

**TOMPKINS COUNTY**



**Restaurant Owner's Manual**  
**An Introduction to Hospitality**  
**Industry Labor Laws**

## FOREWORD

Nathan Shinagawa, County Legislator (D-4), Ithaca

Restaurants have long embodied the entrepreneurial spirit of small business in America. Immigrant families from Italy to Korea have built their dreams from the rich culinary history of their cultures. In Ithaca especially, thousands of individuals and families have created a livelihood from the tastes and smells of their restaurants. This guide was developed to help restaurant owners run their restaurants in compliance with the laws that protect the rights of workers.

Over the past decade, we have seen many restaurants throughout Tompkins County who have faced violations and penalties for breaking labor and occupational safety and health laws. Most were unaware of these laws. Rules about tips, over-time, and safety equipment were sometimes unknown. This guide seeks to educate people of these laws so that we can make sure restaurant owners, their workers, and their patrons are treated fairly, justly, and within the law.

Unfortunately, too, we have faced some restaurants that have neglected or ignored the law. This guide can also be a reference point for workers and customers to make sure that they can help restaurants be accountable to the community they serve. The prevalence of wage theft in the restaurant industry is a growing national and local epidemic that can only be solved through knowledge, accountability, and the enforcement of law.

The Tompkins County Chamber of Commerce, Tompkins County Legislature, the NYS Department of Labor and the County Department of Health worked closely with the Tompkins County Workers Center to make this guide possible. We are lucky to live in a community that cooperates on important projects such as this. I thank them for their efforts.

## INTRODUCTION

The Tompkins County Workers' Center has prepared this booklet for restaurant owners in Tompkins County, New York.

Thanks to our former Cornell University work study student, Jessica Yoon, whose research led us to our model, the *New York City Restaurant Manual*, prepared and distributed through Mayor Michael Bloomberg's Office of Immigrant Affairs, The City of New York.

Sincere thanks to the Cortland Workers' Rights Board's permission to use parts of their *Workers' Rights Handbook*. Materials from *The New York City Restaurant Owner Manual* ©2006 are used with permission of the City of New York.

Thank you to Jean Lindholm of the NYS Department of Labor and Laurie Johnston of the Miller Mayer Law Firm, Ithaca, NY for reviewing our booklet and adding valuable corrections to the text.

Thanks also to the Tompkins County Legislature for seeing the importance of this work. Additional thanks go to Tompkins County Legislator Nathan Shinagawa who worked proactively with the Tompkins County Chamber of Commerce to obtain a fiscal sponsor for the entire printing of the manual, Audrey Edelman Real Estate.

We would also like to thank the Tompkins County Health Department for their willingness to distribute this publication to restaurant owners and managers.

This booklet is distributed with the understanding that neither the Tompkins County Workers' Center nor the authors of the booklet are rendering legal advice on the subjects discussed here. If legal advice is required, the services of a competent professional should be obtained.

All regulations are current as of April, 2011.

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## **Hiring**

Employers may not discriminate on the basis of sex, age, race, national origin, religion or disability in hiring.

### **What questions cannot be asked in an interview or application?**

Questions concerning age, race, religion, marital status, national origin, disability and other personal characteristics are illegal. You cannot ask:

- Are you a US citizen? (Acceptable question: Are you authorized to work in the US?)
- Where were you born? Where were your parents born?
- What is your native language? (Acceptable question: What languages do you read, speak or write?)
- How old are you? (Acceptable question: Are you over 18?)
- When did you graduate from college?
- What is your marital status?
- Who lives with you? Do you plan to have a family?
- How many children do you have? What do you do for child care?
- What social organizations do you belong to? (Acceptable question: Do you belong to any groups that are relevant to your ability to perform this job?)

### **Can an employer ask about disability during a job interview?**

An employer cannot ask an applicant if they are disabled, about the nature or the severity of the disability or require you to take a medical exam. If an employer is aware of the disability, they can ask how the applicant can perform the duties of the job and whether an accommodation would be needed. Once a job is offered, a medical exam can be required.

An employer's duty to provide a reasonable accommodation to persons with disabilities extends to job applicants.

**Employees under 18:** Applicants under age 18 should have working papers from their school. Employees under 18 are subject to certain restrictions on their hours of work particularly during the school year. Employers must post a schedule of when employees under 18 are working.

