



New York Rings in the New Year with New Workplace Laws

Insights

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With another busy year for employment law legislation throughout New York State and New York City coming to a close, New York employers should be aware of new employment laws that will take effect in 2020, as well as laws that already took effect in 2019, to ensure compliance with changing obligations.

Minimum Wage Increase

Once again, employers throughout New York will see an increase in the minimum wage effective **December 31, 2019**. In New York City, employers with 10 employees or fewer will see the minimum wage rise to \$15.00 per hour, catching up to the minimum wage for employees who work for large NYC employers (11 or more employees), which will hold steady at \$15.00 per hour. The minimum wage will increase to \$13.00 per hour for workers in Long Island and Westchester, and \$11.80 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 to \$13.75 per hour if they work outside of New York City. The minimum wage for fast food workers in New York City will remain \$15.00 per hour.

Tip Credit Increase

On **December 31, 2019**, 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 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/\$3.25 tip threshold	\$2.50/\$8.40 tip threshold	\$5.00
New York City small employer (10 or fewer employees)	\$2.50/\$3.25 tip threshold	\$2.50/\$8.40 tip threshold	\$5.00
Long Island/Westchester employers	\$2.15/\$2.80 tip threshold	\$2.15/\$7.30 tip threshold	\$4.35
Remainder of New York State (outside of	\$1.95/\$2.55 tip	\$1.95/\$6.60 tip	\$3.95

Salary Threshold Increase

Effective **December 31, 2019**, the salary basis threshold for executive and administrative employees to be classified as exempt will increase to \$1,125.00 per week (\$58,500 annually) for New York City employers with 10 or fewer employees (and will equal that for large New York City employers).

For employers in Nassau, Suffolk, and Westchester counties, the salary basis threshold will increase to \$975.00 per week (\$50,700 annually). For all other employers in the state of New York, it will rise to \$885.00 per week (\$46,020 annually).

New York's Paid Family Leave Benefits

New York's Paid Family Leave law, which provides 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, has been phasing in its benefits annually since January 1, 2018. As of **January 1, 2020**, the number of weeks of paid, job-protected leave for eligible employees will remain at 10 weeks, but the wage replacement benefits will increase to 60% of the employee's average weekly wage, up to a cap of 60 percent of the state Average Weekly Wage. The maximum weekly benefit will be \$840.70. Further details about Paid Family Leave are available [here](#).

New York State Harassment Laws

On August 12, 2019, Governor Cuomo signed a bill aimed at strengthening and reforming the state's anti-harassment and anti-discrimination laws, building on the expansive [sexual harassment laws enacted in 2018](#). The 2019 laws contain significant new obligations for private employers, many of which already took effect and some of which will become effective in 2020, such as:

- Expanding coverage of the New York State Human Rights Law (NYSHRL) to employers of all sizes (effective **February 8, 2020**);
- Lowering the long-standing "severe or pervasive" standard for harassment claims (effective **October 11, 2019**);
- Eroding the *Faragher-Ellerth* defense, which previously allowed an employer to defeat a harassment claim if the employee failed to take advantage of preventative or corrective opportunities provided by the employer, such as failing to report alleged misconduct through an available and appropriate reporting mechanism (effective **October 11, 2019**);
- Extending all the state's anti-harassment laws to independent contractors and other non-employees providing services in the workplace (effective **October 11, 2019**);
- Allowing recovery of attorneys' fees and punitive damages for successful NYSHRL claimants (effective **October 11, 2019**);

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- Prohibiting settlement agreements for all discrimination claims that include nondisclosure provisions, unless the complainant prefers confidentiality (effective **October 11, 2019**);
- Banning contractual agreements between an employer and employee that prevent disclosure of factual information related to any future claim of discrimination, unless the provision notifies the employee that they are not prohibited from speaking with law enforcement, the EEOC, the NYSDHR, a local human rights agency, or an attorney retained by the employee (effective **January 1, 2020**);
- Lengthening the statute of limitations for individuals to file a charge with the New York State Division of Human Rights from one year to three years (effective **August 12, 2020**); and
- Requiring employers to provide employees with a copy of its sexual harassment policy and the information presented in the employer's harassment prevention training both at the time of hire and at every annual sexual harassment training (effective **August 12, 2019**).

A more in-depth look at this sweeping legislation can be found [here](#).

Statewide Pay Equity Reforms

The New York State Achieve Pay Equity Act was amended to expand pay equity protection for employees beyond gender-based pay differentials. Effective **October 8, 2019**, pay differentials are not only prohibited based on an employee's gender, but also based on any of the protected classes under the New York State Human Rights Law, including age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, and domestic violence victim status. The amendments also lowered an employee's burden to prove a claim for pay discrimination.

Additionally, effective **January 6, 2020**, all New York employers will be prohibited from inquiring about the salary history of a job candidate or relying on salary history in determining the wages to offer a prospective employee. More information regarding this slate of pay equity legislation can be found [here](#).

NYC Bans Pre-Employment Marijuana Testing

As of **May 10, 2020**, New York City employers will be prohibited from conducting pre-employment drug testing for THC, the active ingredient in marijuana. The law does not apply to certain safety-sensitive positions. Additional information can be found [here](#).

