

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/dca. The Law and Rules are current as of May 2018.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

**NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 9: MASS TRANSIT BENEFITS**

§ 20-926. Election of qualified transportation benefits in lieu of taxable dollar compensation for certain non-governmental employees.

- a. Except as provided in subdivision c of this section, every employer with twenty or more full-time employees in the city of New York shall offer full-time employees the opportunity to use pre-tax earnings to purchase qualified transportation fringe benefits, other than qualified parking, in accordance with federal law, provided that in the event that such employer's number of full-time employees is reduced to less than twenty, any employee eligible to be provided such opportunity prior to the employee reduction shall continue to be provided such opportunity for the duration of such employee's employment with such employer. For purposes of this section, "full-time employees"; shall mean employees who work an average of thirty hours or more per week for such employer for such period of time as the commissioner establishes by rule.
- b. The provisions of this section shall be enforceable by the department. Any notice of violation issued by the department shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter as set forth in the department's rules. The department shall prescribe the form and wording of such notices of violation. Any employer found to be in violation of the provisions of this section shall be liable for a civil penalty payable to the city of New York of not less than one hundred dollars nor more than two hundred fifty dollars for the first violation. Such employer shall have ninety days to cure such first violation before a civil penalty shall be imposed. After the expiration of such cure period, every thirty-day period in which such employer fails to offer such benefit shall constitute a subsequent violation and a civil penalty of two hundred fifty dollars shall be imposed for each such subsequent violation. A civil penalty shall not be imposed on any individual employer more than once in any thirty-day period.
- c. Subdivision a of this section shall not apply (i) to the United States government, the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary, or the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207; (ii) where a collective bargaining agreement exists between any group of employees and an employer, except where the number of full-time employees not covered by any such agreement is twenty or more, in which case those full-time employees not covered by any such agreement shall be eligible for such benefit; or (iii) where such employer is not required by law to pay federal, state and city payroll taxes. In addition, the department may waive the requirements of this section for an employer if such employer has demonstrated to the satisfaction of the department that the offering of such benefit would be a financial hardship for such employer.
- d. The commissioner may promulgate such rules as he or she deems necessary to effectuate the provisions of this chapter, including, but not limited to, establishing civil penalties for the violation of such rules in amounts not exceeding two hundred fifty dollars for any such violation.

- e. For the purposes of this chapter, “department” shall mean such office or agency as the mayor shall designate pursuant to section 20-a of the charter and “commissioner” shall mean the head of such office or agency.

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RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 7: OFFICE OF LABOR POLICY AND STANDARDS

SUBCHAPTER A: OFFICE OF LABOR POLICY AND STANDARDS

§ 7-101. Definitions.

(a) As used in this subchapter, the following terms have the following meanings:

"Employee" means any person who meets the definition of "employee," as defined by section 20-912 of the Code, "eligible grocery employee," as defined by section 22-507 of the Code, "fast food employee," as defined by section 20-1201 or 20-1301 of the Code, or "retail employee," as defined by section 20-1201 of the Code.

"Employer" means any person who meets the definition of "employer," as defined by section 20-912 of the Code, "successor grocery employer" or "incumbent grocery employer," as defined by section 22-507 of the Code, "fast food employer," as defined by section 20-1201 or 20-1301 of the Code, or "retail employer," as defined by section 20-1201 of the Code.

"Freelancers Law and rules" means Chapter 10 of Title 20 of the Code and subchapter E of this chapter.

"OLPS laws and rules" means chapters 8, 12, and 13 of Title 20 and section 22-507 of the Code and subchapters A, B, D, F, and G of this chapter.

"Transportation Benefits Law and rules" means Chapter 9 of Title 20 of the Code and subchapter C of this chapter.

(b) As used in the OLPS laws and rules, the following terms have the following meanings:

"Code" means the Administrative Code of the City of New York.

"Department" means the New York City Department of Consumer Affairs.

"Director" means the director of the office of labor standards established pursuant to section 20-a of the charter.

"Joint employer" means each of two or more employers who has some control over the work or working conditions of an employee or employees. Joint employers may be separate and distinct individuals or entities with separate owners, managers and facilities. A determination of whether or not a joint employment relationship exists will not often be decided by the application of any

single criterion; rather the entire relationship shall be viewed in its totality.

"Office" means the office of labor standards established pursuant to section 20-a of the New York City Charter and referred to as the Office of Labor Policy and Standards.

"Supplements" means all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not 'wages' within the meaning of the New York State Labor Law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay, life insurance, and apprenticeship training.

