



New York

Human Resources LEGAL FACT SHEET

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in May 2018, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE NEW YORK STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

| TOPIC | ANSWER | DETAILS |
|--|--------|--|
| Notice of Payday/ Pay Rate ¹ | YES | You must provide all new hires with a Pay Notice and Work Agreement that lists the name and contact info of the employer (including name, address, phone number), any other names used for the business, employee's pay rate, what the rate is based on (hours, shift, day, salary, etc.), hours of work, allowances taken as part of minimum wage (tips, meals and lodging deductions), the regular payday, and benefits, if any. Employees must agree to and sign and date the agreement. The notice has to be in English and in the employee's primary language (if the NY Dept. of Labor offers a translation for that language). You must provide a new agreement if there are changes in the information. You must keep a copy of the signed notice for 6 years. |
| Reporting | YES | New hires and rehires must be reported to the New York New Hire Online Reporting center within 20 days. |

WAGES

| TOPIC | ANSWER | DETAILS |
|---------------------------------|--------|--|
| Payday ² | YES | You must have regular paydays established in advance. Paydays must be weekly for manual labor. They can only be every two weeks if workers are paid up-to-date for the full two weeks. |
| Final Pay ³ | YES | If an employee is fired, terminated, or quits , wages owed are due on the next regular payday. If requested by the employee, these wages must be mailed to the former employee. |
| Overtime ⁴ | YES/NO | Currently, agriculture is exempt from New York overtime laws. Effective Jan. 1 2020, farm workers must be paid overtime of at least 1.5 times their regular rate of pay for any hours worked over 60 hours in a calendar week. |
| Hours Worked ⁵ | YES | Minimum wage must be paid for all time an employee is required to work, permitted to work, or is required to be available for work at a place designed by the employer. The hours worked also include time traveling as a work duty (i.e. during the workday as part of work, not commuting to/from work). |
| Reporting Time Pay ⁶ | NO | New York call-in pay requirements do not currently apply to agriculture, i.e. an employee is only required to be paid for actual hours worked. |

This fact sheet contains embedded hyperlinks. If you are viewing a printed copy, please refer to the FARM website at www.nationaldairyfarm.com for the online version to access the links.



WAGES

(Continued)

| TOPIC | ANSWER | DETAILS |
|------------------------------------|--------|---|
| Minimum Wage ⁷ | YES | <p><u>\$11.10</u> – Most of New York. Becomes \$11.80 on Dec. 31 2019.</p> <p>\$12.00 – Westchester and Long Island counties. Becomes \$13.00 on Dec. 31 2019.</p> <p>\$13.50 – New York City small employers (10 or fewer employees). Becomes \$15.00 Dec. 31 2019.</p> <p>\$15.00 – New York City large employers (11 or more employees)</p> <p>Farms that paid less than \$3,000 in cash during the previous calendar year are exempt. Minimum wage does not apply to immediate family, including spouse, parent, or child. The minimum wage is scheduled to increase on 12/31 of each year until it reaches \$15/hr. The minimum wage must be posted for farm workers.</p> |
| Pay Stub ⁸ | YES | <p>For each payday, employers must give a pay stub that includes:</p> <ul style="list-style-type: none"> • <i>full name and address of the employer;</i> • <i>name of the employee;</i> • <i>hours worked by the employee;</i> • <i>when wages are based on piece rate, the size or weight of the piece-rate unit and the number of units produced during the pay period;</i> • <i>rates paid;</i> • <i>gross wages;</i> • <i>allowances and deductions; and</i> • <i>net wages.</i> |
| Taxes and Withholding ⁹ | YES | <p>If you are required to withhold federal income tax, then you must also withhold <u>New York state income taxes</u>. You must give your employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R. More details on page 58.</p> <p>Effective Jan 1, 2020, all farms must pay New York <u>Unemployment Insurance taxes</u>. However, until the end of 2019, farms only pay the unemployment insurance tax if:</p> <ul style="list-style-type: none"> • <i>You paid cash wages to farm workers of \$20,000 or more in a quarter in the current or prior calendar year; OR,</i> • <i>You employed ten or more farm workers for some part of a day in 20 or more weeks in the current or prior calendar year; OR,</i> • <i>You are liable for the federal unemployment insurance tax.</i> <p>Certain family employment is excluded from coverage requirements (a person employed by their spouse, or, a child under 21 employed by a parent). Unemployment taxes are paid by the employer; they are not taken out of employee pay. You can credit the amount you pay to New York in calculating how much you owe for federal unemployment taxes.</p> |
| Deductions ¹⁰ | YES | <p><u>Deductions required</u> by law or courts (for ex. tax withholdings and child support) do not require written authorization from the employee. Deductions for the employee's benefit, like health insurance payments, are allowed but must be agreed to in writing by the employee in advance. Illegal deductions include those for: breakages, fines, losses to the business, charges for check replacement, and anything not listed in Section 193 of the Labor Law.</p> <p>Meals and lodging can be provided as in-kind wages and count toward minimum wage requirements. You must charge fair market value and the rates are limited by New York law (See pages 8 and 9). Other payments in-kind are permitted as part of the minimum wage if acceptable to the employee and not valued at more than fair market value. Employees must be put on notice of substantial changes in deductions.</p> |
| Bonuses ¹¹ | YES/NO | <p>New York courts have addressed the issue of whether or not bonuses are considered wages. Generally, discretionary bonuses do not constitute wages. Nondiscretionary bonuses may be considered part of wages and covered under protections of New York Wage Law.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p> |

