

Insights, News & Events

# NEW YEAR BRINGS NEW LAWS FOR NEW YORK EMPLOYERS: 2021 RECAP AND 2022 PREVIEW

Insights  
Dec 28, 2021

Year two of the COVID-19 pandemic brought many new legislative changes for New York employers, altering the landscape around workplace safety, employee pay, leave benefits, protected classes and activity, and privacy. Now that we are at year's end, New York employers should not only be aware of the new employment laws obligations that took effect during 2021 – but also those that will come into effect in 2022 and beyond. Here's what you need to know to ensure compliance with new and shifting obligations.

## Minimum Wage Increase

Most New York employers will again face minimum wage increases for their employees. Fast food workers outside of New York City and employees in all sectors in Nassau, Suffolk, and Westchester counties will join New York City employees in earning \$15 an hour. All other New York employees must be paid a minimum of \$13.20 an hour. Minimum wage rates will continue to rise until the \$15 an hour minimum wage is uniform across the state. The wage increases for 2022 go into effect **December 31, 2021**.

## Tip Credit Increase

On **December 31, 2021**, hospitality employers with service employees or food service workers will see an increase in the tip credit that can be taken against an employee's minimum hourly wage, provided that the weekly average of tips at least equals a specified hourly tip threshold (for service employees only) and the total of tips received plus

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wages equals or exceeds the basic minimum wage, as follows:

	Service Employees (other than those at resort hotels)	Service Emplo at Resort Hote
New York City employers	\$2.50/\$3.25 tip threshold	\$2.50/\$8.40 ti threshold
Long Island/Westchester employers	\$2.50/\$3.25 tip threshold	\$2.50/\$8.40 ti threshold
Remainder of New York State (outside of New York City and Nassau, Suffolk, and Westchester counties)	\$2.10/\$2.70 tip threshold	\$2.50/\$8.40 ti threshold

### Salary Threshold Increase

Also effective **December 31, 2021**, the salary basis threshold for executive and administrative employees to be classified as exempt will increase for employees working in Nassau, Suffolk, or Westchester counties to \$1,125.00 per week (\$58,500 annually), matching the salary threshold already set for New York City employees. For employees who work elsewhere in the state of New York, the threshold will rise to \$990.00 per week (\$51,480 annually).

### Recreational Marijuana Legalization

As of **March 31, 2021**, New York State legalized the recreational use of cannabis (marijuana) for adults 21 years of age and older. Employees are protected from disciplinary action or discrimination for their lawful use of cannabis

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during legal recreational activities and use before or after work hours (including paid and unpaid breaks and meals) off employer premises and without use of employee equipment or property. An employer can, however, take action (including discipline) against an employee when the employee is impaired by cannabis use, which must be manifested by “specific articulable symptoms” that decreases the employee’s work performance or interferes with workplace safety obligations. You can read more about the Marihuana Regulation and Taxation Act [here](#) and [here](#).

### **Notice of Electronic Monitoring**

Effective **May 7, 2022**, all New York employers must provide employees with written notice upon hiring of electronic monitoring, including interception or monitoring of telephone conversations or transmissions, email, or internet usage. The law does not apply to general computer system maintenance or protection. Additional details are available [here](#).

### **Whistleblower Protections Expanded**

Beginning **January 26, 2022**, employers face strengthened whistleblower laws. Currently, New York’s whistleblower statute only protects employees who report unlawful practices of their employer that create a substantial and specific danger to the public health and safety. Under amendments to the law, employees will soon be protected from retaliation for reporting *any* actual or suspected violation of law, which substantially broadens the scope of whistleblower protections.

Additionally, the amendments increase damages for violation of the statute and require employers to provide employees with notice of their rights under this law. Additional information can be found [here](#).

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

After a several-year phase-in period, New York’s Paid Family Leave (PFL) reached its maximum leave benefit as of January 1, 2021 (12 weeks leave paid at 67% of the employee’s average weekly wages, up to a cap set by the state). For 2022, the wage replacement benefit cap increases to \$1,068.36 per week. An employee’s payroll contribution remains 0.511% of gross wages for the pay period and is capped at an annual maximum of \$423.71. PFL

is available to all eligible employees regardless of their citizenship or immigration status.

