



New Year, New Workplace Laws: New York's End-of-Year Wrap-Up

Insights

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Continuing a years' long trend of extensive alterations to workplace laws, New York State and New York City continued to enact new workplace legislation impacting employers. A substantial number of enacted bills in the past year will increase your compliance requirements in the year ahead. Let's examine the new laws put in place in 2023 and the legislation set to take effect in 2024.

Minimum Wage Increase and Other Compensation-Related Laws

- **Minimum Wage Increase** – New York State minimum wage rate increased from \$15 to \$16 for workers in New York City, Long Island, and Westchester and from \$14.20 to \$15 for workers in the rest of the state. These increases went into effect on January 1. Additionally, minimum wage will continue to increase incrementally over the next few years, reaching \$17 per hour in certain parts of the state by January 1, 2026. Thereafter, increases to minimum wage increases will automatically be tied to inflation using the Consumer Price Index. Read more [here](#).
- **Tip Credit Increase** – In conjunction with the minimum wage increases, the cash wage and tip credit also [increased](#) effective January 1. The cash wage for tipped service employees in New York City, Long Island, and Westchester went up to \$13.35 and the tip credit to \$2.65. Tipped food service workers in the same region received a cash wage increase to \$10.65 and the tip credit went up to \$5.35. For the rest of the state, the cash wage is \$12.50 and tip credit \$2.50 for tipped service employees. Tipped food service workers in the rest of the state will receive a cash wage of \$10.00 and tip credit of \$5.00.
- **Salary Threshold Increase** – Effective January 1, New York [increased](#) the salary basis threshold for executive and administrative employees to be classified as exempt. For employers in New York City, Long Island, and Westchester, the threshold rose to \$1,200.00 per week (\$62,400 annually). For employers in the rest of the state, the threshold rose to \$1,125 per week (\$58,500 annually). The exempt salary threshold will continue to rise annually for the next several years.

Additionally, New York lawmakers will [increase](#) the state's threshold for applicability of certain wage protections. Effective March 13, the salary threshold for bona fide executive, administrative, or professional employees to be exempt from certain wage protection provisions of the New York Labor Law is increasing to \$1,300 per week (up from \$900). Executive, administrative, and professional employees who earn less than \$1,300 per week

will need to be paid at least semi-monthly. Additionally, advance consent will be required to pay such employees via direct deposit.

- **Increased Criminal Penalties for Wage Theft** – As of September 6, 2023, New York employers could face greater criminal penalties for engaging in wage theft, which has been added to the definition of criminal larceny. Wage theft occurs where an employer hires an individual to perform services and they performs the services, but the employer does not pay wages at the minimum wage rate or overtime or the promised wage for the work performed. Employers, who were already at risk of a misdemeanor (and potential imprisonment of up to a year if convicted) for stealing employee wages for the first violation, now face greater criminal sanctions under the penal code. In New York, larceny comes in two types – petit (a misdemeanor) and grand (a felony). Grand larceny kicks in at only \$1,000.

In a similar vein, Manhattan District Attorney Alvin Bragg Jr. announced a new prosecutorial branch tasked with investigating and prosecuting wage theft and other forms of worker harassment and exploitation throughout Manhattan. The Worker Protection Unit, announced in February of 2023, was established as part of a broader effort from the D.A.'s office to hold corporations accountable for workplace wrongdoing. It has the authority to pursue criminal charges against corporations and potentially individuals who engage in wage theft and disregard worker safety. Read more about it here.

- **Pay Transparency** – New York's statewide pay transparency law took effect on September 17, 2023. New York employers with four or more employees must 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. Read more about the law and amendments here. New York has also proposed transparency pay regulations, which are working their way through the rulemaking process. Read more about them here.
- **Protections for Freelance Workers** – After a veto from Governor Hochul last year, the legislature and Governor were able to come together to enact the Freelance Isn't Free Act, which provides certain protections for freelance workers. Specifically, the act mandates that any hiring party retaining a freelancer for at least \$800 of services provide a detailed written contract and timely and full payment. The law also includes anti-retaliation provisions as well as the right to bring a claim if obligations are not met and affords an administrative process for disputes between freelancers and hiring parties. The law will take effect on May 19, 2024. Read more about it here.
- **Minimum Pay For App-Based Delivery Workers** – New York City's Department of Consumer and Worker Protection (DCWP) implemented a minimum pay rate for app-based restaurant delivery workers, which took effect July 12, 2023. Starting with the first pay period on or after July 12, 2023, apps that pay for all the time a worker is connected to the app (i.e., time waiting for trip offers and trip time) are required to pay at least \$17.96 per hour (not including

tips). Alternatively, apps that only pay for trip time (i.e., time from accepting a delivery offer to dropping off the delivery) must pay at least approximately \$0.50 per minute of trip time, not including tips. Apps that use unique pay methods that do not display a per minute or per hour rate must still follow the minimum pay rates. The minimum pay rate will increase on April 1 each year. Read more about the minimum pay rate [here](#).