RECORD KEEPING

| TOPIC | ANSWER | DETAILS |
|--------------------------------------|--------|--|
| Payroll ¹² | YES | <p>Keep payroll records for a minimum of three years that include for each employee for each week:</p> <ul style="list-style-type: none"> • Name, address, and SSN of the employee • the hours worked • the rate or rates of pay (by the hour, shift, day, week, salary or other) • gross wages • deductions from gross wages • allowances, if any, claimed as part of the minimum wage • net wages for each employee • any cash advances • the wage rate • copy of employee work agreement and • the date of birth of individuals employed at the youth rate and for minors under 17, the name/address of the minor's parent or guardian; and, for minors under 16, the number of the farm work permit issued. <p>Records or certified copies of them need to be available upon request of the Commissioner of Labor of the State of New York at the place of employment.</p> |
| Personnel Files – Employee Access | NO | <p>New York law does not require private employers to let employees view their personnel file.</p> |
| Unemployment Insurance ¹³ | YES | <p>Every employer in New York has to maintain records for each employee:</p> <ul style="list-style-type: none"> • The employee's name and social security account number; and • For each payroll period: <ul style="list-style-type: none"> - the beginning and ending dates; - the days the employee worked and the earnings for each day; - all other payments made to the employee, including vacation pay, bonuses, dismissal pay, tips, the reasonable value of board and lodging, and other forms of compensation. Cash and non-cash wages should be recorded separately (i.e. cash versus meal/lodging allowances) <p>Records must be retained for the current year and at least three preceding years and be available for inspection by the Department of Labor. More details.</p> <p>Employers covered under Unemployment Insurance law must file quarterly payroll reports using forms available online.</p> |
| Workers' Compensation ¹⁴ | YES | <p>New York law requires a fair amount of recordkeeping under its Workers' Compensation rules. This a condensed list; producers should review the full list here.</p> <ul style="list-style-type: none"> • Identity, organizational, and occupational records. • Employment records. • Tax records. • Account records. • Employers must maintain a record of transactions, such as a general ledger, including both debits and credits. • Employee leasing company and temporary labor service records. • Invoices from contracted entities. • Workers' compensation insurance and certificates of election to be exempt. • Contracts. <p>The records should be kept for the current year and three preceding years. Designated officials from the Workers' Compensation chair can inspect these records at any time.</p> <p>Employers covered under Workers' Compensation requirements must also keep certain payroll records: the number of employees, the classification of employees, information regarding employee accidents, and the wages paid. Records should be kept for four years after each entry and open to inspection at any time by the Workers' Compensation Board. Additionally, injury records should be kept in your files for 18 years.</p> |
| OSHA | YES | <p>See federal OSHA recordkeeping requirements in the federal fact sheet.</p> |
| Federal | YES | <p>There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.</p> |