### **What restrictions on hours of work apply to teens?**

16 and 17 year olds cannot work:

- More than 4 hours Monday through Thursday during school
- More than 8 hours on Friday, Saturday, Sunday or holidays
- More than 28 hours in a school week or 48 hours when school is not in session
- Later than 10 pm if the next day is a school day or later than midnight when school is not in session.

Younger children have more strict restrictions.

### **What wage regulations apply to teens?**

Like all workers, youth workers must earn at least the minimum wage of \$7.25. Young workers must be paid for all hours and parts of hours that they work and are entitled to overtime pay for all hours worked over 40 in one week.

**Criminal Record of Applicants:** Employers may not ask applicants to disclose or discuss any arrest that did not lead to conviction. It is legal to ask job applicants about past convictions for criminal offenses. A guilty plea is the same as a conviction. An ex-offender can be denied a job if his or her convictions are 'directly related' to the job in question where hiring the person would create 'unreasonable risk' to the safety of people or property. An example of 'directly related' would be a person who has a conviction for embezzlement applying for a job in a restaurant where the wait staff are solely responsible for collecting the patron's payment for their meals.

It is illegal for an employer to have a policy of not hiring any persons with criminal histories. An employer can consider a number of factors such as seriousness of the offense, the time that has elapsed since

the offense, rehabilitation and other relevant information.

### **Pre-employment Tests:**

#### **Credit bureaus and detective agencies**

Applicants must be notified in writing if the employer intends to use an outside company do a credit check or other investigation, and must consent to provide the required information for the investigation.

#### **Mandatory Drug Testing**

Mandatory drug testing for applicants is legal. If the employees are represented by a union, drug testing for employees is a subject for negotiations.

#### **Lie Detector or genetic tests**

The Employee Polygraph Protection Act (EPPA) prohibits private sector employers from asking or requiring an employee to take any kind of lie detector test or from taking adverse action against an employee for refusing to submit to a lie detector test.

In New York, the use of a 'Psychological Stress Evaluator' (PSEs) is strictly prohibited. PSEs are devices that are marketed as measures of truthfulness based on voice fluctuations. An employer who violates this law is subject to a misdemeanor charge and can be sued.

Under NY Human Rights Law, an employer cannot request, require or administer a genetic test to a person as a condition of employment nor can an employer obtain results of an employee's genetic test results. If an occupational environment would create an increased risk for people with a particular genetic abnormality, a specific genetic test can be required.

**PAY Notice at time of Hire:** At the time of hiring, employers must give newly-hired employees a written notice of their hourly rate of pay, their overtime hourly pay rate, the amount of tip credit, if any, and their regular payday. Additionally, from April 9, 2011 onward, this notice must include the basis of wage payment (e.g., paid hourly, salary, commission, weekly or on another basis). If the employer intends to claim tip or meal allowances, that must be included as well. The notice must include the employer's main address and phone number and any additional information about the employer, including any d/b/a ('doing business as') names. If the employee has indicated a language other than English as his or her primary language, the notice must be provided in that language.

Each subsequent year of employment, each employee must receive an updated notice on or before February 1. The employee must also be notified seven days in advance if the employer changes pay or other terms contained in the notice.

The employer is required to obtain from each employee a signed and dated written acknowledgement, confirming receipt of the notice.

Appendix A contains the form that must be completed and provided to the employee.

**Form I-9:** All employees must complete a Form I-9 within 3 days of hire. This form is proof of the employee's identity and authorization to work in the United States. You can download Form I-9 at <http://www.uscis.gov/files/form/i-9.pdf>; this form must be completed and retained by the employer.

## **Employment**

### **Employer Policies**

Employers are not required to have an employee handbook, but they are required to provide employees with information about its policies on sick days, vacation days, pay day and other employer rules. Employers can post these policies on an employee bulletin board.

### **What is permitted and prohibited in terms of instituting English in the workplace?**

Establishing English-only rules in the workplace and forbidding other languages can only be instituted for

non-discriminatory reasons, such as to promote the safe or efficient operation of the business. If you institute such a rule, you must inform employees about when they are required to speak English and what the consequences are for violating the English-only rule. Employees are free to speak whatever language they want during breaks and non-working times in an English-only workplace.

### **Minimum Wage**

Workers must be paid at least the federal minimum wage of \$7.25 an hour. The Wage Theft Protection Act imposes criminal penalties against employers that fail to pay minimum wage. The first violation is a misdemeanor and, if convicted, the employer could be fined from \$500 to \$20,000 or imprisoned up to one year. A second violation within six years of the first conviction will be a felony.

