

New York State Department of Labor - Division of Labor Standards
Frequently Asked Questions: Minimum Wage Information for Non-Profitmaking Institutions, Public
Agencies, and Children's Camps

Q: Are non-profitmaking institutions covered under the Minimum Wage Act (Labor Law Article 19)?

A: Yes. The Minimum Wage Act covers non-profitmaking institutions.

Q: What is the definition of a non-profitmaking institution under the Minimum Wage Act?

A: A non-profitmaking institution is defined as any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Q: What Minimum Wage rate applies to employees of a non-profitmaking institution?

A: Employees must be paid the Minimum Wage rate for the region they work in. You will find information on Minimum Wage rates here: <http://labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>.

Q: Where can I find Minimum Wage requirements for non-profitmaking institutions?

A: There are two sets of Minimum Wage regulations for non-profitmaking institutions (CR 142-3 or CR 143). If a non-profitmaking institution is covered under the Miscellaneous Wage Order, CR 142-3 applies. If a non-profitmaking institution has elected to be exempt from coverage under a Minimum Wage Order, CR 143 applies. Regulations detail rules about employees covered, rates, overtime, recordkeeping, allowances, etc. The rules can be found here: <http://labor.ny.gov/formsdocs/wp/CR142.pdf> and <http://labor.ny.gov/formsdocs/wp/CR143.pdf>.

Q: Are there any employee exemptions from Minimum Wage requirements for non-profitmaking institutions?

A: Yes, there are several. Non-profitmaking institutions often have volunteers, students, trainees, or learners/apprentices that may be exempted from minimum wage requirements. Others not covered under the Minimum Wage Act include members of religious orders and staff counselors in children's camps.

Q: How is a student defined under Minimum Wage regulations?

A: A *student* means any individual who is enrolled in and regularly attends a course of instruction at a state-licensed educational institution of learning leading to a degree, certificate or diploma, or who is completing residence requirements for a degree. A person is deemed to be a student during the time school is not in session if such person was a student during the preceding semester. Students working in a non-profitmaking institution are exempt from Minimum Wage regulations if that institution is set up and operates strictly for charitable, educational or religious purposes.

Q: Can a student at a for-profit business be exempt from coverage under Minimum Wage regulations?

A: Yes. A student is considered not to be working if they are fulfilling the curriculum requirements of the educational institution which they attend, or if the student is obtaining supervised and directed vocational experience in another establishment.

Q: Can for-profit and non-profitmaking institutions have unpaid volunteers?

A: By definition, the term *volunteer* means a person who works for a non-profitmaking institution under no contract of hire...and with no promise of compensation, other than reimbursement for expenses as part of the conditions of work. A person may do volunteer work in a non-profit organization, if that organization is set up and operates strictly for charitable, educational or religious purposes. For-profit organizations may not use unpaid volunteers (who meet certain criteria) except for a short term recreational or amusement event run by that organization.

Q: What are the restrictions on the type of work performed by an unpaid volunteer in a non-profitmaking institution?

A: Unpaid volunteers may not:

- replace or augment paid staff to do the work of paid staff
- do anything but tasks traditionally reserved for volunteers
- be required to work certain hours
- be required to perform duties involuntarily
- be under any contract of hire by any other person or business express or implied
- be paid for their services, except for expense reimbursement

Q: Can volunteers receive a stipend?

A: Yes, volunteers may receive a stipend. A stipend represents regular payments given to volunteers to offset expenses that they may incur. It should not be based on an hourly, daily, weekly, or monthly pay rate.

Q: Do staff counselors in a children's camp need to be paid Minimum Wage?

A: No. A staff counselor in a children's camp is not covered under the Minimum Wage laws. If there is an agreement to pay wages, however, the employer must pay what has been promised.

Q: What is a staff counselor in a children's camp?

A: A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision and care of campers in a children's camp, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes, but is not limited to: head counselor, assistant head counselor, specialist counselor or instructor (such as swimming counselor, arts and crafts counselor,

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etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

Q: What is a children's camp?

A: *Children's camp* means any establishment which, as a whole or part of its activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs of supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play school, or by any other name. The term children's camp does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year. In order to meet the definition of a children's camp, there is no requirement for such establishment to meet the definition of a non-profitmaking institution.

Q: Is a worker at a non-profit summer camp or conference covered under the Minimum Wage laws?

A: Not if the individual works for no more than 13 weeks, and the camp or conference is not open for more than 3 months annually (between June 21st and September 21st).

Q: Are ministers and members of religious orders subject to the Minimum Wage laws?

A: No. Any duly ordained, commissioned or licensed minister, priest or rabbi, or a sexton, as well as members of a religious order, do not have to be paid minimum wage.

Q: Are interns required to be paid Minimum Wage?

A: The Labor Law does not cover "interns" who work at a for-profit or not-for-profit business under the minimum wage requirements, as long as they are not in an employment relationship. See P725 (<http://www.labor.ny.gov/formsdocs/factsheets/pdfs/p725.pdf>) and P726 (<http://www.labor.ny.gov/formsdocs/factsheets/pdfs/p726.pdf>) for more information.

Q: Is a non-profitmaking restaurant or hotel covered under the Hospitality Wage Order?

A: No. Any establishment which meets the definition of a non-profitmaking institution is covered by CR 142-3 (<http://labor.ny.gov/formsdocs/wp/CR142.pdf>) or CR 143 (<http://labor.ny.gov/formsdocs/wp/CR143.pdf>)

Q: How can a non-profitmaking institution elect to be exempt from coverage under a Minimum Wage Order?

A: The institution must file a certification with the Department of Labor within six months after it was organized (or first employed employees). If it has been more than six months, the organization will not be granted an exemption. The application can be found here: <http://labor.ny.gov/formsdocs/wp/ls315.pdf> Mail to: Division of Labor Standards, State Office Campus, Bldg 12, Room 532, Albany, NY 12240.

Q: Are public employees subject to the NYS Minimum Wage?

A: No. The State Minimum Wage Law does not apply to public agencies. This includes: Federal, State, County, City, Village, Town, School district, or certain quasi-government agencies. Employees of public agencies are usually covered by the Federal Minimum Wage. Non-teaching employees of school districts are subject to the NYS Minimum Wage Requirements.

Q: Are Charter schools, private schools and non-profits considered public agencies?

A: No.

Q: Are public employees covered by the Federal Minimum Wage?

A: Yes. Contact your local USDOL Wage and Hour Division office for more information. <https://www.dol.gov/whd/america2.htm#NewYork>

Q: What NYS wage and hour laws cover public employees?

A: The following wage and hour related sections cover employees of public agencies under most circumstances:

- 162 Time allowed for meals
- 167 Restrictions for consecutive hours of work for nurses
- 201-C Discrimination in child-care leave prohibited
- 201-D Discrimination against the engagements in certain activities
- 202-I Leave of absence for military spouse
- 202-J Leave of absence for blood donation
- 203-C Employee privacy protection
- 203-D Employee personal identifying information
- 205 Prohibition against eating meals in certain workrooms
- 206-C Right of nursing mothers to express breast milk