WORKING CONDITIONS

| TOPIC | ANSWER | DETAILS |
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| Bathrooms ¹⁵ | YES | The Pasteurized Milk Ordinance and New York Requirements for the Production, Processing, Manufacturing and Distribution of Milk and Milk Products both require at least one toilet facility that must be kept in clean and sanitary condition. |
| Working Hours ¹⁶ | YES/NO | Currently, there are <u>no max hour or day requirements for adults</u> . However, on Jan. 1 2020, farm workers must be given at least 24 consecutive hours in each and every calendar week. A farm worker can voluntarily agree to work on the day of rest, provided that they are paid overtime of at least 1.5 times their regular rate of pay. This provision excludes parent, children, spouse, or other member of the employer's immediate family. See Child Labor (below) for maximum hours for minors. |
| Rest and Meal Breaks ¹⁷ | YES | <u>Meal breaks</u> : 30-minute lunch break between 11:00 a.m. and 2:00 p.m. for shifts six hours or longer that extend over that period and a 45-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m. Must give an additional 20-minute meal break between 5:00 p.m. and 7:00 p.m. for workdays that extend from before 11:00 a.m. to after 7:00 p.m. Meal breaks do not count toward work time, so you do not need to pay employees for that time so long as no work is performed during the meal break. <u>Rest breaks</u> : Employers do not have to provide other "breaks," such as for "rest periods" or "coffee breaks." But, if an employer permits a break (of up to 20 minutes), then they should pay it as work time. |
| Labor Relations ¹⁸ | YES/NO | The New York Labor Relations Act, which protects employee's right to organize, currently excludes farmworkers. However, the new Farm Laborers Fair Labor Practices Act amends the law. Farmworkers will be covered under the New York Labor Relations Act starting Jan. 1 2020. The Act grants collective bargaining rights to farmworkers. However, it is an 'unfair labor' practice for employees to strike an agricultural employer. There are additional provisions specific to farm workers and agricultural employers (in particular, review section 704-b for unfair labor practices as well as section 702-b for procedures during an impasse.) More information . |
| Whistleblower Protection ¹⁹ | YES | Employers cannot discipline or take retaliatory action against employees who disclose or threaten to disclose activities, policies or practices that violate laws or regulations or threaten public health or safety. |
| Paid Vacation or Sick Leave | YES/NO | New York law does not require paid sick or vacation leave. Employers who choose to provide such benefits must follow their written policy/contract. Employees may be covered under New York's Paid Family Leave (described below), which allows for paid leave to provide care for a family member's serious health condition. |
| Breaks for Nursing Mothers ²⁰ | YES | Must allow nursing mothers reasonable, unpaid break times to express milk and make a reasonable attempt to provide a private location for her to do so. Prohibits discrimination against nursing mothers. |
| Pregnancy Leave and Accommodations ²¹ | YES | Under case law applying the Human Rights Law, New York courts have held that employers are required to provide the same benefits and accommodations to employees affected by pregnancy, child birth, or related conditions as they provide in other instances of temporary disability. In terms of leave, employees covered under New York State Disability Benefits can take short-term disability after childbirth in certain circumstances. See FAQs on pregnancy and maternity leave online . Coverage is not required for farm laborers, but employers can voluntary elect to provide disability benefit coverage for farm laborers (see Workers' Compensation near the end of this document). Employees may be eligible for maternity or parental leave under the Paid Family Leave law described below. |
| Jury Duty Leave ²² | YES | Employers are required to permit employees to take leave for purposes of jury duty. An employer who employs more than ten employees must pay an employee the first \$40 of his regular daily wages for the first three days of jury service. In all other instances, an employer is not required to pay an employee for time spent serving on a jury. |

WORKING CONDITIONS

(Continued)

