



# New Laws for New York Employers in a New Year: What You Need to Know as 2023 Unfolds

Insights

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After a few years of rapid and expansive change to New York's workplace laws, involving adjustments to workplace safety, employee pay, benefits, and privacy, there was a noticeable slowdown for the state legislature this past year. However, New York employers must remain alert as a flurry of bills signed into law within the last month will add to your compliance burdens this year. Let's review what laws were enacted in 2022 and legislation that will soon go into effect in 2023.

## Minimum Wage Increase

New York State minimum wage rate has increased from \$13.20 to \$14.20 an hour for Upstate New Yorkers (consisting of workers outside of NYC, Long Island, and Westchester where the minimum wage is already, and will remain, \$15/hour). This wage increase went into effect on December 31, 2022.

## Tip Credit Increase

Given the increase to the minimum wage, Upstate New York (outside New York City and Nassau, Suffolk and Westchester counties), saw the cash wage and tip credit increase on December 31, 2022. The cash wage for service employees increased to \$11.85 and tip credit to \$2.35. Food service workers also saw an increase in the cash wage to \$9.45 and tip credit to \$4.75.

## Salary Threshold Increase

The NYS Division of the Budget proposed an increase of the salary basis threshold for executive and administrative employees to be classified as exempt, with an effective date of December 31, 2022. For employers in Upstate New York (outside New York City and Nassau, Suffolk and Westchester counties) the threshold would rise to \$1,064.25 per week (\$55,341 annually). For the rest of the state, the threshold will remain \$1,125.00 per week (\$58,500 annually).

## Salary Transparency in Job Postings

Salary transparency made major strides in New York this past year. On November 1, 2022, New York City's salary transparency law went into effect, requiring employers with four or more employees to

state minimum and maximum salary ranges in job postings, including transfers and promotions. Read about the local law [here](#).

This past spring, the state legislature passed a statewide salary transparency law that Governor Hochul signed into law on December 21, 2022. Effective **September 17, 2023**, the law requires New York employers with four or more employees to disclose compensation or the range of compensation (minimum and maximum annual salary or hourly range of compensation) that the employer in good faith believes to be accurate at time of posting, as well as, the job description for the position. Employers must keep records showing their compliance with the law, including the history of compensation ranges for each job, promotion, transfer and job descriptions (if such description exists). The state law does not supersede or preempt any local law (i.e., NYC's salary transparency law). Read more about the law [here](#).

### **Electronic Poster Requirement**

Employers must now make available to their employees electronic copies (through its website or by email) of documents that, pursuant to state or federal law, must be physically posted in a workplace. In addition, employers must provide notice to employees that documents required for physical posting are available electronically. The law went into effect on December 16, 2022. Read about the law [here](#).

### **Protections Against Discrimination and Retaliation**

Early 2022, in response to political events at the time, the state legislature amended the New York State Human Rights Law to prohibit the release of an employee's personnel file in retaliation for the employee's protected activity. The law does not apply to disclosures related to litigation or administrative proceedings. Read more [here](#). The legislature also [amended](#) the New York State Human Rights Law to broaden protections against discrimination for a victim of domestic violence. Late last year, the Governor signed into law a further [amendment](#) to the New York State Human Rights Law, which now explicitly provides protection from discrimination based on a person's immigration or citizenship status. Employers are not foreclosed, however, from verifying citizenship or immigration status where required by law. All three of these laws are now in effect.

The state has tasked the New York State Division of Human Rights, through a statutory [mandate](#), with developing and implementing a statewide campaign to increase awareness and promote the acceptance, inclusion, tolerance, and understanding of the diversity of people of this state. As a part of this mandate, the Division will develop educational materials and coordinate with public and private organizations.

In furtherance of the movement against the term "alien," the legislature [amended](#) various laws, including New York's labor law and executive law, to change the terms "alien" and "illegal alien" to "noncitizen" and "undocumented citizen."

## One-Year Lookback for Adult Victims of Sexual Abuse

Following the enactment of the Adult Survivors Act earlier, employers should be aware of heightened litigation risks related to the conduct of former or even current employees. The act, which gives adult survivors of certain sexual offenses one year (beginning November 24, 2022) to file a claim against an alleged abuser, also permits claims against purported enablers of the alleged abusers. This means employers may be held liable for the conduct of their employees under a vicarious liability or negligence standard years and possibly decades after an alleged incident. You can read more about the law [here](#).

## Accommodations for Nursing Employees

New York is [expanding protections](#) for nursing employees, requiring employers to (1) provide a reasonable unpaid break time or permit an employee to use paid break time or meal time to express breast milk each time the employee has a reasonable need to express breast milk, (2) designate a room or other location for the employee to express breast milk upon request, and (3) provide employees with the written policy, to be developed by the New York Department of Labor (DOL), regarding the rights of nursing employees to express breast milk in the workplace upon hire, annually, and when an employee returns to the workplace following the birth of a child.

Absent an undue hardship (i.e., significant difficulty or expense), the designated room or other location must be:

- In close proximity to the work area;
- Well lit;
- Shielded from view; and
- Free from intrusion from other persons in the workplace or public.

An employer must provide, at minimum, a chair, working surface, nearby access to running water, and, if the workplace is supplied with electricity, an electrical outlet. A restroom or toilet stall do not meet these requirements. The state law now mirrors the protections that have been in place for several years for nursing employees in New York City.

