

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

Notice of Proposed Hearing and Opportunity to Comment

What are we proposing?

The Department of Consumer Affairs Office of Labor Policy and Standards is proposing rules to implement Chapter 13 of Title 20 of the NYC Administrative Code, and provide guidance to covered employers and protected workers.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Friday, November 17. The hearing will be in the 5th floor hearing room at 42 Broadway, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rulecomments@dca.nyc.gov.
- **Mail.** You can mail written comments to Casey Adams, Deputy Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8th Fl. New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, 347-788-4689.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-436-0095. You can also sign up in the hearing room before the hearing begins on Friday, November 17. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes. Written comments must be submitted on or before 5 PM on Friday, November 17.

What if I need assistance to participate in the Hearing? You must tell the Department's External Affairs Division if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5 PM on Wednesday, November 15.

This location has the following accessibility option(s) available: Wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the Website at <http://rules.cityofnewyork.us/>. A

few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available between the hours of 9 a.m. and 5 p.m. to the public at the office of Casey Adams, Deputy Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.

What authorizes the Department of Consumer Affairs Office of Labor Policy and Standards to make this rule? Sections 20-a, 1043, and 2203(f) of the New York City Charter and Chapter 13 of Title 20 of the New York City Administrative Code authorize the Department of Consumer Affairs Office of Labor Policy & Standards to make these proposed rules. These proposed rules were not included in the regulatory agenda of the Department of Consumer Affairs for this Fiscal Year.

Where can I find the Department of Consumer Affairs' rules? The Department of Consumer Affairs' rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

In May 2017, New York City Mayor Bill de Blasio signed into law a bill to give fast food employees the ability to make voluntary contributions to not-for-profit organizations through payroll deductions under certain circumstances.

These rules add a new Chapter 15 to Title 6 of the Rules of the City of New York to implement this new law and provide guidance on when and how fast food employers must make such payroll deductions. Specifically, these rules:

- Define terms used in the new Pay Deductions law.
- Clarify that the authorization shall state that a not-for-profit's contact person is responsible for processing authorizations and revocations.
- Clarify that an electronic signature has the same effect as a handwritten signature.
- Establish when an authorization is presumed to have been received by an employer.
- Clarify that a fast food employer shall not begin deductions prior to the start date indicated on an authorization.
- Establish that a not-for-profit must notify fast food employees of when the not-for-profit intends to transmit authorizations to the fast food employer if more than 180 days has elapsed since the not-for-profit received an employee's authorization and the not-for-profit has not yet transmitted it.
- Establish which of their employees not-for-profits must include on their required disclosures.
- Clarify that IRS form 990, or an equivalent tax form if no 990 was filed, is sufficient for disclosing a not-for-profit's finances.
- Establish the format for posting disclosures on a single webpage.
- Clarify what a false or misleading disclosure is.
- Establish what constitutes an acceptable form of proof of not-for-profit status.
- Establish what constitutes acceptable proof that a not-for-profit made required disclosures to fast food employees.
- Establish how costs associated with deductions and remittances will be calculated.
- Clarify how an authorization may be revoked.
- Establish procedures for reexamining or revoking a not-for-profit's registration.
- Clarify what rights are protected against retaliation.
- Establish procedures for enforcement.
- Establish procedures relating to civil actions.
- Clarify the records fast food employers must retain.

Sections 20-a, 1043, and 2203(f) of the New York City Charter and Chapter 13 of Title 20 of the New York City Administrative Code authorize the Department of Consumer Affairs Office of Labor Policy & Standards to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rules

Section 1. A new Chapter 15 of Title 6 of the Rules of the City of New York is added to read as follows:

§ 15-01 Definitions

- (a) As used in Title 20, Chapter 13 of the New York City Administrative Code and this chapter, the following terms have the following meanings:

“Contact person” means the not-for-profit employee or agent responsible for processing authorizations and requests to revoke authorizations.

