

## Act Now Before It's Too Late: What New York Employers Should Do Before the New Year

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This has been a busy year for New York employers, especially those with offices in New York City. As we near the beginning of 2018, there are many changes that have recently gone into effect (or will soon go into effect) that will impact the workplace for 2018 and beyond. Now is the perfect time for New York employers to ensure that their policies and practices appropriately address new legislation.

This *Act Now* Advisory summarizes the significant new employment laws that require New York employers to take action.

### **New York State Paid Family Leave**

The New York Paid Family Leave Benefits Law (“PFLBL”) takes effect on January 1, 2018, and will provide New York-based employees with paid family leave (“PFL”) benefits.

Beginning January 1, 2018, eligible employees may take up to eight weeks of leave within a 52-week period, paid at 50 percent of the employee’s average weekly wage, not to exceed 50 percent of the New York State average weekly wage. The percentage and dollar amount of weekly benefits, as well as the length of available leave benefits, will increase over the next few years. Upon full implementation (as of January 1, 2021), the PFLBL will provide up to 12 weeks of PFL, paid at 67 percent of an employee’s average weekly wage, not to exceed 67 percent of the state average weekly wage.

Employees may use PFL to care for a family member with a serious health condition, bond with a newborn or a child placed for adoption or foster care, or assist loved ones while a family member is deployed on active military duty abroad.

PFL coverage will be funded by employee payroll contributions. Employees will receive benefits through an insurance policy that their employer can either purchase from an insurance company or self-fund.

Employees become eligible for PFL benefits upon working:

- 26 consecutive weeks (for employees whose regular employment schedule is 20 or more hours per week) or
- 175 days (for employees whose regular employment schedule is less than 20 hours per week)<sup>1</sup>

For more information on New York's PFLBL, please see our *Act Now* Advisory titled "[Employer Resource Guide to the New York State Paid Family Leave Benefits Law](#)," as well as our [handy guide](#), summarizing what New York employers need to know about the law. Additionally, New York State has published two fact sheets, one for [employers](#) and one for [employees](#), which provide information on the basic elements of the PFLBL.

### **New York City's Salary History Inquiry Ban**

As of October 31, 2017, New York City employers are prohibited from requesting a job applicant's salary history, as well as relying on a job applicant's salary history to determine his or her salary, benefits, or other compensation.

Under New York City's salary history ban law, "salary history" includes the applicant's current or prior wage, benefits, or other compensation. Importantly, however, the term "salary history" does *not* include objective measures of the applicant's productivity. As such, revenue, sales, production reports, etc., may be discussed with the applicant. Further, New York City employers are permitted to engage in a discussion with an applicant regarding his or her *expectations* with respect to salary, benefits, and compensation, and the employer may rely on salary information that the applicant voluntarily, and without prompting, discloses. Employers are also permitted to ask an applicant whether he or she will have to forfeit deferred compensation or unvested equity as a result of resigning from his or her current employer and, if so, the value and structure of the forfeited compensation or equity. Moreover, employers may request documentation to verify such information and consider it when making an offer to the applicant. Employers may also ask about the value of any competing offers or counteroffers.

For more information on permitted and prohibited practices, please see our *Act Now* Advisory titled "[New York City's Impending Salary History Inquiry Ban: What You Need to Know](#)."

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<sup>1</sup> The PFLBL provides that an employee is permitted to waive PFL contributions and benefits if (i) the employee's schedule is less than 20 hours per week, and the employee will not work at least 175 days in a 52-week period, or (ii) the employee's schedule is 20 hours or more per week, and the employee will not work at least 26 consecutive weeks in a 52-week period. Otherwise, PFLBL contributions and benefits cannot be waived. Employers must advise employees eligible for a waiver of their right to waive.

## **Earned Safe and Sick Time Act**

New York City's existing Earned Sick Time Act ("ESTA") was recently amended to permit New York City employees to use sick time for certain "safe" reasons. Effective May 5, 2018, the expanded Earned Safe and Sick Time Act ("ESSTA") will allow an employee to take time off for "safe time"—i.e., time necessary to tend to specific activities when the employee or a family member has been the victim of a family or domestic violence offense, a sexual offense, stalking, or human trafficking. This amendment to ESTA does not require employers to provide additional sick or safe time to employees beyond what is currently provided under ESTA—the amendment simply expands the circumstances upon which that leave may be used.

For more information on "safe time" activities, new terms, and what employers should know, please see our *Act Now Advisory* titled "[NYC Mayor de Blasio Signs Law Expanding Earned Sick Time Act to Include 'Safe Time.'](#)"

## **Employee Scheduling**

The New York State Department of Labor ("NYSDOL") has issued proposed regulations that would modify the state's labor laws relating to "call-in pay" and impose new call-in pay penalties that address common scheduling practices, such as on-call scheduling, last-minute cancellations or new shifts, and call-in requirements. If these proposed regulations are finalized, New York employers will be required to provide "call-in pay" for various situations, including reporting for work, reporting to work for previously unscheduled shifts, cancelled shifts, on-call shifts, and "call for schedule" shifts.

For more information on the proposed regulations, please see our *Act Now Advisory* titled "[New York State Department of Labor Advances Regulations on Employee Scheduling.](#)"

## **Salary Threshold Increases**

Last year, the NYSDOL also adopted amendments to New York State's minimum wage orders to increase the salary basis threshold for executive and administrative employees to be classified as exempt employees. These increases will take place over the next few years, and, like the minimum wage, vary according to an employer's size and location. Employers must ensure that their exempt employees are earning at least the salary basis threshold of the Fair Labor Standards Act or the applicable New York wage order—whichever is higher.

The following salary thresholds will be required as of December 31, 2017:

- \$975.00 per week (\$50,700 annually) for employers in New York City with 11 or more employees

- \$900.00 per week (\$46,800 annually) for employers in New York City with 10 or fewer employees
- \$825.00 per week (\$42,900 annually) for employers in Nassau, Suffolk, and Westchester Counties
- \$780.00 per week (\$40,560 annually) for employers in the rest of New York State

For more information on salary threshold increases for exempt employees, please see our *Act Now* Advisory titled [“New York State Department of Labor Implements New Salary Basis Thresholds for Exempt Employees.”](#)

### **Minimum Wage Increases**

Last year, the NYSDOL implemented a state-wide minimum wage increase, which provides for a tiered increase, depending on an employer’s size and location.

The following increases will be effective on December 31, 2017:

- \$13.00 per hour for New York City employers with 11 or more employees
- \$12.00 per hour for New York City employees with 10 or fewer employees
- \$11.00 per hour for employers in Nassau, Suffolk, and Westchester Counties
- \$10.40 per hour for employers in the rest of New York State

For more information on the state-wide tiered increase, please see our *Act Now* Advisory titled [“New York State Will Provide Paid Family Leave and \\$15 Minimum Wage.”](#)

### **What New York State and City Employers Should Do Now**

- Review the above referenced advisories for more detailed information on these new laws.
- Review and update employee handbooks and policies, where applicable.
- Review and update employment applications, where applicable.
- Update onboarding materials with relevant employee notices and provide current employees with updated notices, where applicable.<sup>2</sup>

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<sup>2</sup> New York City has not yet released a revised ESSTA notice to include “safe time,” but it is expected that one will be released prior to the law’s effective date. Employers should monitor the City’s website for updates.

- Train managers, human resources staff, and any other individuals involved in the hiring, interviewing, and timekeeping processes on these new laws.

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