There are a few exceptions to the minimum wage regulation:

**Tipped Employees:** Food service workers who earn tips may be paid a state tipped minimum wage of \$5.00 per hour. However, the employee's tips added to this base wage *must equal at least minimum wage*. If the employee does not earn enough tips to raise their hourly wage to \$7.25, the restaurant must pay the difference. Food service workers include waitstaff, food runners, counter workers who serve customers, bartenders, barbacks, service bartenders, buspersons, hosts and captains who serve customers.

Other service employees who earn tips may be paid a state tipped minimum wage of \$5.65 per hour, if their weekly average of tips received is at least \$1.60 per hour. Other service employees include food delivery workers and valet parkers.

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

- a) keep records of employees' tips,
- b) inform employees that their wage is being decreased under the tip credit provision,
- c) for food service workers, pay the difference if the employees' reduced minimum wage plus tips does not equal the legal minimum wage, and
- d) for other service employees, be sure their weekly average of tips received is high enough to qualify for the lower tipped rate.

### **Laws Regarding Tips**

*editor's note: NY DOL announced these changes in early January, 2011. Employers will be allowed a period of time from January 1 through February 28, 2011 in which to make necessary changes to payroll systems and bookkeeping operations resulting from these new rules. As of March 1, 2011 or the first regularly scheduled payday following March 1, employers must pay all covered employees any additional wages owed, computed retroactively to January 1, 2011. Employers must maintain payroll records that clearly identify the retroactive payments and must post, in a workplace location frequented by employees, notice announcing the implementation period and the entitlement to retroactive wages. Please contact the DOL if you need help with these changes.*

**Management may not withhold tips from employees or require employees to share their tips with managers.**

### **Tip sharing and Tip pooling**

Tipped employees can voluntarily share or pool their tips or be required by their employer to participate. The employer may set the percentage to be distributed to each occupation from the tip pool. Only food service workers may receive distributions from the tip pool.

When an employer operates a tip share or tip pool, they must establish, maintain, and preserve for at least six years records which include:

- a daily log of the tips collected by each employee on each shift, whether in cash or by credit card
- a list of occupations that the employer deems eligible to receive tips from the pool or share
- the shares of tips that each occupation is scheduled to receive from tip sharing/pooling
- the amount in tips that each employee receives, by date.

**The records must be regularly made available to participants in the tip pool or share systems to review.**

**Other rules regarding tips, wages and hours:**

- Tips left on credit cards: When tips are charged on credit cards, the employer can deduct the transaction percentage charged by the credit card company for the tipped amount.
- Call in pay: an employee who reports for scheduled duty but is unneeded and sent home shall be paid for at least three hours or the number of hours in the regularly scheduled shift, whichever is less.
- Spread of hours greater than 10: The spread of hours is the length in the interval between the beginning and end of an employee's workday. Examples of this:  
 7am – 10am, 7pm – 10pm = 6 hrs. worked, 15 hour spread  
 11:30am – 3pm, 4pm – 10pm = 9 1/2 hrs. worked, 10 1/2 hour spread  
 On one day on which the spread of hours exceeds 10, an employee shall receive one additional hour of pay at the basic minimum wage hourly rate. It is not included when calculating overtime pay.

**Employees must be paid an hourly rate of pay. Employers may not pay employees on a daily, weekly, salary, piece rate or other non-hourly rate of pay.**

**Overtime**

If an employee works over 40 hours in a week, they must be paid 1 1/2 times their regular rate for each overtime hour after the 40th hour.

Tipped employees must be paid 1 1/2 times the legal minimum wage (\$7.25/hour) minus the tip credit for every overtime hour worked after the 40<sup>th</sup> hour.

*Editor's note: many of these changes are new as of January 1, 2011 and can be confusing. When in doubt, please consult the Department of Labor.*

**Payroll**

**When employees must be paid**

In New York, restaurant workers must be paid their wages at least weekly, with no more than a 7 day lag time between the end of the work week and the payday.

A worker must be paid for all time worked; employers may not require tasks to be performed 'off the clock,' including cashing out at the end of a shift, setting up machinery, job training or giving update reports to the next shift. Failure to pay over time is now an offense punishable by fines or prison time.