Expanded Anti-Discrimination Protections

- **Transgender Discrimination:** Effective **February 24, 2019**, transgender individuals are protected from discrimination statewide. The Gender Expression Non-Discrimination Act amended the NYSHRL to add gender identity and expression to the list of protected classes, making discrimination based on gender identity or expression unlawful, including in the workplace. More information is available [here](#).

- **Hairstyle Discrimination:** New York State passed legislation explicitly prohibiting discrimination based on traits historically associated with race, including hair texture and protective hairstyles, such as braids, locks, and twists. This law took effect on **July 12, 2019**. Further details are available [here](#).
- **Religious Attire and Facial Hair:** An amendment to the NYSHRL effective **October 8, 2019** expressly prohibits employers from taking discriminatory action against an employee for wearing clothing, attire or facial hair associated with the requirements of the employee's religion. The employer bears the burden of demonstrating it cannot reasonably accommodate the employee's religious practice, such as wearing a yarmulke, headscarf, turban, burqa, or hijab, without undue hardship to the business. Further information is available [here](#).
- **Protections for Domestic Violence Victims:** The NYSHRL was amended effective **November 18, 2019** to provide increased workplace protections for victims of domestic violence. In addition to enumerating certain unlawful discriminatory practices with respect to victims of domestic violence in the workplace, such as refusing to hire or terminating someone because they are a victim of domestic violence, the amendment requires employers to provide reasonable time off to allow employees who are domestic violence victims to participate in legal proceedings related to the offense or to obtain health or safety services. More details can be found [here](#).
- **Reproductive Health Decisions:** Both New York State and New York City enacted laws banning employment discrimination based on an individual's reproductive health choices, in response to the federal government's efforts to curtail reproductive health access. Effective **May 20, 2019**, New York City employers cannot discriminate against applicants or employees based on sexual and reproductive health decisions. Additional information is available [here](#). After the City enacted its law, New York State followed suit. As of **November 8, 2019**, New York employers are prohibited from accessing an employee's personal information regarding the reproductive health decision making of an employee or their dependent. Additionally, New York employers cannot discriminate or take any retaliatory personnel actions against an employee because of the employee's or their dependent's reproductive health decision making.
- **Expansion of the NYCHRL to Independent Contractors:** Beginning **January 11, 2020**, the antidiscrimination protections afforded to New York City employees will extend to independent contractors and freelancers. This means that independent contractors will be able to file complaints with the New York City Commission on Human Rights and pursue civil remedies in a court of law for discrimination or harassment based on race, color, creed, age, national origin, alienage or citizenship status, gender, gender identity, sexual orientation, disability, marital status, partnership status, or any other characteristic protected by the New York City Human Rights Law. Additional information is available [here](#).
- **Retaliation for Reasonable Accommodation Requests:** The New York City Human Rights law was amended to prohibit retaliation against individuals who request a reasonable accommodation. This law took effect **November 11, 2019**.

Strengthened Data Breach and Privacy Law

On July 25, 2019, Governor Cuomo signed into law the Stop Hacks and Improve Electronic Data Security Act (SHIELD Act). It creates additional protections for New York residents' private information and seeks to improve cybersecurity measures for those who possess private information about New York residents. Modifications to the data breach notification law took effect **October 23, 2019** and new data security protections will become effective on **March 21, 2020**. More information about these expansive new requirements is available [here](#).

Expanded Voting Leave

New York State revised its election law to provide workers expanded time off to vote. As of **April 1, 2019**, workers in New York can take up to three hours of paid time off to vote, regardless of whether the employee's work schedule allows them sufficient time to vote before or after their shift.

New York Labor Law Anti-Retaliation

The New York Labor Law was amended to codify case law interpreting its anti-retaliation provisions to prohibit an employer from threatening to contact immigration authorities about an employee or an employee's family member. Under this law, employers cannot threaten immigrant workers with potential deportation in retaliation for the employee standing up for their rights under the state's labor laws. This provision took effect **October 25, 2019**.

Westchester Sick and Safe Time Leave

Westchester County passed the [Earned Sick Leave Law](#), which provides Westchester County employees with up to 40 hours of paid sick leave per year, as of **March 30, 2019**. On the heels of this law, the county legislature passed the Safe Time Leave for Victims of Domestic Violence and Trafficking Law, which took effect **October 30, 2019**. Under the Safe Time Law, employees who work in Westchester County who are victims of domestic violence or human trafficking are entitled to up to 40 hours of paid safe leave per year to (a) attend or testify in criminal or civil court proceedings related to domestic violence or human trafficking, or (b) move to a safe location. This leave is in addition to the sick leave provided by the Earned Sick Leave Law. Additional information can be found [here](#).

Conclusion

Given the timing, you should comprehensively review your employment policies and practices to ensure compliances with ever-changing state and local employment laws. For those laws that have not yet taken effect, you should take proactive steps to ensure you will be ready to comply when the time comes.

We will continue to monitor further developments affecting you, as the changeable legal landscape is likely to continue in 2020. 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 an overview of specific state and local laws. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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