

Employment & Labor Alert

December 2020

Legal Developments That Every New York Employer Needs to Know for 2021

Employers in the state of New York and New York City have faced numerous challenges this year with the COVID-19 pandemic and the enactment of wide-ranging new employment laws. Some of those laws are already in force, while others will take effect in 2021.

Here is an overview of significant New York State and New York City employment laws in 2020 and 2021 that employers of all sizes need to know.

Salary History Ban

Following a similar New York City law from 2017, a New York State law took effect in January 2020 prohibiting employers in the state from asking job candidates about their salary history. The law bars prospective public and private employers from asking applicants about their current or past salary, compensation or benefits in order to prevent employers from using applicant's salary history to make employment-related decisions, including whether to interview a candidate or offer employment, or to determine what salary to offer.

Salary history may only be discussed if an applicant voluntarily discloses the information. However, while employers may not ask job applicants for their salary history, they may ask applicants for "their salary expectations for the position." The law also applies to current employees being considered for promotions.

Paid Family Leave

Starting on Jan. 1, 2021, the amount of paid family leave available to eligible employees under the state's Paid Family Leave (PFL) law will increase from 10 weeks to 12 weeks of leave. Wage replacement benefits under the law will also increase in 2021 from 60% of the employee's



average weekly wage (capped at \$840.70) to 67% of the average weekly wage (capped at \$971.61).

The state's PFL law provides eligible employees with paid time off to bond with newly born, adopted or fostered children; care for a family member with a serious health condition; or help loved ones when a spouse, domestic partner, child or parent is deployed abroad on active military service. Enacted in 2016, the law also provides job protection and continued health insurance.

Read more [here](#).

COVID-19 Paid Leave

New York State passed a law in April 2020 guaranteeing employees job protection and financial compensation in the event they or their minor child are subject to quarantine or isolation orders issued by the state, a local board of health or another government entity due to COVID-19. Most financial compensation will be drawn from a combination of benefits, including PFL, sick leave and disability. The benefits are not available to employees who are able to work remotely.

Read more [here](#).

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State Sick Leave

As of Sept. 30, 2020, all private-sector employees in New York State began accruing sick leave, regardless of industry, occupation, part-time status and overtime-exempt status. Employees may begin using their accrued leave on Jan. 1, 2021.

New York State employers with four or fewer employees and net income of less than \$1 million the previous tax year will be required to provide their employees with up to 40 hours of unpaid sick leave per year. Those employers with four or fewer employees and net income of \$1 million or more the previous tax year, and those employers with from five through 99 employees, will be required to provide their employees with up to 40 hours of paid sick leave per year. New York State employers with 100 or more employees will be required to provide their employees with up to 56 hours of paid sick leave per year.

The new sick leave law is in addition to state provisions already in effect providing paid sick time due to COVID-19.

Employees may take sick leave for themselves or a family member for whom they are providing care for physical illness or injury or mental illness; for diagnosis, care or treatment of a physical illness or injury or mental illness; and for "safe leave" requiring an absence from work when the employee or the employee's family member has been the victim of domestic violence, a sexual offense, stalking or human trafficking.

Read more [here](#).

New York City Sick Leave Amended

New York City amended its sick leave law so that, with a few exceptions, it matches the accrual and use provisions of the New York State sick leave law. The employers most affected will be small employers with net income greater than \$1 million and those with 100 or more employees. As of the start of the new year, New York City employers with four or fewer employees and net income of \$1 million or more the previous tax year will be required to provide their employees with up to 40 hours of paid sick leave per year. New York City employers with 100 or more employees will be required to provide their employees

with up to 56 hours of paid sick leave per year. All other New York City employers will continue to be required to provide their employees with up to 40 hours of sick leave per year, which must be paid for employers with five through 99 employees. Employers must also reimburse employees who must pay for the required documentation after three consecutive workdays of leave.

Under the new amendments effective September 30, 2020, the following employers must provide an updated [notice](#) of rights to employees by January 1, 2021: employers with 100 or more employees and employers of domestic workers.

Read more [here](#).

Minimum Wage Rates For 2021

The state's minimum wage rates are scheduled to increase each year on Dec. 31 until they reach \$15 per hour. New York City employers of all sizes should already be paying their employees \$15 per hour. As of Dec. 31, 2020, the hourly minimum wage will increase in Long Island and Westchester County to \$14 and in the rest of the state to \$12.50.

Read more [here](#).

COVID-19 Resource Center

For information on the business impacts of COVID-19, please visit our [COVID-19 Resource Center](#), which we continue to update as the situation evolves. If you have questions about COVID-19's impact on your business, please reach out to your Loeb relationship partner or email us directly at COVID19@loeb.com.

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6543 REV1 12-30-2020