This past fall, New York enacted legislation expanding the definition of family member to include siblings. Accordingly, employees will be able to use PFL to care for siblings with a serious health condition, effective **January 1, 2023**. Read more about this upcoming change [here](#).

## **Retirement Accounts**

Employers that do not sponsor their own retirement savings plan for employees will soon have to automatically enroll employees in a state-run savings plan if they (1) have at least 10 employees, and (2) have been in business in New York for at least two years. Employers will be responsible for taking payroll deductions and transmitting funds to New York's Department of Taxation and Finance. However, employers need not take immediate action as the program is not yet open for enrollment. Once the program opens, employers will have nine months to set up the payroll deposit system. Further information about this new legislation is available [here](#).

New York City's Retirement Security for All acts (Bill Nos. [888-A](#) and [901-A](#)) likewise mandate retirement accounts for employees. Employers that do not already offer a retirement plan, and have five or more employees in New York City, will be responsible for automatically enrolling employees over the age of 21 who work at least 20 hours per week into the City's future retirement savings program. Employees are able to opt out of the savings program and employers are not required to make contributions. In light of the state legislation, the fate of the City's program is uncertain.

## **New Workplace Health and Safety Protections**

New York State passed the Health and Essential Rights Act (HERO Act) to prevent the spread of all airborne infectious diseases in the workplace and establish workplace safety committees. The law requires employers to adopt workplace safety protocols to be implemented in the event of a state designated airborne infectious disease. Though enacted in response to COVID-19, this legislation is also meant to cover any future airborne infectious diseases the state might so designate. This past summer, in accordance with the law, the state published a model and industry-specific Airborne

Infectious Disease Exposure Prevention Plans (“Prevention Plan”). By **August 5, 2021**, all New York employers were required to have either adopted the state’s applicable Prevention Plan or developed their own compliant plan. As of **September 4, 2021**, Prevention Plans must have been distributed to employees, posted in a prominent location at the worksite, and included in employee handbooks.

Since September 6, 2021, the Department of Health Commissioner has designated COVID-19 an airborne infectious disease under the HERO Act. This designation currently remains in effect until **January 15, 2022** and is likely to be extended beyond that date. Accordingly, not only do employees need to adopt their Prevention Plans, they need to be activated to help prevent the spread of COVID-19 in the workplace.

As of **November 1, 2021**, employees have the right to create workplace safety committees. New York’s Department of Labor has [published](#) proposed regulations pertaining to these committees.

You can read more about the HERO Act [here](#), [here](#), and [here](#).

## **COVID-19 Legislation and Orders**

Of course, there were numerous new workplace obligations enacted in the past year related to the pandemic. The four most significant:

### *Mask and Vaccine Mandates*

The steady loosening of masking requirements (for most industries) was abruptly reversed late this year because of the rapid spread of the omicron variant. As of **December 13, 2021**, all businesses in New York must require employees and customers to wear a mask indoors unless the business requires everyone entering the business provide proof that they are fully vaccinated against COVID-19. The mandate is effective until **January 15, 2022** when it will be re-evaluated based on then-current conditions. **[Ed. Note: The Commissioner of New York’s Department of Health just [extended](#) the mask mandate to February 10. And while the mandate was struck down by the New York Supreme Court on January 24, that decision is stayed until at least March 2 pending appeal.] [Ed. Note: Governor Hochul announced on February 9 that the state mask mandate**

would not be extended beyond February 10.] Additional details are available [here](#).

Meanwhile, New York City has mandated that all private sector employees who perform work in-person or interact with the public in the course of business be vaccinated (at least one vaccine dose) by **December 27, 2021**. Employees not fully vaccinated at that time will have forty-five days to then show proof of receipt of a second dose. Employers cannot allow unvaccinated workers at the workplace (or test in lieu of getting vaccinated) unless the employee qualifies for a reasonable accommodation under applicable law. Businesses must, by **December 27, 2021**, complete and post a certificate affirming their compliance with this vaccine requirement.