**Payroll Deductions**

Legal Payroll deductions:

- Social security
- Taxes
- Wage garnishments or court-ordered payments like child support

Deductions that are allowed IF you have the employee's authorization in writing:

Meals – Employers may deduct a meal allowance of \$2.50 per meal provided to food service workers (wait staff, runners and bussers) and for all other workers (dishwashers, delivery workers). A meal shall provide adequate portions of a variety of wholesome, nutritious foods and shall include at least one of the types of food from all four of the following groups: 1) fruits or vegetables, 2) grains or potatoes, 3) eggs, meat, fish, poultry, dairy or legumes and 4) tea, coffee, milk or juice.

Housing – If housing is provided for employees, employers may deduct a lodging allowance of \$1.50 per day or a maximum of \$9.60 per week for food service workers and \$1.75 per day or a maximum of \$11.30 per week for other workers.

Health or disability insurance  
 Pension  
 Union dues

**Illegal Payroll deductions:**

Deductions for breakage, losses to the employer, mistakes  
 Deductions for customers who walk out without paying  
 Uniform costs or cleaning costs of uniforms  
 Kick-backs or bribes  
 Payments for lost/stolen property, deficient work or as other “punishment”

**Shifts & Breaks**

An employee can be required to work weekend and night shifts. If the employee is over 18, there is generally no restriction on the number of hours or days they work in a week, although workers are entitled to at least one day (24 hours) off per week.

There is no requirement in NY for breaks other than an uninterrupted unpaid meal period of at least 30 minutes if the employee is scheduled to work more than six (6) hours. Under federal law, employees must be allowed reasonable breaks to use the bathroom.

**Uniforms**

If you require employees to wear a specific uniform, you must provide them with the uniforms, replace them when necessary, and pay the cost of their cleaning, or a weekly uniform maintenance allowance, whichever is higher. The uniform maintenance pay is now due to all workers, not just those paid minimum wage or close to it.

Wash and wear uniforms are exempt from this requirement. To qualify for the exemption, the number of uniforms provided to the employee must be consistent with the average number of days per week worked by the employee and the uniform must be able to be laundered routinely along with personal clothing.

Weekly uniform maintenance allowances are \$9.00 for more than 30 hours, \$7.10 for more than 20 up to 30 hours, and \$4.30 for up to 20 hours of working time.

If your employees are required to wear a generic uniform such as black pants and a white shirt, but not a specific uniform, then you do not have to pay the costs of uniform purchase and cleaning.

**Record Keeping Requirements**

You must provide your employees with a pay stub that shows the following information:

Hours worked  
 Hourly rate of pay  
 Gross wages  
 Allowances claimed as part of the minimum wage (tip credit, meal and lodging deductions)  
 Deductions  
 Net Wages  
 The dates of work covered by that payment of wages  
 Name of employee  
 Name of employer  
 Address and phone number of employer  
 Rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission or other  
 And for workers covered by the overtime requirements:  
 The number of regular and overtime hours worked and  
 The regular and overtime rates of pay  
 For piece rate workers:



The piece rate or rates of pay and  
 The number of pieces completed at each pay rate

You must keep payroll records for each employee for at least 6 years. The payroll records must show the following information for each employee:

- Name and address
- Social security number
- Occupational classification and wage rate
- Hours worked daily and weekly
- Amount of gross wages
- Deductions from gross wages
- Allowances claimed as part of minimum wage (tip credit, meals and lodging)
- Money paid in cash
- Student classification
- Whether employee uniforms are laundered, cleaned and maintained by the employer

## **Worker's Compensation**

### **What is workers' comp?**

Workers' compensation is a form of insurance required by law for all employees. The insurance covers employees who are injured in the workplace. The premiums are paid by the employer. The penalties for not having workers' compensation insurance are extremely high, particularly when the employees are under 18.

## **Unemployment Insurance**

Employers pay for unemployment insurance. In the event an employee becomes unemployed through no fault of his or her own, he or she is eligible for unemployment compensation. All decisions concerning the eligibility of an employee for unemployment insurance are made by the New York State Department of Labor.

## **Privacy Issues**

### **Access to Employee's Property or Phone Calls**

A private sector employer can search employees' personal belongings, including briefcases or handbags, for a business related reason. A sealed letter or private communication to an employee cannot be opened. An employer can only monitor phone conversations with the prior consent of at least one party of the conversation or through an extension phone that is used in the ordinary course of the employer's business.