- **Consecutive Hours of Work for Nurses** – New York [amended its laws regulating](#) consecutive hours of work for nurses effective June 28, 2023. [The](#) amended law gives the DOL authority to levy fines against employers that violate provisions outlined in the law. Additionally, the amendments established a complaint reporting and investigative procedure, make certain monetary penalties *permissive* rather than mandatory, and eliminated a 15% premium payment to employees who worked in excess of their scheduled hours.
- **Warehouse Worker Protection Act** – The state also enacted chapter amendments to its Warehouse Worker Protection Act (WWPA), which took effect June 19, 2023. The WWPA protects employees from disciplinary action or termination where quotas are undisclosed or do not allow for proper breaks. It is aimed at ensuring warehouse workers are aware of the standards used to evaluate their performance. The law also creates a rebuttable presumption of retaliation where an adverse action occurs within 90 days of activity protected by the statute. Importantly, employers that do not use quotas or monitor work speed data are not required to do so. It only applies to employers that control (including through a third-party) 100 or more employees at a single warehouse distribution center or 1000 or more employees at one or more warehouse distribution centers in New York. While amendments to the Act, watered down some of its sting, it still mandates significant compliance requirements on impacted employers. Read more about the Act and amendments [here](#).

Expanded Protections Against Discrimination

- **Definition of Sexual Orientation** – The legislature [amended](#) the definition of sexual orientation in the New York State Human Rights Law to remove outdated language. The definition previously included a disclaimer that the definition does not permit otherwise illegal conduct, language rooted in a time when states had laws on the books criminalizing certain consensual sexual acts between adults. The law, which removed said language, took effect on June 25, 2023.
- **Statute of Limitations Expanded for Administrative Relief** – Employees or other covered individuals alleging unlawful discriminatory employment practices in violation of the New York State Human Rights Law (NYSHRL) will soon have three years to file a complaint with the New York State Division of Human Rights (DHR), the state agency which investigates and enforces the NYSHRL – an increase from one year. The enactment of this [law](#) expands the statute of limitations for all claims of unlawful discriminatory practices in line with the three year limitations period that had previously been in place just for sexual harassment claims. It takes effect on February 15.
- **Clean Slate Act** – The [Clean Slate Act](#) creates a process to automatically seal most criminal convictions after a person is released from incarceration and then completes a waiting period. Pursuant to the Act's requirements, certain convictions will be automatically sealed after a

Pursuant to the Act's requirements, certain convictions will be automatically sealed after a period of time specified in the law (e.g., felony convictions will be sealed after eight years). Automatic sealing is not available for the most serious crimes such as sex crimes and most Class A felonies (murder, first-degree kidnapping, and arson). The law will take effect on November 16. The courts will have three years to identify prior convictions eligible for automatic sealing under the law.

Once effective, most employers will not be permitted to inquire about or have access to the sealed criminal records of any employee or applicant. Exceptions apply for certain facilities that hire people to care for children, people with disabilities, the elderly, or other vulnerable populations.

- **Height and Weight Discrimination Prohibited** – New York City now prohibits discrimination based on height and weight. Effective November 22, 2023, the City amended its Human Rights Law to expand to prohibit discrimination based on a person's height and weight in opportunities of employment, housing, and access to public accommodations. Read more about the expanded protections [here](#).
- **New York City Safe and Sick Time Act** – The New York City Department of Consumer and Worker Protection (DCWP) issued updated regulations to the Earned Safe and Sick Time Act (ESSTA), effective October 15, 2023. The amendments provide clarification and guidance for compliance in areas such as employer size, treatment of remote workers, notice requirements, and accruals. Specifically, with respect to employer size, the amended rules clarified that employer size (which determines the amount of paid leave an employer must provide) is based on the total number of employees nationwide, not just in New York City, and counted when at the highest number of employees employed during a calendar year. The amended regulations also address procedures to be followed if an employee's headcount shifts into a different coverage tier during a year.

For remote employees, the amended rules state those working outside of NYC are excluded from coverage even if their employer is located in New York City. However, any employee who primarily works outside of NYC but who performs work in the city with some regularity is covered under the ESSTA. For example, an employee who lives and primarily works in Connecticut but who is expected to regularly cover shifts in New York City will accrue safe and sick leave under the ESSTA for the hours worked in the city. On the other hand, an employee who works outside of New York for a company based in Manhattan and is expected to travel to the city to attend meetings approximately twice a year would not be covered.

