.nyc.gov/health/main.aspx to determine if you or your business might qualify for one of these options.

Information provided by Mayor's Office of Health Insurance Access

Cost

Cost varies by employer contribution and type of plan selected.

Monthly premium ranges
(as of January 2006)

Small Businesses

Category	Low	High
Employee	$177	$188
Employee & child(ren)	336	358
Employee & spouse	389	414
Family	522	555

Sole Proprietors and Individuals

Category	Rate
Employee	$208
Employee & child(ren)	396
Employee & spouse	458
Family	614

Cost varies by type of plan selected.

Monthly premium ranges
(as of January 2006)

Sole Proprietors and Individuals

Category	Low	High
Employee	$114*	$288
Employee & child(ren)	225*	536
Employee & spouse	264*	575
Family	374*	879

**High deductible plan*

Cost varies by employer contribution and type of plan selected.

Monthly premium ranges
(as of January 2006)

Small Businesses

Category	Low	High
Employee	$142*	$785
Employee & child(ren)	245*	1,411
Employee & spouse	271*	1,568
Family	396*	2,430

**High deductible plan*

Cost varies by employer contribution and insurance carrier.

Monthly premium ranges*
(as of January 2006)

Small Businesses, Sole Proprietors and Individuals

Category	Low	High
Employee	$164	$288
Employee & child(ren)	290	536
Employee & spouse	329	583
Family	485	881

**Rates for New York City's 5 boroughs*

Cost varies by employer contribution and type of plan selected.

Monthly premium ranges
(as of January 2006)

Small Businesses

Category	Low	High
Employee	$140*	$795
Employee & child(ren)	242*	1,431
Employee & spouse	269*	1,590
Family	394*	2,465

**High deductible plan*

Sole Proprietors

Category	Low	High
Employee	$223*	$423
Employee & child(ren)	392*	862
Employee & spouse	467*	862
Family	658*	1,221

**High deductible plan*

Contact

Contact Brooklyn HealthWorks for more information and current rates:
Phone: (718) 596-4550
Website: http://www.brooklynhealthworks.com

Contact Working Today for more information and current rates:
Phone: (718) 222-1099
Website: http://www.workingtoday.org
E-mail: membership@workingtoday.org

Contact HealthPass for more information and current rates:
Phone: (888) 313-7277
Website: http://www.healthpass.com

Contact Healthy New York for more information and current rates:
Phone: (866) 432-5849
Website: http://www.healthyny.com
E-mail: ask_healthyny@ins.state.ny.us
(include county and contact information)

Contact LIA Health Alliance for more information and current rates:
Phone: (800) 542-5513
Website: http://www.liahealthalliance.com