



A Quarter For Your Thoughts: New York Employment Law Developments Q1 2023

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WHAT SHOULD BE ON EMPLOYERS' RADARS FOR Q1, 2023?

2023 Wage Increases

UPSTATE NEW YORK CONTINUES ITS INCREASES



2023 Minimum Wage Increases



The wage increases for 2023 went into effect December 31, 2022.



New York Minimum Wage Requirements

| Location | 12/31/22 |
|---|--|
| NYC – All Employees | \$15.00 |
| Nassau, Suffolk, and Westchester Counties | \$15.00 |
| Remainder of New York State | Increased to \$14.20 (from \$13.20) |
| Fast Food Workers – Entire State | \$15.00 |



2023 Tip Credit Increase

- Given the increase to the minimum wage, Upstate New York (outside New York City and Nassau, Suffolk and Westchester counties), saw the cash wage and tip credit increase on December 31, 2022.
- The cash wage for service employees increased to \$11.85 and tip credit to \$2.35.
- Food service workers also saw an increase in the cash wage to \$9.45 and tip credit to \$4.75.





2023 Salary Threshold Increase

- The NYS Division of the Budget proposed an increase of the salary basis threshold for executive and administrative employees to be classified as exempt, with an effective date of December 31, 2022.
- For employers in Upstate New York (outside New York City and Nassau, Suffolk and Westchester counties) the threshold would rise to \$1,064.25 per week (\$55,341 annually). For the rest of the state, the threshold will remain \$1,125.00 per week (\$58,500 annually).

| New York Exempt Employee Salary Basis Requirements | |
|--|--|
| Location | 12/31/22 |
| NYC, Nassau, Suffolk and Westchester Counties | \$1,125/week |
| Remainder of New York State | Increased to \$1,064.25/week (from \$990/week) |



Salary Transparency in Job Postings

FIRST NEW YORK CITY, THEN NEW YORK STATE



In New York City



- On November 1, 2022, New York City's salary transparency law went into effect, requiring employers with four or more employees to state minimum and maximum salary ranges in job postings, including transfers and promotions.

In New York State



- On **December 21, 2022**, Governor Hochul signed into law a statewide pay transparency law.
- Effective **September 17, 2023**, the law requires New York employers with four or more employees to disclose compensation or the range of compensation (minimum and maximum annual salary or hourly range of compensation) that the employer in good faith believes to be accurate at time of posting, as well as, the job description for the position.
- Employers must keep records showing their compliance with the law, including the history of compensation ranges for each job, promotion, transfer and job descriptions (if such description exists).
- The state law does not supersede or preempt any local law (i.e., NYC's salary transparency law).

Artificial Intelligence

Artificial Intelligence in Recruitment, Hiring, and Promotion



- New York City amended its administrative code to mandate independent audits of artificial intelligence technologies used by employers to recruit and hire candidates and promote employees for discriminatory bias (i.e. race, ethnicity, or sex).
- The results of the independent audits must be published and job applicants and employees must be notified of the use of automated employment decision tools in the evaluation of their candidacy for employment or promotion.
- Individuals may opt out of the use of automated employment decision tools during the assessment or evaluation process.
- The law took effect **December 11, 2021**, but employers had until **January 1, 2023** to comply with its provisions. However, NYC Department of Consumer and Worker Protection (DCWP) announced that it would delay its enforcement of the law until April 15, 2023.



Electronic Poster Requirement

For New York Employers



- Employers must now make available to their employees electronic copies (through its website or by email) of documents that, pursuant to state or federal law, must be physically posted in a workplace.
- In addition, employers must provide notice to employees that documents required for physical posting are available electronically.
- The law went into effect on **December 16, 2022**.
- *The electronic posting requirement applies to all documents required to be posted at a worksite under state and federal law or regulation, not just under the labor law.*

Protections Against Discrimination and Retaliation

Amendments to NYS Human Rights Law



- You may recall that last year, the state legislature amended the New York State Human Rights Law to prohibit the release of an employee's personnel file in retaliation for the employee's protected activity (with some exceptions).
- Last year, the legislature also amended the New York State Human Rights Law to broaden protections against discrimination for a victim of domestic violence.
- Late last year, the Governor signed into law a further amendment to the New York State Human Rights Law, which now explicitly provides protection from discrimination based on a person's immigration or citizenship status. Employers can still verify citizenship or immigration status where required by law.
- **All three of these laws are already in effect.**
- *In furtherance of the movement against the term "alien," the legislature amended various laws, including New York's labor law and executive law, to change the terms "alien" and "illegal alien" to "noncitizen" and "undocumented citizen."*

