

Call-in Pay For New York Hospitality Industry Employees

February 28, 2017 • Legal Updates & Insights

[HAO XING / Flickr / CC BY 2.0](#)

Under [New York law](#), if a hospitality industry employee reports to work for a regularly scheduled shift and is told that he or she is not needed, he or she is still entitled to pay at his or her normal hourly rate, otherwise known as “call-in pay”.

Are You an Employee in the “Hospitality Industry”?

The New York State Department of Labor’s [Hospitality Industry Wage Order](#) defines the “hospitality industry” to include “any restaurant or hotel.”

“Restaurant” is broadly defined as “any eating or drinking place that prepares and offers food or beverage for human consumption,” and includes, among other things, concession stands.

“Hotel” is also given an expansive definition, encompassing any establishment that “offers lodging accommodations” to the public, employees, members or guests of members, and provides services to those individuals. This definition includes, among other things, apartment buildings, resorts, summer camps, motels and country clubs.

While there are certain exceptions to these definitions, if you are employed by a restaurant or hotel fitting either of these definitions, you are likely a hospitality industry employee and may be entitled to call-in pay.

What Is “Call-In Pay” and Are You Entitled to It?

Employees are entitled to receive “call-in pay” if they report for a regularly scheduled shift, either at their employer’s request or with their employer’s permission, and are told their work is not needed.

Four factors govern whether a shift is “regularly scheduled”: (i) the frequency of the shift; (ii) the regularity of the shift; (iii) whether the employee can anticipate the shift; and (iv) whether the shift falls within normal work hours.

Assuming the shift is “regularly scheduled”:

- If an employee reports for one shift, he or she is entitled to at least **three hours’ pay** or full pay for the number of hours in the shift (whichever is less).
- If an employee reports for two shifts totaling six hours or less, he or she is entitled to at least **six hours’ pay** or full pay for the number of hours in the shift (whichever is less).
- If an employee reports for three shifts totaling eight hours or less, he or she is entitled to at least **eight**

hours' pay or full pay for the number of hours in the shift (whichever is less).

This law applies to all hourly hospitality industry employees, regardless of their rate of pay. Should your hospitality industry employer refuse to pay you for reporting to work for a regularly scheduled shift, you should seek legal counsel.

Alex J. Hartzband

Associate

WIGDOR LLP

85 Fifth Avenue, New York, NY 10003

T: [\(212\) 257-6800](tel:(212)257-6800) | F: [\(212\) 257-6845](tel:(212)257-6845)

ahartzband@wigdorlaw.com

www.wigdorlaw.com