Employers are prohibited from discharging, threatening, penalizing, or in any other way discriminating or retaliating against an employee for exercising rights under the law. The law will go into effect on **June 7, 2023**. [Read more about it here](#). Notably, the state law (and existing New York City law) provides even greater rights to breastfeeding employees than the [just-enacted PUMP Act, which will expand rights on a federal level](#). Accordingly, employers must be cognizant of the greater obligations imposed by state and city law.

## Protection for Lawful Absences

Amendments to the New York Labor Law will prohibit employers from disciplining (i.e., discharge, threaten, penalize, etc.), discriminating, or retaliating against an employee because the employee used legally protected absences pursuant to local, state, or federal law. This restriction includes the assessment of any demerit, occurrence, any other point, or reduction from an allotted bank of time, which subjects or could subject the employee to disciplinary action, including the loss of a promotion or pay. The law will go into effect on **February 19, 2023**. Read more about the law [here](#).

## **New York Paid Family Leave**

New York released the [contribution rate](#) for paid family leave for 2023. The contribution rate will be (if not paid weekly) 0.455% of gross wages per pay period and the maximum annual contribution will be \$399.43 for each employee, a reduction from last year. If the employee's wages are less than the statewide average weekly wage, the contribution will be lower. For 2023, benefits are capped at \$1,131.08 per week. NY's Paid Family Leave is available to all eligible employees regardless of their citizenship or immigration status.

Effective **January 1, 2023**, the definition of "family member" expanded to include siblings. This means employees will be able to use PFL to care for siblings (biological, adopted, step, or half) with a serious health condition. Read more about this change [here](#).

## **COVID-19 Vaccination Leave**

Recent events have put COVID-19 back on the front pages, reminding all of us that the pandemic is not yet over. This past summer New York extended its law requiring employers to provide their employees with up to four hours (per injection) of paid leave to receive the COVID-19 vaccine, including boosters. Now, this law will not be repealed until **December 31, 2023**. Read more about the COVID-19 vaccine leave [here](#).

## **Workplace Health and Safety Protections**

There are two key workplace health and safety developments you should ensure you know about as we head into 2023.

### ***HERO Act***

New York's Health and Essential Rights Act (HERO Act) is still relevant despite the cessation of the designation of COVID-19 as an airborne infectious disease, which required implementation of airborne infectious disease exposure prevention plans. As a reminder, employers must distribute prevention plans to employees, post (and now have available electronically) them in a prominent location at the worksite, and include them in employee handbooks.

The other key provision of the HERO Act gives employees the right to create workplace safety committees. Evidently identifying a need to codify a proposed DOL regulation, the legislature passed

a bill requiring employers to recognize a workplace safety committee within five business days of its establishment. Failure to do so will result in penalties of \$50 a day until the violation is remedied. This amendment went into effect December 28, 2022. You can read more about the workplace safety committees [here](#) and [here](#).

### ***Warehouse Worker Protection Act***

The act, which applies to employers that control (including through a third-party) 100 or more employees at a single warehouse distribution center or 500 or more employees at one or more warehouse distribution centers in New York, marks a significant change for the warehouse industry. Once effective, the law requires applicable employers to, upon hire of an employee or within 30 days of the effective date of the act and each time a quota changes, to provide a written description (as specified in the law) of each quota to which an employee is subject.

Where an adverse action is taken against an employee, presumably in relation to the employee's failure to meet the quota, an employer must provide said employee with the applicable quota. Employees are protected from disciplinary action or termination for failing to meet undisclosed speed quotas or quotas that do not allow for proper breaks.

The act also includes records requirements, prohibits retaliation, and, notably, creates a rebuttable assumption of retaliation if an employer takes action against an employee within 90 days of the employee's engaging or attempting to engage in any activity protected by the act. The act will go into effect on **February 19, 2023**. Read more about it [here](#).

### **Additional Protections for Nurses**

New York enacted a bill, which will go into effect on **February 28, 2023**, amending the labor law in relation to restrictions on consecutive work hours for nurses. [S1997A](#) will give the DOL authority to levy fines against employers that violate provisions outlined in the law. Nurses will also be entitled to an additional 15% of the any overtime payment received in violation of the law.

### **Artificial Intelligence in Recruitment, Hiring, and Promotion**

In 2021, 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 local law was supposed to go into effect on January 1, 2023. Following high interest in proposed rules it developed to implement the legislation, NYC Department of Consumer and Worker Protection (DCWP) announced that it would delay its enforcement of the law until **April 15, 2023**. DCWP will hold a second public hearing on its [updated](#) proposed rules on January 23, 2023. Read more about the local law and proposed rules [here](#) and [here](#).

### **Workers' Compensation**

Finally, New York's workers' compensation law saw a change. The governor signed into law a bill that forecloses collateral estoppel effect of any finding or decision by the workers' compensation board, judge, or other arbiter in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship. This bill went into effect December 30, 2022.

## Conclusion

With all of these new laws and the start of a new year, this is the time to evaluate your policies and procedures to ensure you are in compliance. For those laws that have not yet, but are soon, to take effect, you should take proactive steps to ensure you will be ready for their implementation when the time comes.

We will continue to monitor further developments affecting you, as the legislature is likely to enact more labor related laws in 2023. 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.

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