

NEW YORK LAWMAKERS PASS A FLURRY OF WORKER PROTECTION LAWS

Insights

Jun 9, 2022

As the New York State legislative session came to a close, state lawmakers passed a flurry of laws providing protections to workers, ranging from wage protections for freelance workers, prohibitions against absence control policies that penalize employers for taking protected leave, and amendments to the Hero Act, as well as laws aimed at providing employment protections in specific industries – nursing and warehousing. These laws are in addition to [a salary transparency law](#), which was also recently passed by New York lawmakers. These bills are now head to Governor Kathy Hochul’s desk for her signature or veto. What do you need to know about these new developments?

1. Freelance Isn’t Free Act

New York lawmakers passed a statewide [Freelance Isn’t Free Act](#), providing protections to workers employed as independent contractors. This new state law will [mirror the NYC law](#) with the same name that has provided protections for New York City independent contractors since May 2017. The amendments to New York Labor Law will provide a recourse to freelance workers experiencing wage theft and other violations under the law.

If enacted, the Freelance Isn’t Free Act will require hiring parties who retain the services of a freelance worker to enter into a written contract which includes the following, at a minimum:

- The name and address of both the hiring party and the freelance worker;

Related People



Melissa Camire

Partner

212.899.9965

Service Focus

Employment Discrimination
and Harassment

Wage and Hour

Related Offices

New York

- An itemization of the services to be provided by the freelance worker;
- The value of the services to be provided;
- The rate and method of compensation;
- The date on which the hiring party must pay the contracted compensation of the mechanism by which such date will be determined; and
- The date the freelance worker must submit a list of services rendered to meet any internal processing deadlines for the hiring party to render timely compensation. The hiring party will be required to keep the contract for at least six years.

Additionally, the Freelance Isn't Free Act will provide wage theft protections to freelance workers by mandating the timely payment of compensation (the date compensation is due under the terms of the contract, or if not specified, within 30 days of the completion of services).

Employers are prohibited from retaliating against a freelance worker who exercises their rights under the act.

Freelancers who are aggrieved under the statute may file a complaint with the labor commissioner or bring a civil action against the hiring party in court. There will be a six-year statute of limitations for private causes of action seeking owed compensation. Aggrieved freelancers can recover the amount owed under the contract, double damages and reasonable attorneys' fees and costs. Freelancers can also bring a cause of action for failure to enter into a written contract if they can prove they requested a written contract before the work began. Such claims must be brought within two years, and monetary awards are limited to statutory damages of \$250. The attorney general can also bring a civil action on behalf of the state against a hiring party that is engaged in a pattern or practice of violations of the act. Employers face civil penalties of up to \$25,000 for pattern and practice violations.

If enacted, the Freelance Isn't Free Act will take effect 180 days thereafter.

2. Lawful Absences Protected from 'No-Fault' Attendance Policies

New York lawmakers passed an [amendment](#) to the 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. This specifically includes assessing any "points" or "demerits" under any absence control policy that could subject an employee to any disciplinary action. The effect of this amendment is that if employers discipline workers by assessing "points" when an employee has used any legally protected absence, then it will constitute retaliation under the Labor Law.

This amendment will take effect 90 days after it is signed into law.

3. Amendment to HERO Act – Workplace Safety Committees

New York lawmakers passed an amendment to the [NYS HERO Act](#) in relation to employer violations of certain provisions allowing for workplace safety committees. Under the HERO Act, employees are permitted to form workplace safety committees that can monitor and review workplace safety practices. The [amendment](#) requires employers to recognize such a committee within five days of receiving a request from employees for committee recognition. Employers are subject to fines of up to \$50 per day for failure to comply

4. Warehouse Worker Protection Act

The [Warehouse Worker Protection Act](#) amends the New York Labor Law to add protections for warehouse and distribution center workers against unreasonable quotas. The law applies to employers with 100 or more employees at a single warehouse distribution center or 500 or more employees at multiple facilities in the state. The statute requires employers to provide a written description of any quotas to which employees are subject upon hire (or within 30 days of the effective date of the legislation), including the number of tasks to be performed or materials to be produced or handled within the defined period, as well as any potential adverse employment action that could result if the employee fails to meet the

quota. Employers must provide an updated description within two business days of any changes to the quota.

Employees must be provided with the applicable quota any time the employer takes an adverse employment action against them. Under the statute, employers cannot require employees to meet quotas that prevent them from following meal or rest period rules or using bathroom facilities. Additionally, employees cannot be disciplined or fired for failing to meet a quota that has not been disclosed to them.

The law also burdens employers with recordkeeping requirements. Employers covered by this law must maintain the following records:

- Data on each employee's personal work speed;
- Aggregated work speed data for similar employees at the same establishment; and
- Written descriptions of the quota provided to the employee.

These records need to be preserved during the worker's employment. Records related to the six-month period prior to an employee's termination must be preserved for at least three years after the termination date.

Records will need to be made available to the labor commissioner upon request. Additionally, current employees have the right to request the quota description, their own work speed data and the facilities' aggregated work speed data for the previous six months. Former employees can request this information for the last six months of their employment anytime within three years of their termination date. The records must be provided at no cost to the current or former employee and within two business days for the quota description and seven business days for the personal and aggregated work speed data.

Employers covered by the law cannot retaliate against an employee who exercises any rights under the law, including requested work speed data or making a complaint related to any violation of the law. The statute creates a rebuttable presumption that any adverse action taken within 90 days of such protected activity is

unlawful, which can only be rebutted by clear and convincing evidence that the action was taken for other permissible reasons and the protected activity was not a motivating factor. The statute empowers the attorney general to take prosecute violations of the law.

If signed by Governor Hochul, this law will take effect 60 days after enactment.

5. Restrictions on Consecutive Hours for Nurses

New York law bans mandatory overtime for nurses, but this does not apply – and thus overtime can be required – during a declared emergency, such as a healthcare disaster that increases the need for healthcare staff, a declared state of emergency, or when the employer determines there is an emergency, including a staffing emergency, and overtime is required to provide safe patient care.

Current law does not provide clear guidelines on how long the ban on mandatory overtime can be suspended in such circumstances. Under the recently passed amendment, however, the ban on overtime due to a healthcare disaster cannot exceed three consecutive dates. In the case of a declared state of emergency, the ban on mandatory overtime must be reinstated at the end of the declared emergency or after thirty consecutive days, whichever is shorter (but the governor has the power to suspend this provision while a state of emergency is in effect).

Finally, the amendments make clear that an unanticipated staffing emergency that may warrant suspension of the mandatory overtime ban does not include staffing needs due to typical staffing patterns; typical levels of absenteeism; and time off that is typically approved for vacations, holidays, sick leave, and personal time. Employers will face fines of up to \$5,000 for violations, and the nurse will be entitled to receive an additional 15% of the overtime payment for each violation.

This law will take effect immediately upon enactment.

Conclusion

New York employers have much to pay attention to in the coming weeks. Given Governor Hochul's prior support of

workplace protection laws, you should expect that all these measures will be signed into law. We will continue to monitor developments on the legislation, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have any questions on how to comply with any of these new laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in in [our New York City office](#).