"Temporary help firm" means an employer that recruits and hires its own employees and assigns those employees to perform work or services for another organization to: (i) support or supplement the other organization's workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages, or seasonal workloads; or (iii) perform special assignments or projects.

"Work week" means a fixed and regularly recurring period of 168 hours or seven consecutive 24 hour periods; it may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

"Written" or "writing" means a hand-written or machine-printed or printable communication in physical or electronic format, including a communication that is maintained or transmitted electronically, such as a text message.

§ 7-102. Construction.

This chapter shall be liberally construed to permit the Office to accomplish the purposes contained in section 20-a of the New York City Charter. The provisions of this subchapter shall not be construed to supersede any other provision of the OLPS laws and rules, the Freelancers Law and rules, or the Transportation Benefits Law and rules.

§ 7-103 Severability.

The rules contained in this chapter shall be separate and severable. If any word, clause, sentence, paragraph, subdivision, section, or portion of these rules or the application thereof to any person, employer, employee, or circumstance is contrary to a local, state or federal law or held to be invalid, it shall not affect the validity of the remainder of the rules or the validity of the application of the rules to other persons or circumstances.

§ 7-104 Complainants and Witnesses.

- (a) All people, regardless of immigration status, may access resources provided by the Office.
- (b) Any person who meets the definition of employee in section 7-101 of this subchapter is entitled to the rights and protections provided by this subchapter to employees and any applicable provision of the OLPS laws and rules, regardless of immigration status.
- (c) The Office shall conduct its work without inquiring into the immigration status of complainants and witnesses.
- (d) The Office shall maintain confidential the identity of a complainant or natural person providing information relevant to enforcement of the OLPS laws and rules and the Transportation Benefits Law and rules, unless disclosure is necessary for resolution of the investigation or matter, or otherwise required by law, and the Office, to the extent practicable, notifies such complainant or natural person that the Office will be disclosing such person's identity before such disclosure.
- (e) For purposes of effectuating subdivision (d) of this section, the Office shall keep confidential any information that may be used to identify, contact, or locate a single person, or to identify an individual in context.

§ 7-105 Joint Employers.

- (a) Joint employers are individually and jointly liable for violations of all applicable OLPS laws and rules and satisfaction of any penalties or restitution imposed on a joint employer for any violation thereof, regardless of any agreement among joint employers to the contrary.
- (b) A joint employer must count every employee it employs for hire or permits to work, whether joint or not, in determining the number of employees employed for hire or permitted to work for the employer. For example, a joint employer who employs three workers from a temporary help firm and also has three permanent employees under its sole control has six employees for purposes of the OLPS laws and rules.

§ 7-106 Determining Damages Based on Lost Earnings.

- (a) The following provisions apply to the extent necessary in circumstances described in paragraphs (1) and (2) below for the calculation of damages based on lost earnings in an administrative enforcement action:

(1) When an employer pays a flat rate of pay for work performed, regardless of the number of hours actually worked, an employee's hourly rate of pay shall be based on the most recent hourly rate paid to the employee for the applicable pay period, calculated by adding together the employee's total earnings, including tips, commissions, and supplements, for the most recent work week in which no sick time or other leave was taken and dividing that sum by the number of hours spent performing work during such work week or forty hours, whichever amount of hours is less.

(2) If an employee performs more than one job for the same employer or the employee's rate of pay fluctuates for a single job, the hourly rate of pay shall be the rate of pay that the employee would have been paid during the time that employee would have been performing work but for the employee's absence.

- (b) If the methods for calculating the hourly rate described in subdivision (a) produce an hourly rate that is below the full hourly minimum wage, then the employee's lost earnings shall be based on the full hourly minimum wage.

§ 7-107 Required Notices and Postings.

- (a) For any notice created by the Office that is made available on the City's website and that is then required by a provision of the OLPS laws and rules to be provided to an employee or posted in the workplace, an employer must provide and/or post such notice in English and in any language spoken as a primary language by at least five percent of employees at the employer's location, provided that the Director has made the notice available in such language. Employers covered by the Earned Safe and Sick Time Act, chapter 8 of Title 20 of the Code, are required to comply with this subdivision in addition to the requirement pursuant to section 20-919 of the Code that an employer provide the notice of rights in an employee's primary language.
- (b) (1) For any notice that is not created by the Office and made available on the City's website, that is required to be provided to an employee and/or posted in the workplace by a provision of the OLPS laws and rules, an employer must provide and/or post such notice in English and in any language that the employer customarily uses to communicate with the employee.
(2) For any notice that is not created by the Office and made available on the city's website, that is required to be posted in the workplace by a provision of the OLPS laws and rules, an employer must post such notice in English and in any language that the employer customarily uses to communicate with any of the employees at that location.
- (c) Any notice, policy, or other writing that is required by a provision of the OLPS laws and rules to be personally provided to an employee must be provided by a method that reasonably ensures personal receipt by the employee and that is consistent with any other applicable law or rule that specifically addresses a method of delivery.
- (d) Any notice, policy or, other writing that is required to be posted pursuant to a provision of the OLPS