The City also expanded its Key to NYC program, requiring employees and customers of indoor dining, fitness facilities, and entertainment venues to be fully vaccinated by **December 27, 2021**.

Further details about New York's vaccine mandate can be found [here](#) and [here](#).

### *Vaccination Leave*

Employers must provide their employees with up to four hours (per injection) of paid leave to receive the COVID-19 vaccine. With the expansion of eligibility for boosters, employers will need to provide their employees with up to twelve hours of leave for the three shots. The law is effective from March 12, 2021 through **December 31, 2022**. You can read more about the COVID-19 vaccine leave [here](#) and [here](#).

The New York City Council granted parents additional sick leave under NYC's Earned Safe and Sick Time Act to accompany their child to receive a COVID-19 vaccine injection or to care for the child if experiencing side effects from the injection. Parents are entitled to four hours of paid leave per child, per vaccine injection, including booster shots. The law, which was enacted **December 24, 2021**, will apply retroactively. Additional details are available [here](#).

### *Sick Leave*

State guidance clarified that employees can use sick leave provided under New York's paid sick leave law to recover

from side effects of the COVID-19 vaccine. You can read more about the guidance [here](#). Paid Family Leave may also be used to care for a family member who has contracted COVID-19, as the family member's illness may qualify as a serious health condition.

### *Quarantine Leave*

In accordance with legislation passed in 2020, employees are able to use paid or unpaid sick leave when they or their minor dependent child are subject to a mandatory or precautionary order of quarantine or isolation due to infection or exposure to COVID-19. All employees are entitled to job protection during their leave. Early this year, the state released additional guidance on the quarantine leave. The guidance explained that an employee may qualify for leave for up to three orders of quarantine isolation, provided the second and third instances of leave are based on a positive test result. Read more about COVID-19 quarantine leave [here](#).

### **New York City Specific Laws**

Finally, employers with operations in New York City find themselves with additional obligations. Among the most significant:

#### *Job Posting Salary Disclosure*

The New York City Council recently passed a [bill](#) amending the New York City Human Rights law, effectively requiring employers with four or more employees to include minimum and maximum salary ranges in job postings. This requirement applies to internal opportunities, like transfers and promotions, as well as new hires. The disclosure requirement is not applicable to temporary staffing agencies, which are already subject to such requirements. The bill awaits the mayor's signature or veto by **January 14, 2022**. If the mayor takes no action, it will become law. The law goes into effect 120 days after it becomes law.

#### *New York City Fair Chance Act*

Effective **July 29, 2021**, New York City expanded protections under its Fair Chance Act. Prohibitions against discrimination due to an individual's criminal history now apply not just to applicants for employment but also to current employees. In addition, whereas the Fair Chance Act

protections previously only applied to convictions, employers are now foreclosed from taking an adverse action against job applicants or current employees because of pending criminal charges absent application of the Fair Chance Analysis. Employers also cannot base adverse employment decisions on certain sealed or unsealed violations. Finally, job applicants at risk of being rejected for employment must be provided with an opportunity to respond if they are being rejected because of perceived intentional misrepresentation of their criminal history. More information about the amendments can be found [here](#).

### *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 will have until **January 1, 2023** to comply with its provisions. Learn more about this legislation [here](#).

### *Just Cause for Termination of Fast Food Employees*

New York City's "just cause" provision in its Fair Workweek Law applicable to the country's largest fast food establishments went into effect this summer (effective **July 4, 2021**). Covered fast food employers cannot, following a 30-day probationary period, terminate, lay off, or reduce the hours of employees by more than 15% without "just cause" and must provide written notices explaining the reason for termination. Read more about the law [here](#).

## **Conclusion**

As you ring in the new year, it is a good time to evaluate your policies and procedures to ensure you are in compliance with the many changes impacting New York State and New York City employers. For those laws that are not yet effective, you should take proactive steps to make sure you will be ready for their implementation when the time comes.

We will continue to monitor further developments affecting you, as the changeable legal landscape is likely to continue in 2022. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions about whether your policies comply with these new laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our New York City office](#).