

NYS Minimum Wage Law & Rules for Camps

Malkin & Ross has provided this summary of the minimum wage laws and regulations in New York as a reference guide when speaking with the Department of Labor. The laws and regulations governing the minimum wage for summer camp employees are inconsistent. Specifically, there still remains an outdated Minimum Wage Order (Miscellaneous Industries and Occupations) that would appear to apply to summer camps. It does not.

In preparation for this memo, Malkin & Ross discussed such inconsistencies within the minimum wage law and regulations with senior staff at the Department of Labor (DOL). Following that discussion, DOL requested that NYSCDA seek an advisory opinion. Unfortunately, the DOL is unable to give Malkin & Ross a timeline as to when such advisory opinion may be issued.

Thus, please use this memo strictly for guidance. If your camp has any specific questions, you may wish to consult an attorney who specializes in employment law.

Minimum Wage for Summer Camps

Generally, the law which governs the minimum wage in New York State is straight forward. Today, the majority of employers can easily find and verify that an employer who pays his or her employee an hourly wage, may not pay less than \$8.75 per hour of labor. However, the laws and regulations which govern the payment of hourly wages that an owner and/or director of a summer camp must pay his or her employees lack clarity.

The Minimum Wage Act is found in Article 19 of the Labor Law. Section 652 of such article spells out the current minimum rate that an employer must pay his or her employee. By definition,¹ certain camp employees are exempt from the

¹ "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work:

general minimum wage rule. Instead, employers of summer camps are instructed to review the Minimum Wage Orders promulgated by the Department of Labor. The Department of Labor has promulgated four separate wage orders. Camps must first look to the Hospitality Industry Minimum Wage Order² as the term hospitality industry³ includes the term hotel. And the term hotel⁴ includes children's camps. However, the Hospitality Industry Minimum Wage Order is only applicable to for-profit summer camps.⁵

For-Profit Camps

Under the Hospitality Order, for-profit summer camps are not required to pay counselors or "camper workers"⁶ the minimum wage. Employees, who are not counselors or "camper workers", must be paid the minimum wage, but if such employees are given three meals and lodging by the camp, employers are permitted to deduct \$19.65 per day⁷ until December 31, 2015, when the allowance increases to \$20.20 per day.⁸⁹

In a previous memo, the payment of a minimum wage to a for-profit camp employee was dependent on the work performed by such employee. Distinctions were made between kitchen, support and maintenance staff. There is no such distinction. Instead, the minimum wage order that applies to for-profit camps, the Hospitality Industry Wage Order, focuses on whether an employee regularly receives tips as part of his or her compensation. This is because the order is primarily interested in regulating the hotel and restaurant industry.

(k) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually;

(l) as a staff counselor in a children's camp;

² 12 NYCRR § 146-3

³ 12 NYCRR § 146-3.1(a)

⁴ 12 NYCRR § 146-3.1(c)

⁵ 12 NYCRR § 146-3.1(d)(2)

⁶ A camper worker is a camper who works no more than four hours a day for a children's camp and at all other times enjoys the same privileges, facilities and accommodations as a regular camper (12 NYCRR § 146-3.2(c)(4))

⁷ 12 NYCRR § 146-1.9(d)(1)(iii)

⁸ 12 NYCRR § 146-1.9(d)(1)(iv)

⁹ Per a telephone conversation with DOL, children's camps are considered a "resort hotel". A resort hotel is one of which offers lodging accommodations of a "vocational nature" to the public or to members or guests of members, and which operates for not more than seven months in any calendar year. NYSCDA will be seeking clarity from DOL by means of an advisory opinion.

Non-profit Camps

Generally, non-profit camps do not have to pay their employees a minimum wage, provided, that such camp does not operate for three months or longer.¹⁰ However, if such camp employs a person for more than three months, that person is considered an employee and the non-profit camp must pay such person a minimum wage.¹¹ This fact becomes important when determining the rate of pay for maintenance or support staff who are year round employees. Again, the distinction is not the position itself, but the duration of job. Employees that are not exempt from receiving a minimum wage, may have their wage reduced if such employees receive food and lodging. In such cases, those non-profit camps may deduct the following amounts for meals and lodging:

Meals	\$3.00 per meal on and after December 31, 2014; \$3.10 per meal on and after December 31, 2015;
Lodging	\$0.45 per hour on and after December 31, 2014. ¹²

Non-profit camps may also opt to pay the minimum wage and exempt itself from a Minimum Wage Order if such non-profit camp certifies, under oath, that such non-profit camp will pay the minimum wage, exclusive of meal and lodging credits.¹³ Those exempt non-profit camps are also permitted to deduct pay from an employee's wage if meals and lodging are provided. However, no specific amount is given in the wage order.¹⁴

As stated above, NYSCDA is seeking an advisory opinion to clarify some of the inconsistencies in the various Minimum Wage Orders. This document may only be used as a reference and does not serve as a legal opinion. If your camp has any specific questions, you may wish to consult an attorney who specializes in employment law.

¹⁰ 12 NYCRR §§ 142-3.12(c)(14) & 143.1(n)

¹¹ 12 NYCRR §§ 142-3.12(c)(14)(i) & 143.1(n)(1)

¹² Please note that there is not an increase in the lodging allowance for non-profit camps that do not elect to exempt itself from a minimum wage order on and after December 31, 2015.

¹³ Labor Law § 652(3)

¹⁴ 12 NYCRR §143.8