laws and rules must be posted in a printed format in a conspicuous place accessible to employees where notices to employees are customarily posted pursuant to state and federal laws and, except for notices created by the Office, in a form customarily used by the employer to communicate with employees.

- (e) An employer that places employees to perform work off-site or at dispersed job-sites, such as in private homes, building security posts, or on delivery routes, must comply with any applicable requirement to post a notice, policy or other writing contained in the OLPS laws and rules by providing employees with the required notice personally upon commencement of employment, within fourteen (14) days of the effective date of any changes to the required posting, and upon request by the employee, in addition to the requirements in subdivision (c) of this section.

§ 7-108 Retaliation.

- (a) No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under the OLPS laws and rules or interfere with an employee's exercise of rights under the OLPS laws and rules.
- (b) Taking an adverse action includes, but is not limited to threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an employee, reducing the hours of pay of an employee, informing another employer than an employee has engaged in activities protected by the OLPS laws and rules, discriminating against the employee, including actions related to perceived immigration status or work authorization, and maintenance or application of an absence control policy that counts protected leave as an absence that may lead to or result in an adverse action.
- (c) An employee need not explicitly refer to a provision of the OLPS laws and rules to be protected from an adverse action.
- (d) The Office may establish a causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by the OLPS laws and rules and an employer's adverse action against an employee or a group of employees by indirect or direct evidence.
- (e) For purposes of this section, retaliation is established when the Office shows that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

§ 7-109 Enforcement and Penalties.

- (a) The Office may open an investigation to determine compliance with laws enforced by the Office on its own initiative or based on a complaint, except as otherwise provided by section 20-1309 of Chapter 13 of Title 20 of the Code.
- (b) Whether it was issued in person, via mail, or, on written consent of the employer, email, an employer must respond to a written request for information or records by providing the Office with true, accurate, and contemporaneously-made records or information within the following timeframes, except as provided in subdivision (c) of this section, subdivision (c) of section 20-924 of the Code, section 7-213 of this title or other applicable law:
 - (1) For an initial request for information or records, the employer shall
 - i. Within ten (10) days of the date that the request for information was received by the employer provide the following information, if applicable:
 - A. the employer's correct legal name and business form;
 - B. the employer's trade name or DBA;
 - C. the names and addresses of other businesses associated with the employer;
 - D. the employer's Federal Employer Identification Number;
 - E. the employer's addresses where business is conducted;
 - F. the employer's headquarters and principal place of business addresses;
 - G. the name, phone number, email address, and mailing address of the owners, officers, directors, principals, members, partners and/or stockholders of more than 10 percent of the outstanding stock of the employer business and their titles;

- H. the name, phone number, email address, and mailing address of the individuals who have operational control over the business;
 - I. the name, phone number, email address, and mailing address of the individuals who supervise employees;
 - J. the name and contact information of the individual who the office should contact regarding an investigation of the business and an affirmation granting authority to act; and
- ii. Within fourteen (14) days of the date of that the initial request for information or records was received, provide the remaining information or records requested in that initial request.
- (2) For all requests for information or records after the initial request, an employer must respond within the timeframe prescribed by the Office in the request, which shall not exceed fourteen (14) days from the date that the request was received by the employer, unless a longer timeframe has been agreed to by the Office.
 - (3) Upon good cause shown, the Director may extend response timeframes required pursuant to this subdivision.
- (c) An employer shall respond to a written request for information or records by providing the Office with true, accurate, and contemporaneously-made records or information in a lesser amount of time than provided in paragraphs 2 and 3 of subdivision b of this section if agreed to by the parties or the Office has reason to believe that:
- (1) The employer will destroy or falsify records;
 - (2) The employer is closing, selling, or transferring its business, disposing of assets or is about to declare bankruptcy;
 - (3) The employer is the subject of a government investigation or enforcement action or proceeding related to wages and hours, unemployment insurance, workers' compensation, discrimination, OLPS laws and rules, the Freelancers Law and rules, or the Transportation Benefits Law and rules; or
 - (4) More immediate access to records is necessary to prevent or remedy retaliation against employees.
- (d) In accordance with applicable law, the Office may resolve or attempt to resolve an investigation at any point through settlement upon terms that are satisfactory to the Office.
- (e) The Office may issue a notice of violation to an employer who fails to provide true and accurate information or records requested by the Office in connection with an investigation.
- (f) An employer who fails to timely and fully respond to the request for information or records that is the subject of a notice of violation issued under subdivision (e) of this section on or before the first scheduled appearance date is subject to a penalty of five hundred dollars, in addition to any penalties or remedies imposed as a result of the Office's investigation.
- (g) The employer may cure a notice of violation issued in accordance with subdivision (e) of this section without the penalty imposed in connection with subdivision (f) by:
- (1) producing the requested information or records on or before the first scheduled appearance date; or
 - (2) resolving, to the satisfaction of the Office on or before the first scheduled appearance date, the investigation that is the basis for the request for information or records.
- (h) A finding that an employer has an official or unofficial policy or practice that denies a right established or protected by the OLPS laws and rules shall constitute a violation of the applicable provision of the OLPS laws and rules for each and every employee subject to such policy or practice.

