

NEW YEAR, NEW LAWS IN NEW YORK

Insights
Dec 20, 2018

As 2018 comes to a close, 2019 will bring new changes to the employment law landscape in New York City and the state of New York. New York employers should be cognizant of these impending new laws, as well as laws that went into effect in 2018, in order to ensure compliance with changing obligations.

MINIMUM WAGE INCREASE

Once again, employers throughout the state of New York will see an increase in the minimum wage effective **December 31, 2018**. In New York City, employers with 10 employees or less will see the minimum wage rise to \$13.50 per hour, and employers with 11 employees or more will see the minimum wage rise to \$15.00 per hour. The minimum wage will increase to \$12.00 per hour for workers in Long Island and Westchester, and \$11.10 per hour for workers in the remainder of New York State.

Fast food workers, who are subject to a higher minimum wage, will also see a pay increase. In New York City, they will see their wages rise to \$15.00 per hour; fast food workers throughout the rest of the state will see an increase to \$12.75 per hour.

TIP CREDIT INCREASE

On **December 31, 2018**, hospitality employers with service employees or food service workers will see an increase in the tip credit that can be taken against an employees' minimum hourly wage, provided that the weekly average of

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tips is at least a specified hourly tip threshold (for service employees only) and the total of tips received plus wages equals or exceeds the basic minimum wage, as follows:

	Service Employees (other than those at resort hotels)	Service Employees at Resort Hotels	Food Service Workers
New York City large employer (11 or more employees)	\$2.50 tip credit/ \$3.25 tip threshold	\$2.50 tip credit/ \$8.40 tip threshold	\$5.00 tip credit
New York City small employer (10 or fewer employees)	\$2.25 tip credit/ \$2.95 tip threshold	\$2.25 tip credit/ \$7.60 tip threshold	\$4.50 tip credit
Long Island/ Westchester employers	\$2.00 tip credit/ \$2.60 tip threshold	\$2.00 tip credit/ \$6.75 tip threshold	\$4.00 tip credit
Remainder of New York State (outside of New York City and Nassau, Suffolk and Westchester counties)	\$1.85 tip credit/ \$2.40 tip threshold	\$1.85 tip credit/ \$6.25 tip threshold	\$3.60 tip credit

SALARY THRESHOLD INCREASE

Effective **December 31, 2018**, the salary basis threshold for executive and administrative employees to be classified as exempt will increase to \$1,012.50 per week (\$52,650 annually) for New York City employers with 10 or fewer employees, and \$1,125.00 per week (\$58,500 annually) for New York City employers with 11 or more employees.

For employers in Nassau, Suffolk, and Westchester counties, the salary basis threshold will increase to \$900 per week (\$46,800 annually). For all other employers in the state of New York, it will rise to \$832.00 per week (\$43,264 annually).

NEW YORK'S PAID FAMILY LEAVE ACT

New York began phasing in its landmark Paid Family Leave law at the beginning of 2018. Currently, eligible employees may take up to eight weeks of job-protected leave to care for a family member with a serious health condition, to bond with a child during the first year after the child's birth, for adoption or foster care placement, or for any qualified exigency arising from a family member's call to active military service, with wage replacement benefits of 50 percent of the employee's average weekly wage, up to a maximum of 50 percent of the current statewide Average Weekly Wage.

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Starting **January 1, 2019**, the number of weeks of paid, job-protected leave for eligible employees will increase to 10 weeks, and the wage replacement benefits will increase to 55 percent of the employee's average weekly wage, up to a cap of 55 percent of the state Average Weekly Wage. Further details about Paid Family Leave are available [here](#).

NEW YORK STATE SEXUAL HARASSMENT LAWS

Governor Andrew Cuomo signed a bill aimed at strengthening and reforming the state's sexual harassment laws in April 2018. The law contains significant new obligations for private employers, many which already took effect, such as:

- Mandatory adoption of a sexual harassment prevention policy, to be distributed in writing to employees (effective October 9, 2018);
- Prohibition of settlement agreements for sexual harassment claims that include nondisclosure provisions, unless confidentiality is the complainant's preference (effective July 11, 2018);
- Prohibition of mandatory arbitration agreements any allegations or claims of sexual harassment are now prohibited, except where inconsistent with federal law (effective July 11, 2018); and
- Extension of sexual harassment protections to nonemployees, such contractors, subcontractors, vendors, consultants or any other person providing services in the workplace (effective April 12, 2018).

Additionally, employers must now provide sexual harassment prevention training to all New York employees on an annual basis. The training must be "interactive" and meet certain minimum standards. New York employers must complete training initially by **October 9, 2019**. A more in-depth look at this sweeping legislation can be found [here](#).

NEW YORK CITY SEXUAL HARASSMENT LAWS

Not to be outdone by the state, in May 2018, Mayor de Blasio signed the "Stop Sexual Harassment in NYC Act," a comprehensive legislative package designed to protect public and private employees from sexual harassment. The

Stop Sexual Harassment in NYC Act is comprised of a series of laws that includes the following provisions:

- New York City employers with 15 or more employees must conduct yearly interactive anti-sexual harassment trainings (beginning **April 1, 2019**) for their employees and within 90 days of start date for new hires, and provide additional trainings to supervisors and managers;
- All New York City employers must conspicuously display an anti-sexual harassment rights and responsibilities poster designed by the New York City Commission on Human Rights and distribute a fact sheet to new employees at time of hire (effective September 6, 2018);
- Expanded coverage for gender and sexual harassment-based claims under city law to all New York City employees; and
- Extension of the statute of limitations for filing complaints directly with the New York City Commission of Human Rights from one year to three years after the alleged conduct occurred for claims of gender-based harassment.