“Electronic signature” means a computer data compilation of any symbol or series of symbols executed, adopted, or authorized by a natural person attached to or logically associated with an electronic record and executed or adopted by a natural person with the intent to sign the record. An electronic signature is considered to be “attached to or logically associated with an electronic record” if the electronic signature is linked to the record during transmission and storage.

“Pay Deductions Law” means Title 20, Chapter 13 of the New York City Administrative Code.

“Signature” means an original, handwritten signature or an electronic signature.

“Valid authorization” means a written authorization from a fast food employee to deduct wages from the fast food employee’s paycheck for remittance to a not-for-profit that complies with section 20-1302 of the New York City Administrative Code and section 15-03 of these Rules.

- (b) As used in this chapter, the following terms have the same meaning as set forth in Section 20-1301 of the Pay Deductions Law: “fast food employee,” “fast food employer,” “fast food establishment,” “not-for-profit,” and “office.”

§ 15-02 Valid Authorization

- (a) A valid authorization must contain the following: (i) the relevant fast food employee’s signature and date that the authorization was signed by the fast food employee; (ii) the fast food employee’s name and physical address; (iii) the amount, frequency, and start date of the contribution; (iv) the name, physical address, email address, web address, if any, and phone number of the not-for-profit; (v) the contact person’s title, telephone number, and email address; and (vi) a statement notifying the fast food employee that contributions are voluntary and that the authorization to deduct wages is revocable at any time by submitting a written revocation to the not-for-profit or contact person.
- (b) A valid authorization must include a statement that the fast food employee can revoke an authorization at any time, immediately followed by the contact person’s title and email address.
- (c) Valid authorizations shall be effective with respect to any fast food employer that succeeds another fast food employer in ownership or control of a fast food

establishment, whether through merger, pledge, transfer, assignment, operation of law, or otherwise.

- (d) A valid authorization may be transmitted to a not-for-profit or a fast food employer by personal delivery, mail, facsimile, email, or other means of electronic transmission.

§ 15-03 Electronic Authorization to Deduct and Remit Wages

- (a) The use of an electronic signature shall have the same validity and effect as the use of a handwritten signature. Each electronic signature shall be unique to one individual.
- (b) Each individual shall have a single electronic signature.
- (c) Before an organization establishes, assigns, certifies or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization must verify the identity of the individual by sending the individual an email or a text message to a mobile phone with an electronic link after the individual submits the electronic authorization. Once the individual clicks on the link in the email or text message, the authorization is verified and the electronic signature is valid.
- (d) Not-for-profits using electronic signatures must, prior to or at the time of such use and upon the office's request, certify to the office: (i) that the electronic signatures in their system are intended to be the legally binding equivalent of traditional handwritten signatures, and (ii) the process by which the not-for-profit verifies the signatures.
- (e) Submission of an electronic signature must include verification that the individual is a natural person.

§ 15-04 Authorization to Deduct and Remit Wages

- (a) A fast food employer must begin to deduct wages from the fast food employee's pay check no later than the first pay period after 15 days following receipt of the valid authorization, and remit the deductions to the not-for-profit no later than 15 days after the deduction is made, provided that the not-for-profit has registered with the office and either the fast food employee or not-for-profit has provided a registration letter from the office to the fast food employer.
- (b) A valid authorization or registration letter is presumed to have been received by the fast food employer upon the earlier of (i) the date the document is personally delivered to a managerial or supervisory employee or agent of the fast food employer, or (ii) 10 days following service on a managerial or supervisory employee or agent of the fast food employer by mail, email, or facsimile.
- (c) A fast food employer must not begin deductions earlier than the start date of contribution a fast food employee indicates on an authorization.
- (d) A not-for-profit that has not transmitted the valid authorization and registration to the fast food employer within 180 days of receiving a fast food employee's valid authorization must, at least 10 days prior to transmitting the authorization and its registration to the fast food employer, send the fast food employee a letter by mail to the address indicated on the authorization or by email, if the not-for-profit has solicited the fast food employee's email address, that includes (i) the date the not-for-profit plans to transmit the authorization and registration letter to the fast food employer, which must be no earlier than 10 days after the date that the letter to the fast food employee is mailed, (ii) the anticipated date by which deductions will begin, and (iii) the contact person's title, telephone number, and email address.