§ 7-110 Service.

Service of documents issued by the Office to employers, including written requests for information or records and notices of violation, shall be made in a manner reasonably calculated to achieve actual notice to the employer. The following are presumed to be reasonably calculated to achieve actual notice: (i) personal service on the employer; (ii) personal service on the employer by regular first-class mail, certified

mail, return receipt requested, or private mail delivery services, such as UPS, to an employer's last known business address; or (iii) if an employer has so consented, facsimile, email, including an attachment to an email.

§ 7-111 Recordkeeping.

- (a) An employer's failure to maintain, retain, or produce a record that is required to be maintained under the OLPS laws and rules that is relevant to a material fact alleged by the Office in a notice of violation issued pursuant to a provision of the OLPS laws and rules creates a reasonable inference that such fact is true, unless a rebuttable presumption or other adverse inference is provided by applicable law.
- (b) An employer that produces records to the department or Office in response to a request for information affirms that the records produced are true and accurate.

SUBCHAPTER C: TRANSPORTATION BENEFITS

§ 7-301 Definitions.

As used in this chapter and, where applicable, in the Transportation Benefits Law, the following terms have the following meanings:

"Chain business" means a group of establishments that share a common owner or principal who owns a majority of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681.

"Commuter highway vehicle" means a "commuter highway vehicle" as such term is defined in Section 132(f)(5)(B) of the Internal Revenue Code.

"Cure period" means the ninety-day period immediately following a finding of a first violation.

"Department" means the Department of Consumer Affairs of the City of New York.

"Employee" means an "employee," "manual worker," "railroad worker," "commission salesman," or "clerical or other worker" as such terms are defined in § 190 of the New York State Labor Law. "Employee" does not include partners, sole proprietors, independent contractors, or two-percent shareholders of S-corporations.

"Employer" means an "employer" as such term is defined in § 190 of the New York State Labor Law and that employs twenty or more full-time employees in New York City. The common owner or principal of a chain business shall be considered the employer of the full-time employees of such chain business.

"First violation" means the first finding by the administrative tribunal that a particular employer has violated the Transportation Benefits Law since July 1, 2016.

"Full-time employee" means an employee who has worked an average of 30 hours or more per week in the most recent four weeks as of any date of counting, any portion of which was in New York City, for a single employer.

"Earnings" shall have the same meaning as the term "gross income" as used in § 132 of the Internal Revenue Code.

"Month" means an employer's regularly established fiscal month.

"Recidivist violation" means any new finding by the administrative tribunal that a particular employer has violated the Transportation Benefits Law, after the first finding by the administrative tribunal that the employer had violated the Transportation Benefits Law since July 1, 2016.

"Subsequent violation" means each continuous thirty-day period after the expiration of the cure period, or after the finding of a recidivist violation by the administrative tribunal, in which the employer has not demonstrated to the department's satisfaction that it is complying with the Transportation Benefits Law.

"Temporary help firm" means an employer that recruits, hires and supplies employees to perform work or services for another organization to: (i) support or supplement the other organization's workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages or seasonal workloads; or (iii) perform special assignments or projects.

"Transportation Benefits Law" means Chapter 9 of Title 20 of the Administrative Code of the City of New York.

"Transportation fringe benefits" means qualified transportation fringe benefits, other than qualified parking, that may be purchased using pre-tax earnings in accordance with § 132 of the Internal Revenue Code.

