

Labor & Employment



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New Year, New Legal Requirements for New York Employers

While New York employers will likely face ongoing challenges in 2021 as the COVID-19 pandemic continues to disrupt business operations, they must also contend with a number of new and recently enacted employment laws. To help employers navigate the new year, we have provided below a list of noteworthy New York State and City laws for employers of all sizes as we enter 2021:

SALARY HISTORY BAN (STATE)

A New York State law took effect in January 2020 that prohibits public and private New York employers from: (1) asking job candidates about their current or past salary, compensation, or benefits; or (2) seeking this information from other sources, such as former employers or recruiters. The law is designed to prevent employers from using an 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. Although employers may not ask job applicants for their salary history, they may ask applicants for "their salary expectations for the position."

For more information, please read New York State's "What You Need to Know" [here](#).

PAID FAMILY LEAVE (STATE)

Beginning on January 1, 2021, the amount of paid family leave available to eligible employees under New York State's Paid Family Leave ("PFL") law increased from 10 weeks to 12 weeks. The level of wage replacement benefits under the law also increased from 60 percent to 67 percent of the average weekly wage, with a maximum weekly benefit for 2021 of \$971.61.

The State's PFL law provides eligible employees with paid time off to "bond with a new child, care for a family member with a serious health condition, or to assist loved ones when a family member is deployed abroad on active military service." PFL also may be available for use in the event that an employee or an employee's minor dependent child is "under an order of quarantine or isolation due to COVID-19." Employees can take the time all at once, or in full day increments.

For more information, please read New York State's FAQs [here](#).

COVID-19 QUARANTINE RELATED SICK LEAVE (STATE)

New York State also provided paid sick leave and job protections for employees in New York who are unable to work due to COVID-19. The specifics of the leave vary depending on the size and net income of the employer, but regardless of employer size, all employees subject to a mandatory

or precautionary order of quarantine or isolation due to COVID-19 will be entitled to job protection during those absences. As detailed in our prior [post](#), New York requires that:

- businesses with at least 100 employees must provide at least 14 days of paid sick leave during any mandatory or precautionary order of COVID-19 quarantine or isolation;
- businesses with between 11 and 99 employees (or with 10 or fewer employees but more than one million dollars in net income) must provide five days of paid sick leave. Once that is exhausted, those employers must provide their workers with access to short-term disability benefits and paid family leave for the period of quarantine/isolation; and
- finally, employers with 10 or fewer employees and less than one million dollars in net income are not obligated to provide paid leave but must give their workers access to short-term disability benefits and paid family leave for the period of quarantine/isolation.

For more information, please read New York State's FAQs [here](#) and background information [here](#).

NEW YORK STATE SICK LEAVE (STATE)

As of September 30, 2020, all private-sector employees in New York State began accruing sick leave pursuant to new amendments to the New York Labor Law. Employees can use their accrued leave as of January 1, 2021.

Under the New York Labor Law's requirements:

- employers with 100 or more employees must allow employees to accrue at least 56 hours of **paid** sick leave each calendar year;
- employers with between five and 99 employees must allow employees to accrue at least 40 hours of **paid** sick leave each calendar year;
- employers with fewer than five employees but having a net income greater than one million dollars in the previous tax year must allow employees to accrue at least 40 hours of **paid** sick leave each calendar year; and
- employers with fewer than five employees and having a net income less than one million dollars in the previous tax year must allow employees to accrue at least 40 hours of **unpaid** sick leave each calendar year.

As detailed in our prior [post](#), employers can also choose to frontload the allotments. Unused leave can be carried over into the next year, but employers can restrict annual usage to the amount of the employee's annual allotment. Unused accrued leave need not be paid out at termination of employment. Employees may take sick leave to care for themselves or for their family member in the following circumstances: 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.

These amendments are permanent requirements and are not limited to the COVID-19 pandemic.

For more information, please read New York State's overview [here](#).