A further clarification on accruals states that employee accrual of safe and sick time "must account for all time worked, regardless of whether time worked is less than a 30-hour increment." If an employee works time that is less than a 30-hour increment, employers can round safe and sick time to the nearest five minutes or quarter of an hour provided that it will not result in failure to provide the correct amount of accrual of safe and sick time. Lastly, amended notice requirements clarified that employers can require employees to provide

reasonable notice of the need to use safe or sick time, but the requirement and the method of providing notice must be provided in the written policy required by the rules.

Additionally, the City Council passed a bill that would allow employees to initiate lawsuits against their employer for alleged violation of the ESSTA. Currently, employees can file complaints alleging safe/sick leave law violations with DCWP but do not have the ability to sue for violations. The bill was approved by City Council on December 20, 2023, and awaits Mayor Adam's signature, veto, or inaction. If enacted, the local law will take effect 60 days thereafter. Read more about the pending legislation [here](#).

Expanded Employee Rights

- **Assignment of Inventions** – As of September 15, 2023, employers cannot enter into or enforce any agreement which requires an employee to sign their rights to an invention that the employee developed entirely on their own time, without using company equipment, supplies, facilities, or trade secret information. Exceptions apply to inventions that relate to the employer's business or result from any work performed by the employee for the employer.
- **Access to Personal Electronic Media Accounts** – The legislature passed and Governor Hochul signed into law a bill prohibiting employers from requesting or requiring that an employee or applicant disclose their username or password for social media accounts, blogs, messaging sites, and other similar electronic medium ("personal accounts"). It also prohibits employers from requiring employees or applicants to access the personal accounts in the employer's presence or otherwise reproduce the content to the employer. The law excludes personal accounts used for business purposes, provided the employee was given advance notice of the employer's right to require access to such information. Additionally, employers will not be restricted from viewing information in the public domain that can be accessed without log-in information. The law takes effect March 12.
- **Captive Audience Meeting Ban** – In the midst of a major election year, employers will want to pay attention to this law, which took effect September 6, 2023. New York law now prohibits employers from requiring employees attend or participate in meetings sponsored by the employer concerning the employer's views on political or religious matters (as defined in the law), including the choice to join any labor organization. Employers cannot retaliate against any employee who refuses to attend such a meeting or otherwise refuses to listen to or view communications about the employer's opinion concerning religious or political matters. There are several caveats built into the legislation and it does not apply to religious entities exempt from the requirements of Title VII. Employers must also post a sign informing employees of their rights this law. While the law is currently in effect, it is possible that the U.S. Chamber of Commerce or other entity could bring a challenge to the law as they have done in the neighboring state of Connecticut. The argument made there was that the captive audience ban is preempted by federal law and the National Labor Relations Act. Read more about the ban [here](#).

- **Non-Disclosure Agreements** – New York law permits nondisclosure provisions in settlements of discrimination claims only if confidentiality is the employee's (or other complainant's) preference and a robust process is followed, which includes a mandatory 21-day consideration period and seven-day opportunity to revoke. New York's non-disclosure law became more restrictive as of November 17, 2023. Now, any release of claim will be unenforceable if the employee is required to pay liquidated damages or forfeit all or part of the consideration for the settlement agreement for violating the non-disclosure provision. In addition, the law renders unenforceable any release of claim if a complainant is required to make any affirmative statement that they were not in fact subject to unlawful discrimination. The law also prohibits liquidated damages with respect to violations of a non-disparagement clause. Violation of the law will have steep consequences: it will render the release of claims unenforceable, effectively voiding the settlement agreement. As a silver lining to these additional restrictions, the legislature loosened requirements related to the 21-day review period for non-disclosure agreements, allowing complainants to sign prior to completion of the full 21-day review period should they choose to do so. The law took effect on November 17, 2023, and applies to agreements entered on or after the effective date. Read more about the changes [here](#).

Employer Compliance Mandates

- **Unemployment Benefits Notice** – For years, employers have been required by New York Department of Labor regulations to distribute to employees upon separation (e.g., resignation, layoff, or discharge) a notice informing the employee of their potential eligibility for unemployment benefits and right to file for benefits. The state codified this requirement and expanded it. Employers must now provide a written notice that informs an employee who is permanently, indefinitely, or temporarily laid off; discharged; quits; or has their hours reduced to 30 or less each week of the employee's right to file an application for unemployment benefits. The law took effect on November 13, 2023. Employers should download from the agency's website the updated Record of Employment, Form IA 12.3, for distribution.
- **Artificial Intelligence in Hiring and Promotion/Automated Employment Decision Tools** – After delay, enforcement of New York City's law and rules on automated employment decision tools (AEDTs) finally began July 5, 2023. The City's Local Law 144 prohibits employers and employment agencies from using an automated employment decision tool in hiring and promotion decisions unless the tool has been subject to a bias audit within one year of the use of the tool, information about the bias audit is publicly available, and certain notices have been provided to employees or job candidates. Read more about NYC's AEDT law [here](#) and [here](#).
- **Workers' Bill of Rights** – On December 3, 2023, New York City enacted a local law that will require employers to provide each employee with the Workers' Bill of Rights no later than July 1 and thereafter on or before an employee's first day of work. The Bill of Rights will be a reference tool for employees regarding the rights and protections federal, state, and local laws provided to employees, job applicants, and independent contractors in the City, regardless of immigration status. The Bill of Rights will also provide information about employees' rights to form a union.