More information regarding this slate of legislation can be found [here](#).

NEW YORK CITY LACTATION ACCOMMODATION LAW

Effective **March 18, 2019**, New York City employers must provide a dedicated lactation room to any employee needing to express breast milk. Additionally, employers must provide employees with a written policy regarding the availability of a lactation room. Additional information about the law can be found [here](#).

WESTCHESTER COUNTY SICK LEAVE LAW

Westchester County recently enacted an Earned Sick Leave Law that will take effect on **March 30, 2019**. The Westchester law requires employers to provide at least 40 hours of sick leave per year to all employees (both full-time and part-time) who work more than 80 hours per year. For employers with five or more employees, the sick leave must be paid. Sick leave may be taken for any of the following reasons:

1. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care or treatment of such illness, injury or health condition; or an employee's need for preventative medical care.
2. The care of a family member (broadly defined under the law) for a mental or physical illness, injury or health condition; for the family member's need for medical diagnosis, care or treatment of such illness, injury or health condition; or for the family member's preventative medical care.
3. Certain situations where the public health authorities have either (1) determined that an employee or family member's presence in the community may jeopardize the health of others or (2) closed the employer's place of business.

Additional information about this law can be found [here](#).

SUFFOLK COUNTY SALARY BAN

Starting **June 30, 2019**, employers and employment agencies in Suffolk County will be prohibited from asking about a job applicant's wage or salary history, including compensation and benefits. The prohibition applies to written and oral inquiries, as well as searches of publicly available records or reports. You can read more about Restrict Information Regarding Salary and Earnings (the "RISE" Act) [here](#).

NEW YORK CITY TEMPORARY SCHEDULE CHANGE LAW

As of **July 18, 2018**, New York City employees (whether full-time, part-time, or temporary) who work more than 80 hours per calendar year in New York City and who have been employed for a least 120 days are entitled to a temporary change to the employee's work schedule on up to two (2) occasions, each totaling one (1) business day, each year to accommodate a "personal event." A temporary change can include swapping or shifting working hours, using short-term unpaid leave, paid time off, or working remotely.

Employees may request a temporary change for the following personal events:

- to care for a child under the age of 18;

- to care for a person with a disability who is a family or household member and relies on the employee for medical care to meet the needs of daily living;
- to attend a legal proceeding or hearing for public benefits to which the employee, a family member, or the employee's minor child or care recipient is a party; or
- any other reason for which the employee may use leave under New York City's Earned Safe and Sick Time Act.

Employers also must post a Notice of Employee Rights in the workplace, informing employees of their rights under this law. Additional details are available [here](#) and [here](#).

NEW YORK CITY COOPERATIVE DIALOGUE LAW

As of **October 15, 2018**, New York City employers must engage in a "cooperative dialogue" with any employee who has requested a reasonable accommodation related to the employee's religious beliefs, disability, pregnancy, childbirth or related condition, or because the individual was a victim of domestic violence, sex offenses, or stalking. Specifically, employers must engage in a good faith written or oral "cooperative dialogue" with the employee, addressing: (1) the employee's accommodation needs; (2) potential accommodations that may address the needs, including alternatives to an employee's requested accommodation; and (3) the difficulties that such potential accommodations may pose for the employer's business.

After a final determination is made at the conclusion of the "cooperative dialogue," the employer must provide the employee with a final written determination as to whether or not the accommodation is granted or denied. Further details about the cooperative dialogue law can be found [here](#).

PROPOSED NEW YORK STATE "CALL-IN" REGULATIONS

The New York State Department of Labor recently issued proposed regulations seeking to curb on-call scheduling, "call-in" shifts, and last-minute shift changes. The proposed regulations endeavor to provide employees with more predictable schedules, or compensate them for last-minute schedule changes.

The proposed regulations would require employers to pay employees (1) when they report for work, (2) for unscheduled shifts (3) for canceled shifts, (4) for on-call time and (5) for call for schedule shifts. While these regulations are currently subject to a public review and comment period through **January 11, 2019**, final regulations are expected to be issued during the first quarter of 2019. Additional information regarding these proposed regulations can be found [here](#).

CONCLUSION

As the year comes to a close, now would be a good time for employers in the Empire State and the Big Apple to do a comprehensive review of their employment policies and practices to ensure they are in compliance with each of these laws. For those laws that have not yet become effective, employers should take proactive steps to ensure that they will be in compliance when the time comes.

The past year proved to be a busy year for new state and local laws impacting employers, and 2019 is likely to bring even more changes. Employers should stay tuned for future updates. We will continue to monitor further developments both city and statewide, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For help with compliance steps or to answer questions, please contact your Fisher Phillips attorney or any attorney in our [New York City office](#).

This Legal Alert provides information about a specific state, city, and county laws. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.