NEW YORK CITY SICK LEAVE (NEW YORK CITY)

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 detailed above. Importantly, New York City now requires the same sick leave accrual rates, based on size and net income, as New York State. Differing from the New York State Sick Leave Law, however, New York City provides that:

- employers are required to cover any fee incurred by the employee associated with acquiring documentation (such as a doctor's note) requested by the employer to justify use of safe/sick time for an absence of more than three consecutive workdays;
- employers must also notify employees in writing each pay period as to the amount of safe/sick time accrued and used during that pay period and the total balance of accrued safe/sick time (either on a pay stub or by some other means);

- employers need to provide written notice to new hires of the leave requirements (including the accrual and use of safe/sick time, the employer's calendar year, and the right to be free from retaliation and to file a complaint);
- the New York City Department of Consumer and Worker Protection can now open investigations into violations of the law "upon receipt of a complaint or on its own initiative;" and
- Violations now include a civil penalty of not more than \$15,000 and relief of up to \$500 to each employee "covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of earned time."

For more information, please read our prior [post](#).

NEW MINIMUM WAGE RATES (STATE)

While New York City employers (both large and small) are already required to be paying their employees at least \$15 per hour, the rest of the State's minimum wage rates will continue to increase each year on December 31 until they reach that level. For 2021 (as of December 31, 2020), the hourly minimum wage has increased in Long Island and Westchester County to \$14 and in the rest of the State to \$12.50.

For more information, please read New York State's minimum wage chart detailing the upcoming changes [here](#).

MINIMUM WAGE TIP CREDIT (STATE)

At the end of 2019, Governor Cuomo announced that the New York State Department of Labor (the "Department of Labor") would be phasing out the "minimum wage tip credit" for "Miscellaneous Industries," which are covered by the Minimum Wage Order for Miscellaneous Industries and Occupations. The Department of Labor's order is exclusive to the Miscellaneous Industries and does not affect employees covered by the separate Hospitality Industry Wage Order (for restaurants and hotels). In accordance with the Department of Labor's phase out plan, the tip credit for Miscellaneous Industries was eliminated entirely starting December 31, 2020.

Accordingly, effective December 31, 2020, employers with employees in the Miscellaneous Industries, such as hair

salons, nail salons, and car washes, are required to pay the minimum wage regardless of whether those employees customarily and regularly receive tips.

For more information, please read [here](#).

WAGE PARITY LAW (STATE)

New York State amended the Home Health Care Worker Wage Parity Law (the "Wage Parity Law") which established a minimum rate of total compensation (wages plus supplemental benefits) for home health care aides who perform Medicaid-reimbursed work within Nassau, Suffolk, and Westchester Counties, as well as for those in New York City. In addition to the current State minimum wage, employers must pay a total of \$4.09 per hour in New York City and \$3.22 in Westchester, Nassau, and Suffolk Counties in additional wages and/or supplemental benefits.

Employers of home health care aides subject to the Wage Parity Law must also provide employees with a notice that details the supplemental benefit portion of the minimum rate of home health care aide total compensation. This information must specify:

1. hourly rate paid;
2. type of supplement or type of home care aide benefits;
3. names and addresses of the benefit providers; and
4. the plan or agreement, if any, that creates the benefit for each type of employee.

For more information, please read [here](#).

BAN ON PRE-EMPLOYMENT MARIJUANA TESTING (NEW YORK CITY)

Effective in May 2020, New York City banned most employers from requiring job applicants to submit to a marijuana test as a condition of employment. The provisions of the law, however, do not apply to applicants for work in the following positions:

- positions in law enforcement;
- certain construction jobs (defined in the law);
- any position requiring a commercial driver's license;

- positions requiring the supervision or care of children, medical patients, or vulnerable persons (defined in the law); and
- positions with the “potential to significantly impact the health or safety of employees or members of the public,” as determined by rules promulgated by the City.

The provisions also do not apply to drug testing as required by:

- Department of Transportation (Title 49 of the Code of Federal Regulations, Section 40) or state or local drug testing regulations;
- contracts between the federal government and an employer or any grant of federal assistance from the federal government to an employer that mandates drug testing;
- any federal or state statute, regulation, or order that requires drug testing of prospective employees for purposes of safety or security; and
- any applicants whose prospective employer is a party to a valid collective bargaining agreement that specifically addresses the pre-employment drug testing of the applicants.

For more information, please read the New York City Commission on Human Rights’ update [here](#).

For additional information, please contact:

Mara B. Levin
212.885.5292 | mlevin@blankrome.com

Anthony A. Mingione
212.885.5246 | amingione@blankrome.com

Valerie D. Ringel
212.885.5583 | vringel@blankrome.com

Jacob W.E. Kearney
212.885.5263 | jkearney@blankrome.com