| TOPIC | ANSWER | DETAILS |
|--|---------------|--|
| School Activity Leave | NO | New York law does not address leave for private sector employees to attend a child's school activity. |
| Voting Leave ²³ | YES | New York law requires employers to provide employees time off work so that an employee's time off hours combined with his or her off-duty hours provide the employee sufficient time to vote while polls are open. Only two hours of the voting leave must be paid. An employee is considered to have sufficient off-duty time to vote if he or she has four (4) consecutive off-duty hours to vote while polls are open. Not less than ten (10) working days before an election, each employer is required to post in a conspicuous location a notice informing employees of their rights and obligations to take voting leave. |
| Paid Family and Medical Leave ²⁴ | YES/NO | <p>Farm laborers are not covered under New York Paid Family Leave law, but employers can elect coverage by following certain steps outlined online under 'Eligibility and Waivers'. However, other employees on the farm (like bookkeepers, etc.) are covered by the law. Federal law requiring unpaid leave may apply depending on the size of the employer. Refer to federal fact sheet</p> <p>Employees who have worked for a covered employer in New York for 26 or more consecutive weeks are eligible for paid family leave benefits pursuant to the New York Paid Family Leave Benefits Law (PFLBL). Eligible employees are paid by a state fund financed by deductions taken directly from employees' wages. Leave may be taken for the following reasons: (1) to provide care for a family member because of the family member's serious health condition; (2) to bond with the employee's child during the first 12 months after the child's birth or during the first 12 months after placement of the child for adoption or foster care with the employee; or (3) to attend to obligations arising because the spouse, child, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the U.S. Armed Forces. The length of available leave benefits and amount of weekly benefits increases yearly, as follows:</p> <ul style="list-style-type: none"> • On or after January 1, 2018, employees may receive up to 8 weeks of paid benefits in any 52-week period at 50% of their average weekly wage, but in an amount not to exceed 50% of the New York State average weekly wage (NYSAWW). • On or after January 1, 2019, employees may receive up to 10 weeks of paid benefits in any 52-week period at 55% of their average weekly wage, but in an amount not to exceed 55% of the NYSAWW. • On or after January 1, 2020, employees may receive up to 10 weeks of paid benefits in any 52-week period at 60% of their average weekly wage, but in an amount not to exceed 60% of the NYSAWW. • By January 1, 2021 and for each year thereafter, employees may receive up to 12 weeks of paid benefits in any 52-week period at 67% of the NYSAWW, with 67% of average weekly wage, not to exceed 67% of the NYSAWW. |
| Crime Victim and Witness Leave ²⁵ | YES | New York allows time off on prior-day notice for a victim of a crime to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection. |
| Military and other Service Leave ²⁶ | YES | <p>Employees are entitled to leave in order to fulfill their obligations to the armed forces, national guard and military reserves. An employee seeking reemployment must apply within 90 days of being relieved from service. The application period is shorter for training or reserve duty.</p> <p>Employees must be reemployed, unless they were temporary employees, if, upon completion of military service the employee:</p> <ul style="list-style-type: none"> • receives a certificate of completion of military service duly executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia; • is still qualified for the duties of the position; and • applies for reinstatement within the appropriate time frame. <p>However, the employer need not reemploy the employee if the employer's circumstances have so changed that it would be impossible or unreasonable to reinstate the employee.</p> <p>Upon reemployment, the employee must be:</p> <ul style="list-style-type: none"> • restored to their previous position or a position of similar seniority, status and pay, unless the employer's circumstances have changed as to make it impossible or unreasonable to do so; • restored to employment without any loss of seniority; • entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person entered the military service; and • protected from discharge, other than for cause, for one year after reemployment. |

HUMAN RIGHTS

| TOPIC | ANSWER | DETAILS |
|---|--------|---|
| Employment Discrimination ²⁷ | YES | <p><u>New York law prohibits</u> employment discrimination based on: Age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, pregnancy, sealed arrest or conviction record, retaliation, medical marijuana. Applies to employers with 4 or more employees.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, compensation, job assignments, firing, pay, and other terms of employment.</p> <p><u>Employers cannot pay men and women different wages</u> for comparable work on jobs that have virtually the same requirements in terms of skills, effort, and responsibility. Wage differences based on seniority, merit, quantity or quality of production or other factors other than sex are permitted.</p> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p> |
| Harassment/ Sexual Harassment ²⁸ | YES | <p><u>Sexual harassment</u> is a type of discrimination (above). Unlike employment discrimination, sexual harassment laws apply to ALL employers in New York, regardless of the number of employees they have.</p> <p>Sexual harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile, or abusive.</p> <p>Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> • <i>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</i> • <i>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just “treated her right.”</i> • <i>The conduct interferes with an employee’s work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or “just to go out for drinks after work.” The worker says she isn’t interested, but the co-worker won’t take ‘no’ for an answer.</i> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p> |
| Forced Labor ²⁹ | YES | <p>Human trafficking is <u>illegal in New York</u>. Trafficking for labor means: recruiting, harboring, transporting, transferring, providing, buying, purchasing, receiving, or obtaining by any means a person for forced labor or services.</p> <p>Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.</p> |

CHILD LABOR

| TOPIC | ANSWER | DETAILS |
|---------------------------|--------|---|
| Child Labor ³⁰ | YES | <p>Work permit required if under 16, except for minors working for their parents/ guardians on the home farm. Employers can request an age certificate.</p> <p>Meal and rest break requirements are the same as the ones for adults (see above).</p> <p>Minimum age:</p> <ul style="list-style-type: none"> • <i>During school hours: 16</i> • <i>Outside school hours: 14, 12 if working for their parents or guardians on the home farm</i> <p>Working hours:</p> <ul style="list-style-type: none"> • <i>Minors cannot work during the hours they are required to attend school</i> • <i>Maximum hour laws do not apply to dairy farm labor</i> <p><u>More details, including hazardous occupation restrictions.</u></p> |

