

Employee Scheduling (Call-in Pay)

The proposed rule would revise the call-in pay requirements of the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR Part 142 at §§ 142-2.3 & 3.3) to read, in their final form, as follows:

Call-in pay.

(a) Call-in pay shall be provided as set forth below.

(1) **Reporting to work.** An employee who by request or permission of the employer reports for work on any shift shall be paid for at least four hours of call-in pay.

(2) **Unscheduled shift.** An employee who by request or permission of the employer reports to work for any shift for hours that have not been scheduled at least 14 days in advance of the shift shall be paid an additional two hours of call-in pay.

(3) **Cancelled shift.** An employee whose shift is cancelled within 72 hours of the scheduled start of such shift shall be paid for at least four hours of call-in pay.

(4) **On-call.** An employee who by request or permission of the employer is required to be available to report to work for any shift shall be paid for at least four hours of call-in pay.

(5) **Call for schedule.** An employee who by request or permission of the employer is required to be in contact with the employer within 72 hours of start of the shift to confirm whether to report to work shall be paid for at least four hours of call-in pay.

(b) **Calculation of call-in pay.** Call-in pay shall be calculated as follows.

(1) **Actual attendance.** Payments for time of actual attendance shall be calculated at the employee's regular rate or overtime rate of pay, whichever is applicable, minus any allowances permitted under this Part.

(2) **Minimum rate.** Payments for other hours of call-in pay shall be calculated at the basic minimum hourly rate with no allowances. Such payments are not payments for time worked or work performed and need not be included in the regular rate for purposes of calculating overtime pay.

(3) **Offsets.** Call-in pay shall not be offset by the required use of leave time, or by payments in excess of those required under this Part.

(4) **Shorter work days.** The four hours of call-in pay for reporting to work and for cancelled shifts under paragraphs (1) and (3) of subdivision (a) of this section may be reduced to the lesser number of hours that the employee normally works for that shift, as

long as the employee's total hours worked, or scheduled to work, for that shift do not change from week to week.

(c) **Applicability.** This section applies to all employees, except as provided below.

(1) This section shall not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.

(2) Paragraphs (2) through (5) of subdivision (a) of this section shall not apply to employees during work weeks when their weekly wages exceed 40 times the applicable basic hourly minimum wage rate.

(3) Paragraph (2) of subdivision (a) of this section shall not apply to any new employee during the first two weeks of employment or to any regularly scheduled employee who volunteers to cover: (i) a new and additional shift during the first two weeks that the shift is worked; or (ii) a shift that had been scheduled at least fourteen days in advance to be worked by another employee. For purposes of this and the following paragraph, "regularly scheduled employee" means an employee who is scheduled at least fourteen days in advance for shifts consistent with a written good faith estimate of hours provided by the employer at the time of hiring (or at the time this section takes effect, whichever is later), which may be amended at the employee's request. In addition, as used in this paragraph, "volunteers to cover" means acceptance of any request from another regularly scheduled employee or of an open request from the employer that is extended to all eligible employees, with no penalty or consequence for any employee who does not extend or accept such requests.

(4) Paragraph (3) of subdivision (a) of this section shall not apply when an employer cancels a shift at the employee's request for time off, or when operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer's control, including, but not limited to, a state of emergency declared by federal, state, or local government, provided, however, that where operations can begin or continue but staffing needs are reduced due to act of God or other cause not within the employer's control, the 72-hour period of paragraph (3) of subdivision (a) of this section shall be reduced to 24-hours for regularly scheduled employees.