§ 15-05 Required Disclosures by Not-for-Profits to Fast Food Employees

- (a) The not-for-profit must provide a fast food employee with disclosures required by section 20-1304(a) of the Pay Deductions Law no later than the time at which the fast food employee authorizes remittance of deductions to the not-for-profit.
- (b) Required disclosures pursuant to section 20-1304(a) of the Pay Deductions Law must include a list of individuals who performed work within the 5 years preceding the date that the fast food employee signed the authorization for the not-for-profit and who also either (i) are or were trustees of the not-for-profit, or (ii) receive(d) more than \$100,000 in compensation from the not-for-profit or a related organization in any single fiscal year. Such list must include the names and titles of such individuals.
- (c) A not-for-profit may satisfy the requirements of section 20-1304(a)(5) of the Pay Deductions Law by submitting the organization's form 990 of the Internal Revenue Service of the United States Department of the Treasury or, if the organization did not file a form 990, another equivalent tax filing that reflects the organization's funding, budget, and expenditures, for the three most recent tax years for which such form was filed.
- (d) If a not-for-profit chooses to post its required disclosures on a single webpage pursuant to section 20-1304(b) of the Pay Deductions Law:

 - i. The text on the webpage must be a sans serif font and in a minimum size of 12 point font; and
 - ii. The URL for the webpage containing the required disclosures must be no more than 50 characters in length.
- (e) A not-for-profit must not intentionally make materially false or misleading disclosures to fast food employees.

 - i. A disclosure is "materially false" when it is both untrue and would have made a reasonable person more likely to contribute funds to the not-for-profit.
 - ii. A disclosure is "misleading" when it is formatted, organized, arranged, or worded in such a way as to neutralize, conceal, or omit information that, if known by the fast food employee, would make a reasonable person less likely to contribute funds to the not-for-profit.
 - iii. Disclosure of materially false or misleading information is "intentional" when the not-for-profit was aware that the information was materially false or misleading at the time of disclosure.
 - iv. A not-for-profit must cure a materially false or misleading disclosure for each fast food employee who received the false or misleading disclosure within 30 days of being found in violation of this section or section 20-1307(d) of the Pay Deductions Law by the office of administrative trials and hearings.

§ 15-06 Not-for-Profit Registration

- (a) A not-for-profit must register with the office by providing the information required under section 20-1303(a) of the Pay Deductions Law to the office electronically, such as by email, providing the office with access to cloud-based storage, or by personally delivering or mailing one or more CD-Rs or DVD-Rs to the office.
- (b) Authorizations submitted pursuant to section 20-1303(a)(3) of the Pay Deductions Law must be signed no earlier than 270 days before the date the not-for-profit submits its registration to the office pursuant to subdivision (a).
- (c) Any of the following will constitute acceptable proof of status as an active not-for-profit for purposes of section 20-1303(a)(2) of the Pay Deductions Law:

- i. A copy of an Internal Revenue Service affirmation or determination letter confirming the not-for-profit's tax-exempt status issued to the not-for-profit within the 120 days preceding the letter's submission to the office;
 - ii. A letter from a state taxing body or a state attorney general certifying that the organization is a not-for-profit organization operating within the State and no part of its net earnings may lawfully benefit any private shareholder or individual, which is issued to the not-for-profit within the 120 days preceding the letter's submission to the office for purposes of registration;
 - iii. A certified copy of the not-for-profit's certificate of incorporation or similar document if such document explicitly identifies the organization as an active not-for-profit, and such document was issued within the 120 days preceding its submission to the office for purposes of registration; or
 - iv. Proof that the not-for-profit was listed in the Internal Revenue Service's online database of organizations eligible to receive tax-deductible charitable contributions within the 120 days preceding submission to the office for purposes of registration.
- (d) Either of the following will constitute acceptable proof that a not-for-profit has provided the required disclosures to a fast food employee pursuant to section 20-1304(a) of the Pay Deductions Law:
- i. Valid authorizations containing the URL of the webpage containing the required disclosures and screenshot(s) depicting each version of the webpage associated with the URL that is written on the authorization during the range of signature dates of the valid authorizations, or
 - ii. A written acknowledgement of receipt of the required disclosures signed and dated by each fast food employee who signed the authorizations not covered by item (i) of this clause, submitted pursuant to section 20-1303(a)(3) of the Pay Deductions Law along with a copy of the writing containing the required disclosures or screenshot(s) depicting each version of the webpage provided to the fast food employees containing the required disclosures over the period covering the dates on the written acknowledgement of receipt.
- (e) The office shall issue a registration letter to the not-for-profit confirming that it has met the conditions required for registration as soon as practicable and in no case more than 14 days after the office has determined that the requirements for registration have been met. A not-for-profit shall be considered registered upon its receipt of the registration letter from the office.