Employers must also post the Workers' Bill of Rights in a conspicuous location in the workplace and, where an employer's business operates online or through a mobile application, post the workers' bill of rights online or on such mobile application. City agencies are tasked with creating and publishing the Workers' Bill of Rights that employers must distribute. Read more about the local law [here](#).

- **End of COVID-19 Vaccination Leave** – Gone with the year 2023 is the mandatory vaccination leave employers were required to provide employees that chose to get vaccinated against COVID-19. This measure provided employees with four hours of paid leave per vaccine dose (including boosters). Originally set to expire at the end of 2022, the measure was expanded until the end of 2023 but has now come to an end.
- **Emergency Alert System** – New York lawmakers passed new legislation this past spring creating an emergency alert notification system. Employers may voluntarily register for emergency alerts, including information related to the health and safety of workers, from the notification system. The law took effect on October 15, 2023.

What to Look Forward to in 2024

We expect 2024 will be another busy year in the Empire State when it comes to regulation of the employment relationships. New York lawmakers will likely continue to pass legislation impacting the workplace and expanding protections for employees (and independent contractors).

- High on that list will be continued efforts to **restrict non-compete agreements** in the state. Last year, New York lawmakers passed legislation that would ban employee non-compete agreements, which was vetoed by Governor Hochul shortly before the new year. Reportedly, Governor Hochul wanted the law to include a salary cap so employers could enter into non-competes only with their highest paid executives. While the Governor and legislature were not able to reach an agreement on a salary cap, lawmakers have indicated their intent to continue efforts to enact legislation restricting non-competes.
- Additionally, we can expect to see legislation aimed at providing works with **paid time off for prenatal care**. As a part of efforts to address maternal and infant mortality issues in the state, Governor Hochul has proposed an expansion of New York's Paid Family Leave (PFL) benefits to provide 40 hours of paid leave for prenatal appointments and add prenatal visits as a qualifying condition for PFL.
- Governor Hochul has also proposed amending the state disability benefits law to increase the maximum weekly benefit over the next five years for **paid medical and disability leave** and tie it to the Statewide Average Weekly Wage (SAWW). Once fully phased in, disability benefits would match the benefits for PFL for the first twelve weeks of medical leave, which, for eligible employees, would be 67% of an employee's average weekly wage, capped at 67% of the SAWW.

Conclusion

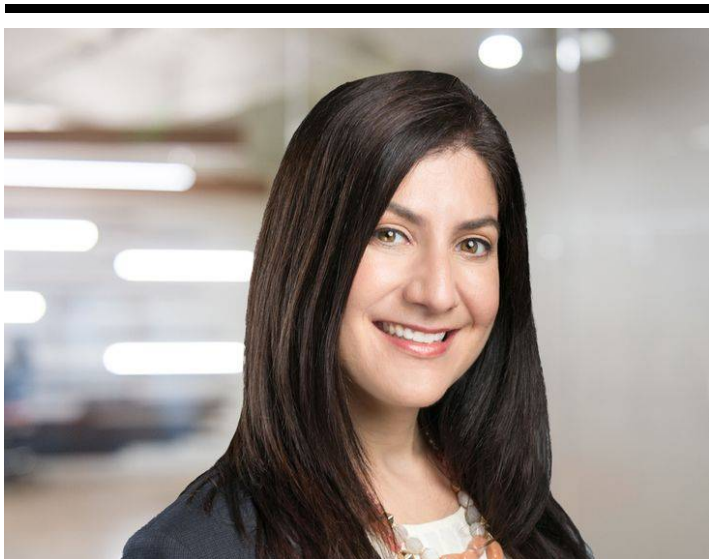
As the new year gets underway, it is crucial to review and assess your policies and procedures for compliance with New York, and where applicable, New York City law. For impending laws that have yet to take effect, you should take proactive steps to ensure you will be ready for their eventual implementation.

We will continue to monitor further developments affecting you, as the legislature is likely to enact more labor related laws in 2024. 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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