### **Can an employee be fired for off-duty activities?**

Under NY law, an employer generally cannot fire or otherwise discriminate against an employee because of the person's off-duty legal activities outside of working hours, off the employer's premises and when the activities do not involve the use of the employer's equipment or property. These activities includes an employee's political activities and/ or an employee's use of alcohol or tobacco.

## **Employment Discrimination**

The employment discrimination laws apply to employers or 4 or more employees.

### **What is discriminatory behavior?**

Discriminatory behavior encompasses a variety of acts, involving differential treatment of workers based on race, color, national origin, age disability, sex, sexual orientation, pregnancy, creed, religion or citizenship. The following behaviors, based on the protected categories, are some acts constituting discriminatory behavior:

- Refusing to hire
- Refusing to promote
- Firing
- Paying differently
- Providing lesser or different work conditions or benefits
- Treating differently in terms of job assignments
- Harassment
- Different training
- Layoffs
- Particularly harsh discipline
- Repeated jokes about age or race

Treating certain employees differently than others in any way may constitute discriminatory behavior if it is based on the protected categories. Federal discrimination laws protect all employees in the US regardless of their citizenship or work eligibility. If an employer hires an undocumented worker, the undocumented worker is equally protected under US law from discrimination. An American citizen who appears to be foreign, has a foreign name or accent or who was born in another country may not be treated differently than other employees.

## **Sexual Harassment**

### **What is sexual harassment?**

Sexual harassment is unwelcome sexual advances, requests for sexual favors and other physical and verbal conduct of a sexual nature when:

- 1) submission or rejection of this conduct may affect whether the employee keeps the job, gets a promotion, gets a good job assignment or will receive some other benefit and
- 2) the behavior unreasonably interferes with the employee's work performance or creates an intimidating, hostile or offensive work environment

### **Examples of sexual harassment**

The following are just some examples of sexual harassment:

- Pressure for sexual favors
- Pornographic materials left on a desk or work area
- Touching, 'goosing,' patting, hugging, leering
- Whistling, catcalls, howling
- Use of demeaning terms such as 'honey,' 'babe' or 'sweetheart'
- Sexual teasing or jokes
- Posting cartoons, posters or drawings of a sexual or insulting nature
- Asking personal questions
- Spreading lies or rumors about someone's social or sex life
- Making sexual remarks or gestures
- Actual or attempted sexual assault.

The harasser may be the victim's supervisor, an agent of the employer, a supervisor in another division of the workplace, a co-worker or a non-employee and can be the same or opposite sex of the victim. A victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

### **What must an employer do in cases of sexual harassment?**

Sexual harassment is illegal and no worker should be forced to tolerate it. An employer must investigate sexual harassment complaints and take appropriate action to end the harassment.

If the employer does not follow proper investigation and action steps, a victim may file charges with the EEOC or the NYS Division of Human Rights (DHR). A lawsuit can also be filed in State Court for a violation of New York's Human Rights Law.

## **Other forms of Harassment**

### **What is bullying or harassment?**

Bullying is persistent, abusive behavior designed to make the target feel upset, humiliated or threatened. A workplace bully may be a boss who constantly criticizes, demeans and undermines employees, a supervisor who delights in exploiting those beneath him/her or a co-worker. Bullying is psychological violence. Tactics include:

- Unfairly blaming others for errors
- Unjustified criticism and trivial fault-finding of work performance
- Making unreasonable demands or denying needed information and resources
- Yelling, screaming, put-downs or threats of job loss
- Inconsistent enforcement of arbitrary rules
- Social exclusion
- Stealing credit for another's work

### **Is bullying illegal?**

If bullying is based on race, gender, religion, ethnicity, sexual orientation or disability, it is unlawful. Harassment in this form affects worker productivity and workplace morale due to fear, anger, and stress. Harassment can increase absenteeism, staff turnover, worker's compensation and the potential for discrimination claims against the employer.

## **Disability and Accommodation**

### **What is a legally protected disability?**

Under the Americans With Disabilities Act (ADA) a disability is a physical or mental impairment that substantially limits one or more major life activities such as hearing, speaking, walking, breathing, performing manual tasks, lifting, working and caring for oneself. A person is also considered disabled if they have a record of a disability or are regarded by others as having a disability, even if they do not actually have one. Under the New York State Human Rights Law (HRL), a disability is essentially any medical condition, including temporary conditions.

### **Who is covered? What protections?**

New York State law protects the disabled who work in a business with 4 or more employees. The ADA covers private sector employees with 15 or more employees.

