

# How New York State Labor Laws Section 191 Affects Weekly Pay

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New York State labor laws require employers to pay their workers on a regular weekly, bi-weekly, or monthly basis. It all depends on the type of work performed by your employee.

## When to Pay New York Workers Weekly, Bi-Weekly, and Monthly

The following questions and answers will explain when you should pay your New York State workers weekly, bi-weekly, and monthly. Staying compliant with all New York State labor laws is crucial to the survival and prosperity of your small- to medium-sized business.

### What is the New York State Labor Law Section 191?

The [New York State Labor Law Section 191](#) outlines the frequency by which employees must be paid.

### Which employers are covered by Section 191 of the labor law?

All private-sector employers are covered by Section 191. Federal, state, and local government employers are not covered.

### Which workers does Section 191 of the labor law apply to?

The law applies to most employees working for private-sector employers in New York State. Charter schools, private schools, and not-for-profit corporations are covered, as they are considered private entities.

### How does New York State law define wages?

[Under section 190](#), wages are defined as earnings for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission, or another basis.

### Which employees in NY State do I have to pay weekly?

It depends on the type of work performed by your employees. Manual labor workers and railroad workers (except for executives) must be paid on a weekly basis.

### What is a manual worker in New York State?

Section 190(4) of the [New York State Labor Law](#) defines a "manual worker as a [mechanic, workingman, or laborer](#)." Employees who spend 25% or more time engaged in physical labor are considered manual workers.

### How are weekly worker wages calculated?

Weekly wages for manual workers must be paid not later than seven calendar days after the end of the week in which wages are earned.

### Do NY non-profit entities have to pay manual workers weekly?

No. Manual workers for non-profit entities must be paid in accordance with their agreed terms of employment, but not less frequently than semi-monthly.

### How does New York State define non-profit organizations?

In New York State, a "non-profitmaking organization means a corporation, unincorporated association, community chest, fund or foundation organized exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual."

### Can large employers pay manual workers bi-weekly?

Yes, but only if they file an [Application for Authorization to Pay Manual Workers Less Frequently Than Weekly](#), and meet the following criteria:

- Under Section 191.1(a), in the three years preceding the application to pay manual workers bi-weekly, an employer has employed an average of 1,000 manual workers in New York State.
- Or, for one year preceding the application to pay manual workers bi-weekly has employed 1,000 or more workers in New York State AND has for three years prior to the application employed an average of 3,000 or more workers outside of New York State.
- The employer furnishes satisfactory proof of their continuing ability to meet payroll responsibilities.
- Employer representatives must also file a [Letter of Representation](#) with the New York State Department of Labor.

### Which employees in NY State can I pay bi-weekly or monthly?

Employers in New York can pay their employees bi-weekly or monthly, as follows:

- Clerical and non-manual labor workers may be paid weekly or bi-weekly
- Commissioned salespeople may be paid on a weekly, bi-weekly, or monthly basis
- Bona fide executives, and administrative, or professional employees who are classified as exempt may be paid at any agreed-upon interval

### What is a commission salesperson?

A commission salesperson is defined in Section 190(6) of the New York State Labor Law as any employee whose:

- Principal activity is the selling of any goods, wares, merchandise, services, real estate, securities, insurance or any article or thing
- Earnings are based in whole or in part on commissions

"The term 'commission salesman' does not include an employee whose principal duties are of a supervisory, managerial, executive, or administrative nature, even if such employee also engages in the sale of goods, etc."

### What is a bona fide executive, administrative, or professional employee?

"The definitions set forth in regulation [12 NYCRR §142-2.14](#) are used to define the terms 'executive, administrative, and professional' for purposes of Section 191 of the Labor Law. (In re Yorke, PR-07-035 [2008].) However, this regulation does not reflect the statutory earnings threshold in Section 191. Therefore, the specific earnings threshold contained in Section 191 substitutes for the amounts contained in regulation 12 NYCRR §142-2.14."

### How do New York State Laws define a bona fide executive?

To qualify as a bona fide executive, all the following criteria must be met:

- The Employee's primary duty consists of the management of the enterprise
- The Employee customarily and regularly directs the work of two or more other employees
- The Employee has the authority to hire or fire other employees
- The Employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees have particular weight
- The Employee customarily and regularly exercises discretionary powers
- The Employee must be paid more than minimum salary threshold per week

### How do New York State Laws define an administrative employee?

To qualify as a bona fide administrative employee, all the following tests must be met:

- The Employee's primary duty consists of the performance of office or non-manual field work, directly related to management policies or general operations
- The Employee customarily and regularly exercises discretion and independent judgment
- The Employee regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity or who performs under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge
- The Employee must be paid more than minimum salary threshold per week

### How do New York State Laws define a professional employee?

To qualify as a bona fide professional employee, all the following tests must be met:

- The employee's primary duty consists of the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from:

- 1) A general academic education
- 2) An apprenticeship
- 3) Training in the performance of routine mental, manual, or physical processes

Or

- Is original and creative in a recognized field of artistic endeavor, and produces a result that depends primarily on the invention, imagination, or talent of the employee

### Can an employer require employees to accept other frequencies of pay?

No. Employees cannot be required, as a condition of employment, to accept wages at periods other than those provided in [Section 191 of the Labor Law](#).

### Do partial wage payments satisfy an employer's obligations under Section 191 of the Labor Law?

No. Section 191 of the Labor law requires the timely payment in full for all hours worked at an employee's agreed-upon rate of pay.

As with most New York State labor law regulations, there are numerous provisions for less common circumstances and situations. As a New York State business owner, it's vital to your success that you know the applicable compliance laws or work with someone who does. At Baron, we'll make sure you're covered.

Contact us to learn more about paying your New York State workers.

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