



FEDERAL AND NEW YORK STATE LAW AND THE TAV HAYOSHER

The exploitation of labor has long been recognized as a transgression under the tenets of Jewish law. The Torah is clear that “[t]hou shalt not oppress a hired servant that is poor and needy” (Deuteronomy 24:15). The Jewish sages have compared the deprivation of a laborer’s wages to the act of taking an individual’s life. This fundamental concept of treating workers with respect is the basis for Uri L’Tzedek’s Tav HaYosher standards:

- (i) The right to fair pay.
- (ii) The right to fair time.
- (iii) The right to a safe work environment.

These standards are not just applicable to those who subscribe to the Jewish legal system, but apply to every employee and employer within the United States of America. The legal protections afforded to every employee under the Fair Labor Standards Act (FLSA) ensures every employee receives fair pay, fair time, and a safe working environment. Indeed, just as exploitation of workers is a violation of Jewish law, so too, any willful violation of the FLSA can result in criminal sanctions, including jail time.

The protections afforded to every employee (not just US Citizens) under the FLSA are undeniable. However, States, through enacting their own laws, may create additional protections for employees. For instance, under the FLSA, minimum wage is \$7.25 per hour. No employee within the United States may be paid less than \$7.25 per hour (even restaurant workers, who may be paid less hourly, are required to receive at least \$7.25 per hour after tips). However, in California, the minimum wage is \$8.00 per hour. As such, no employer within the state of California may pay less than \$8.00 per hour to any employee.

Below is a brief outline of the different Federal and New York State laws that afford employees the right to fair pay, the right to fair time, and the right to a safe work environment. Remember, any New York State law that affords more protection to employees than its Federal counterpart is the law that employers are required to abide by.

As you can see the Tav HaYosher does not exceed the legal requirements under FLSA. As long as a restaurant follows these basic US laws, it is eligible for the Tav HaYosher and all of the benefits that it provides. Please contact tav@utzedek.org to learn more!

Uri L’Tzedek Orthodox Social Justice

FEDERAL STATUTES

- Minimum Wage (29 U.S.C. § 206) (Department of Labor – “DOL”)
 - According to the Fair Labor Standards act, every employee must be paid \$7.25/hour for all hours worked.
- Overtime (29 U.S.C. § 207) (DOL)
 - For every hour employees work over 40 hours in a single week, employers must pay those employees 1.5 times their regular wage.
 - Regular wage is calculated by dividing their earnings by the number of hours actually worked (29 C.F.R. §§ 778.100 – 778.115)
 - Workweek means regularly recurring period of 168 hours (7 consecutive 24-hour periods) 29 C.F.R § 778.105
- Tip credit (29 C.F.R. § 531.50) (DOL)
 - Tipped employees must be paid at least \$2.13/hour
 - If tips do not amount to federal minimum wage (\$7.25/hr), then employer must pay the employee the difference so that the employee makes at least minimum wage.
- Breaks (DOL)
 - Under federal law, rest and meal breaks are not mandatory
- Safe work environment (29 U.S.C 654) (OSHA)
 - Each employer
 - Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
 - Shall comply with occupational safety and health standards promulgated under this act.
- Discrimination (Equal Employment Opportunity Commission – Also, New York Department of Human Rights)
 - Title VII (race, gender, national origin, and religion), ADA (disabilities), ADEA (age)
- Right to Organize (National Labor Relations Board)
 - 29. U.S.C. § 157; Sec. 7 of the National Labor Relations Act
 - Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

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NEW YORK STATE STATUTES

- Minimum Wage (N.Y. Lab. Law § 652 and 12 NYCRR § 146-1.2)
 - Same as Federal (\$7.25/hr)
- Overtime (12 NYCRR § 146-1.4)
 - An employer shall pay an employee for overtime at a wage rate of 1.5 times the employee's regular rate for hours worked in excess of 40 hours in a given workweek.
- Tip credit
 - For Employees (12 NYCRR § 146-1.3)
 - Food service worker (waiter that serves food) must make at least \$5.00/hr. Credit for tips shall not exceed \$2.25/hr.
 - Non-food service employees: \$5.65/hr and credit may not exceed \$1.60/hr.
 - For Employers (12 NYCRR § 142-2.5)
 - Tips and gratuities may be considered part of the minimum wage if:
 - “substantial evidence” that employee received in tips at least the amount claimed (e.g., statement signed by the employee that he actually received in tips the amount claimed)
 - allowance claimed by employer is recorded on a weekly basis as a separate item in the wage record.
- Tip sharing (N.Y. Lab. Law § 196-d)
 - Employer is not allowed to demand or accept any part of the gratuities received by an employee
- Breaks
 - Entitled to one day of rest out of every seven days (NYLL § 161)
 - Restaurant workers must also be able to take a break of 20, 30 or 45 minutes determined by the hours worked. (NYLL § 162)
- Deductions (NYLL § 193; 12 NYCRR 146-2.7)
 - No employer shall make any deduction from the wages of an employee, except credits authorized by 146-1.3, unless such deductions:
 - 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.
- Discrimination
 - NY DHR Section 296(1)(a)

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- Unlawful for employer to discriminate based on an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.
- Right to Organize
 - 29. U.S.C. § 157; Sec. 7 of the National Labor Relations Act
 - Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].