"Week" means an employer's regularly established payroll week.

§ 7-302 Determination of Size of Employer.

(a) An employer's number of full-time employees is determined by calculating the average number of full-time employees for the most recent consecutive three-month period, provided that for an employer that has operated for less than three months, the number of full-time employees is determined by calculating the average number of full-time employees per week for the period of time in which the employer has been in operation.

(b) Full-time employees at all of an employer's or a chain business's locations in New York City shall be counted in determining the number of full-time employees of the employer.

§ 7-303 Temporary Help Firms.

(a) Where a temporary help firm supplies a full-time employee to another organization, the temporary help firm shall be the employer of the full-time employee for purposes of the Transportation Benefits Law and must comply with its provisions, regardless of the size of the other organization.

(b) To determine the number of hours worked each week by an employee working for a temporary help firm, the employer must aggregate the number of hours worked by the employee in the most recent four weeks at all placements.

§ 7-304 Employee Eligibility.

(a) An employer must offer its full-time employees the opportunity to use pre-tax earnings to purchase transportation fringe benefits by January 1, 2016, or four weeks after such employee's commencement of employment as a full-time employee of the employer, whichever is later.

(b) If an employer's work force is reduced to fewer than 20 full-time employees, the employer must continue to offer the opportunity to use pre-tax earnings to purchase transportation fringe benefits to full-time employees who were employer's full-time employees before the work force was reduced.

§ 7-305 Maximum Deductions.

Employers must offer full-time employees the opportunity to use the maximum amount of pre-tax earnings permitted under federal law for the purchase of transportation fringe benefits.

§ 7-306 Recordkeeping Requirements.

Employers must retain records for two years sufficient to demonstrate (i) that each full-time employee eligible for transportation fringe benefits pursuant to the Transportation Benefits Law and this chapter was offered the opportunity to use pre-tax earnings to purchase transportation fringe benefits in accordance with this chapter; or (ii) records sufficient to demonstrate that the employer provides, at the employer's expense, a transit pass or similar form of payment for transportation on public or privately-owned mass transit or in

a commuter highway vehicle at the maximum federal transportation fringe benefit amount that may be excluded from pre-tax earnings. Employers may use the form provided by the department and available on the department's website to document compliance.

§ 7-307 Employer-Funded Transportation Benefits.

(a) As an alternative to offering the opportunity to use pre-tax earnings to purchase transportation fringe benefits, an employer may provide at the employer's expense a transit pass or similar form of payment for transportation on public or privately-owned mass transit or in a commuter highway vehicle.

(b) If the employer-provided transit pass or similar form of payment is less than the maximum transportation fringe benefit that may be excluded from pre-tax earnings under federal law, then the employer must offer employees the opportunity to use pre-tax earnings to purchase transportation fringe benefits for an amount equal to the difference between the value of the employer-provided transit pass or similar form of payment and the maximum amount that may be excluded from gross earnings under federal law.

§ 7-308 Financial Hardship Exemption

(a) The department may waive the requirements of the Transportation Benefits Law for an employer if such employer demonstrates to the department's satisfaction that offering the opportunity to use pre-tax earnings to purchase transportation fringe benefits would be a financial hardship for such employer.

(b) To qualify for a waiver, an employer must present compelling evidence that complying with the Transportation Benefits Law would be impracticable and create a severe financial hardship.

§ 7-309 Enforcement and Penalties

(a) The department may issue a notice of violation pursuant to section 20-926(b) of the Administrative Code.

(b) Any employer found to be in violation of the Transportation Benefits Law will be liable for a civil penalty of two-hundred fifty dollars payable to the city of New York for the first violation, for any and each subsequent violation, and for any and each recidivist violation.

(c) A civil penalty will not be imposed on an employer for the first violation if the employer demonstrates to the satisfaction of the department within the cure period that it is complying with the Transportation Benefits Law.

(d) For the purposes of this section, "satisfaction of the department" with reference to an employer's compliance with the Transportation Benefits Law means proof that the employer has offered its full time employees the opportunity to use pre-tax earnings to purchase transportation fringe benefits or that the employer provides, at the employer's expense, a transit pass, or similar form of payment, for transportation on public or privately-owned mass transit or in a commuter highway vehicle at the maximum federal transportation benefit amount that may be excluded from pre-tax earnings.

(e) An employer seeking to demonstrate that it is complying with the Transportation Benefits Law may do so by submitting the compliance form provided by the department and available on the department's website. The department may require submission of additional information, including documentary evidence, reasonably necessary to prove that a first violation was cured within the cure period.