Adult Victims of Sexual Abuse

The Adult Survivors Act



- The Adult Survivors Act gives adult survivors of certain sexual offenses **one year** (beginning November 24, 2022) to file a claim against an alleged abuser. This is a one-time opportunity to file civil lawsuits for their claims in New York that have already passed the statute of limitations period.
- Employers should be aware of heightened litigation risks related to the conduct of former or even current employees. The act permits claims against purported enablers of the alleged abusers. This means employers may be held liable for the conduct of their employees under a vicarious liability or negligence standard years and possibly decades after an alleged incident.

Accommodations for Nursing Employees in New York State

Nursing Employees in New York State



- New York is expanding protections for nursing employees, requiring employers to
 - (1) provide a reasonable unpaid break time or permit an employee to use paid break time or meal time to express breast milk each time the employee has a reasonable need to express breast milk,
 - (2) designate a room or other location for the employee to express breast milk upon request, and
 - (3) provide employees with the written policy, to be developed by the New York Department of Labor (DOL), regarding the rights of nursing employees to express breast milk in the workplace upon hire, annually, and when an employee returns to the workplace following the birth of a child.

Nursing Employees in New York State



- Absent an undue hardship (i.e., significant difficulty or expense), the designated room or other location must be:
 - In close proximity to the work area;
 - Well lit;
 - Shielded from view; and
 - Free from intrusion from other persons in the workplace or public.
- An employer must provide, at minimum, a chair, working surface, nearby access to running water, and, if the workplace is supplied with electricity, an electrical outlet. A restroom or toilet stall do not meet these requirements.
- *The state law now mirrors the protections that have been in place for several years for nursing employees in New York City.*
- Employers are prohibited from discharging, threatening, penalizing, or in any other way discriminating or retaliating against an employee for exercising rights under the law. The law will go into effect on **June 7, 2023**.
- Notably, the state law (and existing New York City law) provides even greater rights to breastfeeding employees than the just-enacted PUMP Act, which will expand rights on a federal level.

Protection for Lawful Absences



- New York employers will need to change their practices to ensure employees are not penalized in any way for any absence legally protected under federal, state or local law.
- New York lawmakers passed an amendment to the New York Labor Law that prohibits employers who maintain “no fault” attendance policies from assessing points or demerits for absences or otherwise disciplining employees who have used any absence protected under federal, state, or local law.
- Will take effect **February 20, 2023**.

New York Paid Family Leave



New York's Paid Family Leave (PFL)

- The 2023 contribution rate will be (if not paid weekly) 0.455% of gross wages per pay period and the maximum annual contribution will be \$399.43 for each employee, *a reduction from last year*. If the employee's wages are less than the statewide average weekly wage, the contribution will be lower.
- For 2023, benefits are capped at \$1,131.08 per week.
- Effective **January 1, 2023**, the list of family members for whom eligible workers can take Paid Family Leave to care for will include siblings with a serious health condition. This includes biological siblings, adopted siblings, stepsiblings and half-siblings. These family members can live outside of New York State, and even outside of the country.



COVID-19 Vaccination Leave

COVID-19 Vaccine Leave



- This past summer New York extended its law requiring employers to provide their employees with up to four hours (per injection) of paid leave to receive the COVID-19 vaccine, including boosters.
- Now, this law will not be repealed until **December 31, 2023**.

Workplace Health and Safety Protections

New York's Health and Essential Rights Act (HERO Act)



- Even though the state has not currently designated COVID-19 as an airborne infectious disease (which would require implementation of airborne infectious disease exposure prevention plans), employers must still distribute prevention plans to employees, post them in a prominent location at the worksite, and include them in employee handbooks.
- (Because of new electronic postings law, they must also now be available electronically)
- The other key provision of the HERO Act gives employees the right to create workplace safety committees.
- The legislature passed a bill requiring employers to recognize a workplace safety committee within five business days of its establishment. Failure to do so will result in penalties of \$50 a day until the violation is remedied. This amendment went into effect **December 28, 2022**.