§ 15-07 Method of and Costs Associated with Remitting Deductions

- (a) A not-for-profit must notify a fast food employer in writing of the method by which deductions authorized by fast food employees shall be remitted to the not-for-profit. Such method and its associated costs must be reasonable and consistent with standard deductions remittance practices for fast food employers, and, where possible, should be compatible with the fast food employer's existing processes for remitting deductions. Subject to subdivision (b), the maximum amount per transaction per fast food employee that a fast food employer may charge a not-for-profit is \$0.30.
- (b) A fast food employer may seek an exemption from the maximum amount set forth in subdivision (a) by demonstrating to the office that the employer's actual costs exceed that maximum amount.
- (c) A fast food employer's request to be reimbursed by the not-for-profit pursuant to section 20-1302(g) of the Pay Deductions Law must be made in writing and include the cost calculations prescribed in subdivision (d) of this section.

- (d) Costs associated with deductions and remittances shall be calculated based on the actual costs to a fast food employer of making deductions from a fast food employee's paycheck and remitting those deductions to the not-for-profit the fast food employee designated.
- (e) Upon a not-for-profit's request, a fast food employer remitting deductions to that not-for-profit organization pursuant to this chapter must simultaneously with the remittance provide the following information:
 - 1. Name of the fast food employer;
 - 2. For each fast food employee for whom the fast food employer is remitting:
 - (i) name
 - (ii) fast food establishment address
 - (iii) home address
 - (iv) phone number
 - (v) email address, if any
 - (vi) amount of deduction and
 - (vii) date and payroll period of deduction
 - 3. Name of any fast food employee who separated from employment with the fast food employer in the preceding payroll period who had authorized deductions pursuant to this chapter.
- (f) Pursuant to section 20-1302(g) of the Pay Deductions Law, a not-for-profit must reimburse a fast food employer as frequently as the fast food employer requests, provided that a not-for-profit need not honor a fast food employer's request(s) to be reimbursed more frequently than every two weeks.

§ 15-08 Revocations

- (a) A fast food employee's revocation by mail, facsimile, email, web submission, or text message to the not-for-profit or contact person will constitute a revocation in writing.
- (b) If a fast food employee submits a revocation to a fast food employer instead of to the not-for-profit, the fast food employer must provide a copy of the revocation to the not-for-profit within five business days of receipt.
- (c) For purposes of Section 20-1302(e) of the Pay Deductions Law, a revocation is presumed received by the fast food employer upon the earlier of (i) the date of delivery from the not-for-profit to the fast food employer, or, (ii) in the event that a fast food employee delivers the revocation to the fast food employer, the date the revocation is received by the not-for-profit.
- (d) A not-for-profit must not submit an authorization that has been revoked in support of an application for a registration letter.

§ 15-09 Petition to Re-Examine or Revoke a Not-for-Profit's Registration

- (a) The term "interested party" as used in section 20-1307(e) of the Pay Deductions Law shall include: any current or former fast food employee, any authorized representative of a current or former fast food employee, any fast food employer required to make deductions pursuant to the Pay Deductions Law, any not-for-profit, any labor organization or employee organization as those terms are defined in Section 20-1310(b) of the Pay Deductions Law, and the New York State Attorney General.
- (b) Petitions to re-examine or revoke a not-for-profit's registration must be in writing, in the form of a letter addressed to the director, and sent to the office by mail, email, or facsimile.