Both laws prohibit discrimination against individuals with disabilities in terms of: job application procedures, hiring, firing, advancement, compensation, training and other terms, conditions and privileges of employment. In addition, both laws require employers to provide a 'reasonable accommodation' so that the employee can perform the essential functions of the job.

An employee who feels that they are discriminated against because of their disability has the right to file a claim with the EEOC or the NYS Division of Human Rights.

### **What is the reasonable accommodation requirement?**

If an employee is or becomes disabled, the employer is required to make changes to the work environment or the way the job is done so that the employee can still work. The accommodation must be a reasonable solution and not impose undue hardship on the employer. The worker must take the initiative in suggesting changes or in getting the employer to help figure out the appropriate accommodation. An employer does not have to alter an essential function of the job.

### **Examples of reasonable accommodations**

- Large print menus
- Extra time to memorize information, or permission not to memorize
- Modification of uniform, including shoes, to accommodate disability
- Allowing more frequent breaks

Modification of how trays are loaded and/ or carried

## **Health and Safety**

### **Laws relating to safety and health on the job**

The federal law OSHA (Occupational Safety and Health Act) protects workers' rights to a safe and healthful workplace. An employer must provide a place of employment that is free of recognized hazards and must obey safety standards and regulations, including allowing employees opportunity to use the rest-room. OSHA protects workers against retaliation for raising safety concerns.

## **Right to Unionize**

Federal law guarantees employees the right to discuss terms and conditions of employment as well as to join together with other employees for the purpose of collective bargaining, and negotiating their terms and conditions of employment.

An employer cannot punish or discriminate against any worker because of union activity. The employer cannot fire, lay off, discipline, transfer or reassign employees because of their union support nor threaten to do any of the above. A private sector employee who is discriminated against because of union activity may file charges with the National Labor Relations Board (NLRB).

## **Family and Medical Leave**

The Family and Medical Leave Act (FMLA) is a federal law applies to employers of 50 or more, and gives eligible workers the right to take up to 12 work weeks of unpaid leave each year for illness, to care for family members, or for the birth or adoption of a child. Eligible employees cannot be prevented from using FMLA nor can they be penalized.

## **Termination**

NYS is an 'employment at will' state meaning that a private sector employee can be discharged or terminated for almost any reason. There are a few circumstances where this is NOT true. Circumstances that make termination illegal:

- ***Discrimination.*** An employee may not be discharged because of his or her race, color, creed, religion, sex, sexual orientation, national origin, age, marital status or disability.
- ***Whistle-blowing.*** If an employee reports a work violation to a supervisor or public agency, they cannot be fired in retaliation.
- ***Union organizing.*** Organizing between even two employees is protected by the National Labor Relations Board (NLRB). Employees cannot be terminated for such organizing activities.
- ***Employee's legal activities outside of work hours.*** A person cannot be fired for participating in lawful political or recreational activities.

Terminated employees must receive notice of the status/ termination of any of their benefits, e.g., vacation, paid leave, insurance, within 5 days of the termination of employment.

## **Recommended Best Practices**

When restaurant owners and managers treat their employees with respect and fairness, the employees treat their customers well. Happy employees provide attentive and friendly service and proactively create a comfortable dining environment; good customer service is a major factor in creating customer loyalty. There is much more than following the law that creates a successful relationship between employer, employee and customer. Here are some suggestions for fostering employee satisfaction.

### **1. Treat your employees as you would treat your customers.**

In all human relationships, respect generates respect. When a manager treats employees well, most employees will respond with respect for the manager and the customers. Yelling, raised voices, threats, insults and name-calling will create an unpleasant atmosphere for employees and customers. Racial slurs are illegal. Ill treatment can lead to decreased productivity and resentment.

Do not fire people publicly, especially in the heat of the moment. Do not argue in front of customers. Do not use threats of firing or demotion unless you are seriously considering taking such action.

Have a zero tolerance policy for bullying, verbal harassment and other forms of emotional or psychological abuse.

## **2. Provide opportunities for internal promotion and salary increases**

If you can, offering advancement to your current employees will increase loyalty and decrease turnover. Restaurant managers actually save training costs by promoting employees who already are familiar with their routines and customers.

Provide financial incentives for workers. Provide opportunities for employees to increase their earnings through seniority. Employees who are hoping to increase their salaries are motivated to learn more about their jobs and take on more responsibilities.