Warehouse Worker Protection Act



- The act, which applies to employers that control (including through a third-party) 100 or more employees at a single warehouse distribution center or 500 or more employees at one or more warehouse distribution centers in New York, marks a significant change for the warehouse industry.
- Once effective, the law requires applicable employers to, upon hire of an employee or within 30 days of the effective date of the act and each time a quota changes, to provide a written description (as specified in the law) of each quota to which an employee is subject.
- Where an adverse action is taken against an employee, presumably in relation to the employee's failure to meet the quota, an employer must provide said employee with the applicable quota. Employees are protected from disciplinary action or termination for failing to meet undisclosed speed quotas or quotas that do not allow for proper breaks.
- The act also includes records requirements, prohibits retaliation, and, notably, creates a rebuttable assumption of retaliation if an employer takes action against an employee within 90 days of the employee's engaging or attempting to engage in any activity protected by the act.
- The act will go into effect on **February 19, 2023**.

Additional Protections for Nurses

Additional Protections for Nurses



- New York enacted a bill, which will go into effect on **February 28, 2023**, amending the labor law in relation to restrictions on consecutive work hours for nurses.
- S1997A will give the DOL authority to levy fines against employers that violate provisions outlined in the law.
- Nurses will also be entitled to an additional 15% of any overtime payment received in violation of the law.

Workers' Compensation

Bill limiting the effect of determinations by the board of workers' compensation



- Workers' Compensation law in New York was also updated.
- The new bill, which went into effect on **December 30, 2022**, limits the effect of determinations by the workers' compensation board.
- The bill states that such determinations shall not be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.

Looking ahead...



What's around the corner: NYS & NYC Legislative Updates...



NYS Updates



- Legislative session has just begun!
- New Chairs in the Senate and Assembly:
 - Senate Commerce Chair: Sean Ryan (Buffalo)
 - Senate Procurement Chair: Jeremy Cooney (Rochester)
 - Assembly Housing Chair: Linda Rosenthal (Manhattan)
 - Assembly Environment Chair: Deborah Glick (Manhattan)

Indexing the Minimum Wage Plan



- Governor Hochul’s 2023 State of the State focused on affordable housing and public safety.
- Governor Hochul proposed a plan to raise the minimum wage on an annual basis based on inflation, with a cap for annual increases.
- However, the Governor has not endorsed more progressive legislation to raise New York’s current minimum wage, such as a bill from Sen. Jessica Ramos and AM Latoya Joyner, to increase minimum wage to \$21.25 by 2026.
 - The bill has been reintroduced in the Senate (S1978).
 - AM Joyner has not reintroduced it yet in the Assembly.

NYC Updates (cont'd)



- New York City Council held a 2-day hearing in late December about the asylum seeker crisis, which touched upon getting worker permits for asylum seekers.
- In a Council report, “NYC’s Response to the Arrival of Asylum Seekers,” Council acknowledged that it may take months before migrants receive work permits, barring regulatory and statutory changes at the federal level.

“Just Cause” Law/Secure Jobs Act



- In December, Councilmember Tiffany Caban introduced a new “Just Cause” law, also known as the Secure Jobs Act, prohibiting ALL employers from terminating employees without just cause.
 - The bill would apply to all employers, regardless of size.
 - Current “Just Cause” law applies only to fast food companies and their employees.
 - Employers would be required to provide 14 days notice and a written explanation when terminating an employee.
 - The bill would also implement a “progressive discipline system,” to give employees the opportunity to receive feedback.
- The bill would also prohibit the use of electronic monitoring in discharging or disciplining employees.
- The bill currently has 10 cosponsors, but is not scheduled for any upcoming City Council hearings at this time.

Politics



- Hakeem Jeffries is the new leader of the House Democrats.
- George Santos, a House Republican in Long Island, has been under fire for lying about his resume but indicated he will not resign.
- City Council district maps have been finalized and will be in effect for next year's elections.
- Assembly maps will need to be redrawn by April 2023.
- Governor Hochul's selection for Chief Judge, Chief LaSalle, has been rejected by the Senate Judiciary Committee. We may see an upcoming lawsuit on this issue, and this creates significant tension between the Governor and the legislature.

Thank You



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