- (c) The office shall not register and shall revoke any previously issued registrations of not-for-profits that collect authorization cards or other documents related to membership in a labor organization or with respect to a showing of interest or vote for certification, decertification, or deauthorization of a labor organization, upon receiving proof that the not-for-profit is engaging in such activities.

§ 15-10 Retaliation

For purposes of section 20-1306 of the Pay Deductions Law, the phrases “any right protected under this chapter” and “activities protected by this chapter” include, but are not limited to, the right to: sign an authorization, submit an authorization, revoke an authorization, file a complaint with the office, file and maintain a civil action based on the Pay Deductions Law, and communicate with any person regarding the above activities.

§ 15-11 Enforcement and Penalties

- (a) A fast food employee or a not-for-profit may file a complaint with the office alleging violations of the Pay Deductions Law by a fast food employer.
- (b) A not-for-profit that files a complaint with the office must submit with its complaint a copy of the not-for-profit’s registration letter. The office shall dismiss a complaint filed by a not-for-profit if the not-for-profit’s complaint does not include a copy of its registration letter.
- (c) Notwithstanding subdivision b, the office shall investigate any complaint that alleges retaliation in violation of the Pay Deductions Law, regardless of whether the relevant not-for-profit has registered with the office.
- (d) If, as a result of an investigation, the office determines that a fast food employee’s wages were deducted without a valid authorization or after such time as deductions should have ended pursuant to a revocation, the fast food employer or not-for-profit that retains the deductions shall be liable for the reimbursement and interest prescribed pursuant to section 20-1307(c) of the Pay Deductions Law.
- (e) A fast food employer found to be in violation of the Pay Deductions Law shall be liable for the civil penalties due pursuant to section 20-1307(b)(2)(b) of the Pay Deductions Law. Such civil penalties shall be imposed on a per fast food employee basis.

§ 15-12 Civil Actions

- (a) A fast food employee or not-for-profit who filed a complaint with the office pursuant to the Pay Deductions Law and who intends to withdraw the complaint to pursue a civil action must withdraw the complaint in writing to the office prior to commencing a civil action that includes claims based on the Pay Deductions Law.
- (b) A fast food employee or not-for-profit who filed a civil action that includes any claims based on the Pay Deductions Law may file a complaint with the office upon a showing that the Pay Deductions Law claims in the civil action have been withdrawn or dismissed without prejudice to further action.
- (c) The withdrawal of a complaint or the commencement of a civil action by a fast food employee or not-for-profit does not preclude the office from investigating the fast food employer, or commencing, prosecuting, or settling a case against the fast food employer.

§ 15-13 Pattern of Violations

The phrase “pattern of such violations” in section 20-1309 of the Pay Deductions Law shall include a failure to deduct or remit deductions for a particular fast food employee or group of fast food employees, or a failure to honor the revocation(s) of a particular fast food employee or group of fast food employees more than twice in a six month period.

§ 15-14 Recordkeeping

- (a) Fast food employers must retain for two years copies of fast food employees’ wage statements issued pursuant to state law requirements regarding notation of deductions.
- (b) A written acknowledgement of receipt of the notice required pursuant to section 20-1302(h) of the Pay Deductions Law signed and dated by each fast food employee along with a copy of the distributed notice shall constitute adequate proof of distribution for purposes of section 20-1305(a)(5) of the Pay Deductions Law.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Implementation of Pay Deductions Law

REFERENCE NUMBER: 2017 RG 076

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 16, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Implementation of Pay Deductions Law

REFERENCE NUMBER: DCA-61

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) No cure period/mechanism is provided under the proposed rules because the implementing laws do not provide for a cure period. However, the rules provide for resolution prior to a hearing via settlement.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 16, 2017
Date