By paying a Living Wage, a business not only helps its employees achieve a stable, self-supporting life, it also ensures a loyal customer base. Many consumers will 'vote with their wallet' and happily patronize businesses that show their commitment to the Living Wage. The Living Wage in Tompkins County in May 2011 is \$11.67/hourly if medical benefits are included, \$12.78/hourly if they are not.

The Living Wage is calculated biannually by the Alternatives Federal Credit Union and the Tompkins County Workers' Center; the most recent calculation was announced in May 2011. Check [www.alternatives.org](http://www.alternatives.org) or <http://tcworkerscenter.org/> for updates.

## **3. Avoid segregated workplaces**

Be aware of who is hired for front-of-house and back-of-house positions. Were they hired because they fit a stereotype or subconscious assumption about a person's abilities or attractiveness? Many types of discrimination are against the law. Try to make hiring and promotion decisions based on actual skills and experience.

## **4. Provide adequate staff training**

Your business will benefit from proper training of both back of house and front of house workers. Workers operating any kind of equipment should be adequately trained but it is also beneficial to conduct regular training on procedures your restaurant follows as well as health and safety practices. Regular staff meetings provide time for questions, continuing education and increased communication between managers and employees.

## **5. Have an Open Door policy**

Let your employees know that management is open to concerns and suggestions. Post a notice on the employee bulletin board encouraging employees to speak to anyone in management if they have a suggestion or a specific concern.

## **6. Maintain adequate staffing levels**

Understaffing often results in high turnover, poor morale, high stress levels in workers and management, accidents, illness and poor customer service. It should not be common practice to force employees to 'fill in' for positions which they are not trained to perform.

## **7. Provide paid sick days and vacation time**

Allowing employees to leave work without forfeiting pay when they are ill and providing a set number of paid sick days per year will ensure that workers do not 'hide' their illnesses, endangering both other workers and customers. This practice can limit infectious disease in the workplace. Also, when workers are provided

with paid vacation time, they can rest and take care of personal affairs, and be more productive during their regular worktime.

### **8. Provide Notices in writing, either on a bulletin board or in a handbook**

When an employer policies are in writing, all policies are clear. This helps avoid arguments over the ambiguity of management decisions. The policies should contain vacation, sick days and other benefits and describe unacceptable activities and behavior. The bulletin board should also be used for the posters employers are required by law to have available in the workplace.

If you have employees whose first language is not English, it is helpful to have a handbook available in their language. An oral translation should be provided if there is no written handbook.

### **10. Maintain good records**

A personnel file should be maintained for each employee. The law requires maintaining a log of accidents and other health and safety incidents. You must also maintain complete and accurate wage and hour records. You can also document interactions over personnel matters.

### **11. Help employees access government and private benefits**

You can foster loyal, valuable relationships with workers by helping them access benefits that can enhance their wages and help them stay employed. Employers can consider providing health insurance for workers. Some resources for small business owners include:

New York State Insurance Department (NYSID)

[www.ins.state.ny.us](http://www.ins.state.ny.us)

Healthy New York


<http://www.ins.state.ny.us/website2/hny/english/hny.htm>

Government benefits include food stamps, Child Health Plus insurance coverage and special subsidized utility payments for low-income workers. A good New York State resource is [https://www.mybenefits.ny.gov/selfservice/HomePage\\_input](https://www.mybenefits.ny.gov/selfservice/HomePage_input) which has links to the many programs available in our state.

An excellent resource for employees who have become ill or injured on the job is the **Occupational Health Clinical Center in Syracuse, NY**. OHCC provides accurate, independent diagnosis of work-related illness and offers treatment referrals by taking medical histories and conducting diagnostic tests and physical exams. An industrial hygienist on staff can offer assistance to employers by offering suggestions to modify your worksite or work habits in order to prevent future health problems. For more information, contact OHCC at 315-432-8899 or 800-432-9590. [www.upstate.edu/cnyohcc](http://www.upstate.edu/cnyohcc)

#### APPENDIX A: Notice of Pay Rate and Payday forms

The form on page 15, LS54, is an updated Notice of Pay Rate and Payday form from the NYS Department of Labor. This example is a notice for English-speaking workers receiving hourly wages. Other examples for salaried employees, non-English speakers and more can be found at <http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>