HEALTH AND SAFETY

| TOPIC | ANSWER | DETAILS |
|-------------------------------------|--------|---|
| OSHA | YES | New York is under federal OSHA jurisdiction. See the federal portion of the fact sheet for more information. |
| Workers' Compensation ³¹ | YES | <p>Effective Jan. 1 2020, employers must provide workers' compensation coverage to all farm workers. Until the end of calendar year 2019, farms must provide workers' compensation coverage if they paid more than \$1,200 in wages to farm labor in the previous calendar year. The farm owner's spouse and children are only excluded if they are NOT under a work contract/contract of hire. Employers must post a notice about their compliance with workers' compensation requirements in both English and Spanish. Typically, the notice is supplied by the farm's insurance carrier. More details.</p> <p>Retaliation is prohibited against any employees relating to workers' compensation, which includes any employee that claims or attempts to claim compensation; requests a claim form for work-related injuries; testifies in a workers' compensation related hearing; etc.</p> <p>Farms are also covered under New York Disability Benefits Law. In 2019, you can choose whether or not to provide coverage for farm laborers. However, starting Jan 1, 2020, all farm laborers are covered under the disability benefits law. Minors that are the farm owner's children are excluded. Some of the premium can be withheld from employee pay, but employers bear the cost of the difference.</p> <p>For injuries treatable with first aid and resulting in loss time of less than one day beyond the end of the working shift, then fill out Form C-2E (Employer's First Report of Work Related Injury/Illness) but don't send it to the insurance. Keep it in your files.</p> <p>If the injury requires medical treatment beyond first aid or results in more than one day of lost time, then send Form C-2F to the insurance company and the Workers' Compensation Board within ten days.</p> <p>Records should be kept in your files for 18 years.</p> |
| Housing | YES/NO | <p>Lodging provided as in-kind wages are defined as "living accommodations which meet generally accepted standards for protection against fire, and all structural, sanitation, and similar standards in State and local laws, codes, regulations and ordinances applicable to the premises."</p> <p>However, ag housing for non-migrant workers is not otherwise explicitly addressed in New York law, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.</p> |

References

1. NY Lab L §195; NY Lab L §673-a
2. NY Lab L §191
3. NY Lab L §191
4. NY Lab L §651; §163-a
5. NYCRR 12 §142-2.1
6. NYCRR 12 §142-2.3
7. NY Lab L §670 et seq
8. NYCRR 12 §190-8.1
9. NY TAX L §607; NY TAX L §671; NY Lab L §564; NY Lab L §511
10. NY Lab L §193; NYCRR 12 §190-3.1; NYCRR 12 §190-5.1
11. See for example: Truelove v Northeast Capital & Advisory, Inc., 3 No. 99 (NY Ct. App. 2000); Fiorenti v. Central Emergency Physicians, PLLC, 305 A.D.2d 453, 762 N.Y.S.2d 402 (App. Div. 2003); Ryan v. KELLOGG PARTNERS INST., 968 N.E.2d 947, 19 N.Y.3d 1, 945 N.Y.S.2d 593 (2012).
12. NY Lab L §195 and NYCRR 12 §190-8.2
13. NYCRR 12 §472.2; §472.4
14. NY Work Comp L §131; §141-A; §110; 12 NYCRR 308.3
15. NYCRR 1 §2.14 Item 7r
16. NY Lab L §161.1 and 161.2
17. NY Lab L §162
18. NY Lab L §700 et seq.
19. NY LAB L §740
20. NY Lab L §206-c
21. Brooklyn Union Gas Co. v. N.Y. State Human Rights Appeal Bd., 41 N.Y.2d 84, 359 N.E.2d 393 (1976).
22. New York Judiciary Code 519
23. New York Election Law 3-110
24. NY Work Comp L §§ 201, 203, 204, 205, 212.
25. NY PEN L §215.14
26. NY MIL L §317
27. NY Exec L §290 et seq.; NY Lab L §194
28. See above. In particular, NY Exec L §296 and NY Exec L §292.5
29. NY PEN L §135
30. NY LAB L §130; §142; §143; NY EDN L §3215; §3215-a; §3216
31. NY WKC L §2; NY WKC L §3(1) (Group 14b); NY WKC L §51; NY WKC L §110; NY WKC L §201