	<b>Notice and Acknowledgement of Pay Rate and Payday</b> <b>Under Section 195.1 of the New York State Labor Law</b> <b>Notice for Hourly Rate Employees</b>	
<p><b>1. Employer Information</b></p> <p>Name: _____</p> <p>Doing Business As (DBA) Name(s): _____</p> <p>FEIN (optional): _____</p> <p>Physical Address: _____</p> <p>Mailing Address: _____</p> <p>Phone: _____</p> <p><b>2. Notice given:</b></p> <p><input type="checkbox"/> At hiring</p> <p><input type="checkbox"/> On or before February 1st</p> <p><input type="checkbox"/> Before a change in pay rate(s), allowances claimed or payday</p> <p>LS 54 (03/11)</p>	<p><b>3. Employee's rate of pay:</b></p> <p>\$ _____ per hour</p> <p><b>4. Allowances taken:</b></p> <p><input type="checkbox"/> None</p> <p><input type="checkbox"/> Tips _____ per hour</p> <p><input type="checkbox"/> Meals _____ per meal</p> <p><input type="checkbox"/> Lodging _____</p> <p><input type="checkbox"/> Other _____</p> <p><b>5. Regular payday:</b> _____</p> <p><b>6. Pay is:</b></p> <p><input type="checkbox"/> Weekly</p> <p><input type="checkbox"/> Bi-weekly</p> <p><input type="checkbox"/> Other</p> <p><b>7. Overtime Pay Rate:</b></p> <p>\$ _____ per hour (This must be at least 1½ times the worker's regular rate with few exceptions.)</p>	<p><b>8. Employee Acknowledgement:</b></p> <p>On this day I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated pay day on the date given below. I told my employer what my primary language is.</p> <p><b>Check one:</b></p> <p><input type="checkbox"/> I have been given this pay notice in English because it is my primary language.</p> <p><input type="checkbox"/> My primary language is _____. I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.</p> <p>Print Employee Name _____</p> <p>Employee Signature _____</p> <p>Date _____</p> <p>Preparer's Name and Title _____</p> <p><b>The employee must receive a signed copy of this form. The employer must keep the original for 6 years.</b></p>

### Appendix B:

#### Summary of The Wage Theft Prevention Act

The Wage Theft Prevention Act will become law on **April 9, 2011**. The following is a **summary** of the Act. **Please contact the Department of Labor for the full text.**

The WTPA addresses issues such as record keeping; increases penalties for wage theft and record keeping violations, instituting criminal penalties including imprisonment for failure to pay minimum wage; increases the amount of wages to 100% that can be recovered as damages over and above the lost wages themselves; increases protection for employees who have been retaliated against when they ask for past due wages; and provides the Department of Labor with new powers for investigation and prosecution of wage theft. Wage theft includes underpayment as well as nonpayment of wages. Wage theft includes failure to pay minimum wage, failure to pay overtime, requiring off-the-clock work, stealing of tips and misclassification of workers.

- **Pay Notice.** Employers must provide all employees with the following information: rate of pay, the regular payday, overtime rate of pay if applicable, basis of wage payment (hourly, weekly, shift, etc), intent to claim (tip and/or meal) allowances, the employer's main address and phone number and the employer's name including any doing business as titles. This notice must be furnished in English or in the primary language that an employee designates. All new workers must be provided with this information upon hiring; old employers must receive this each year by February 1. The employer must obtain and keep a signed and dated acknowledgement confirming receipt for six years.

The notice must be updated and provided again at least seven calendar days in advance if changes are to be made to their payday, rate of pay or other subjects of the above regulation.

These are additional requirements to NY Labor Law, Article 6, Section 195.

- **Pay Statements.** Pay statements must specify the dates the wages cover, the regular and over time pay rate and basis of pay rate (hourly, weekly, etc), the number of regular and overtime hours worked.
- **Recordkeeping Requirements.** Payroll and pay notice records must now be kept for a period of six years. This has been extended from three years previous to the WTPA.
- The Act expands the types of businesses subject to criminal penalties for nonpayment of wages to include partnerships, limited liability corporations and the officers and agents of those entities.

For more information:

NYS Department of Labor  
W. Averell Harriman State Office Campus  
Building 12  
Albany NY 12240  
518-457-9000  
888-4-NYSDOL  
[www.labor.ny.gov](http://www.labor.ny.gov)

Tompkins County Workers' Center  
115 The Commons / E. Martin Luther King, Jr. Street  
Ithaca NY 14850  
607-269-0409  
[tcworkerscenter.org](http://tcworkerscenter.org)