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# 2023 New York Employment Law Updates

As we start 2023, New York employers should take note of recent and upcoming employment law updates. Below, we highlight the key employment law developments that employers should have on their radar in 2023.

## Electronic Copies of Mandatory Workplace Postings

As of December 16, 2022, Section 201 of the New York Labor Law requires employers to maintain electronic copies of all mandatory employment postings that are published in the workplace, including all postings physically posted at the workplace pursuant to state or federal law or regulation. The electronic copies must be readily available to employees on the employer's website or through e-mail. Employers are also required to inform employees that they have a right to obtain employment postings electronically. The law took effect immediately after Governor Kathy Hochul signed it on December 16.

## Minimum Wage Increase

Although the minimum wage in New York City, Long Island and Westchester County remains at $15.00 per hour, employers in the rest of the state face an increase from $13.20 to $14.20 per hour as of December 31, 2022.

There have also been changes to the hourly wage rate and maximum tip credit for service employees. For tipped service employees outside of New York City, Westchester County and Long Island, the minimum hourly wage in New York increased from $11.00 to $11.85, and the maximum tip credit amount increased from $2.20 to $2.35. For tipped food service workers, the minimum hourly wage increased from $8.80 to $9.45, and the maximum tip credit amount increased from $4.40 to $4.75.

The minimum hourly wage rate for tipped service employees in New York City, Westchester County and Long Island is $12.50, and the maximum tip credit amount is $2.50. For tipped food service workers in New York City, Westchester County and Long Island, the minimum hourly wage is $10.00 and the maximum tip credit amount is $5.00.

In addition, the salary threshold for executive and administrative employees who are classified as exempt from overtime laws has increased from $990.00 to $1,064.25 per week for employees outside of New York City, Westchester County and Long Island. The salary threshold for exempt executive and administrative employees working in New York City, Westchester County and Long Island remains $1,125.00 per week.

## New York Paid Family Leave Changes

As we previously reported, there are several updates to the New York Paid Family Leave Law that took effect in January. As of January 1, the definition of "family member" under the New York Paid Family Leave Law has been expanded to include siblings. This means that employees may now take paid family leave to care for a sibling with a serious health condition. The term "sibling" includes biological, adopted, step- and half-siblings, regardless of where they reside.

In addition, the New York statewide average weekly wage is now $1,688.19, which means the maximum weekly benefit is $1,131.08. This is $62.72 more than the maximum weekly benefit for 2022. Also, employees will now contribute 0.455 percent of their gross wages per pay period. The maximum annual contribution for 2023 is $399.43, which is $24.28 less than the maximum annual contribution in 2022.

## Protected Absences

As we reported in December, as of February 19, employers may not discipline employees for taking lawful absences pursuant to federal, state or local law. Section 215 of the New York Labor Law, which prohibits employers from penalizing, threatening, or discriminating or retaliating against employees for engaging in activities that are protected under the law, has now been amended to include an employee's use of any legally protected absence pursuant to federal, local or state law as a protected activity. Although the law does not expressly define a legally protected absence pursuant to federal, local or state law, it presumably protects the use of any absences or leaves granted by the New York Paid Family Leave Law, the New York Paid Sick Leave Law, the New York Emergency COVID-19 Paid Sick Leave Law, the New York Paid Leave for COVID-19 Vaccinations Law, the New York City Safe and Sick Leave Law, the Family and Medical Leave Act, and the Americans with Disabilities Act, as well as other laws that authorize employee absences or leaves.

The amendment to Section 215 of the New York Labor Law also prohibits employers from "assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay." Accordingly, this provision effectively prohibits the use of no-fault attendance policies in New York.

The law provides a private cause of action for current and former employees to initiate a lawsuit to recover damages from employers that violate their rights under the law. In addition, the New York Department of Labor (NYDOL) may require employers that violate Section 215 to provide liquidated damages, back pay, and reinstatement or front pay. The NYDOL can also impose civil penalties of between $1,000 and $10,000 on first-time violators and up to $20,000 for subsequent violations.

## New York Paid Vaccination Leave Extended

The New York State Paid Vaccination Leave has been extended through December 31. The law requires that all employers provide employees with up to four hours of paid leave to receive a COVID-19 vaccination, including boosters.

The New York City Child Vaccination Leave law, which required employers to provide paid time off for employees to accompany their children when they receive COVID-19 vaccinations, expired on December 31, 2022.

Separately, the New York State COVID-19 Sick Leave law remains in effect. The law requires employers to provide job-protected sick leave to employees who need to take leave because they are under a mandatory or precautionary order of quarantine or isolation due to COVID-19. The amount of sick leave and whether the leave must be paid depend on the number of employees an employer has and the employer's net annual income.

## New York City Automated Employment Decision Tools Law Postponed to April

As we previously reported, the New York City Automated Employment Decision Tools Law was originally set to take effect in January. This law regulates New York City employers' use of automated employment decision tools in hiring and other employment-based decisions, with the intent of protecting employees and applicants from biases resulting from the use of such tools.

On September 23, 2022, the New York City Department of Consumer and Worker Protection (DCWP) published its proposed rules for the law. A public hearing on the proposed rules was held on November 4, 2022. However, the DCWP announced that due to the high volume of public comments, it will hold a second public hearing on January 23 and is postponing enforcement of the law until April 15.

## Amendments to the Nursing Mothers in the Workplace Act

On December 9, 2022, Governor Hochul signed into law amendments to the Nursing Mothers in the Workplace Act (New York Labor Law Section 206-c), which implements new written policy requirements and mandatory specifications for lactation rooms that will go into effect on June 7.

There are several key amendments that employers should be aware of. The law will require employers to provide a location for employees to express milk that is (1) close to the work area; (2) well lit; (3) shielded from view; and (4) free from intrusion from other persons in the workplace or from the public. The designated location cannot be a restroom or toilet stall. In addition, the designated location must include, at a minimum, the following: (1) a chair; (2) a working surface; (3) nearby access to clean running water; and (4) if the workplace has electricity, an electrical outlet. Notably, New York City law has already required New York City employers to comply with similar lactation accommodation specifications since 2018.

The law requires the New York Labor Commissioner to develop and publish a written policy setting forth the rights of nursing employees to express breast milk in the workplace. Employers will be required to distribute such written policy to each employee upon hire, annually and upon returning to work following the birth of a child. In addition to informing employees of their rights, the written policy will set forth how a request may be submitted to the employer for a location that an employee can use to express breast milk, and it will require the employer to respond to such requests in a reasonable time frame, not to exceed five business days.

The law also prohibits employers from retaliating against employees for exercising their rights under the law.

## New York State Pay Transparency Law

On December 21, 2022, Governor Hochul signed the New York State Pay Transparency law. The law will take effect in September.

As we previously reported, the law requires employers with more than four employees to include, in any advertisement for a job, promotion, or transfer opportunity that can or will be performed in the state of New York, the minimum and maximum annual salary or hourly range of compensation that the employer in good faith believes to be accurate at the time of the posting. The law also requires employers to disclose the applicable job description for the advertised position, if one exists. In addition, the law requires employers to keep and maintain certain records that demonstrate compliance with the statute, such as the history of compensation ranges for each job, promotion, or transfer opportunity and the job descriptions for such positions, if such job descriptions exist. If an advertised position is paid solely on commission, the advertisement must disclose a general statement providing that "compensation shall be based on commission."

The law prohibits employers from discriminating or retaliating against applicants or current employees for exercising their rights under the law. Although the law does not create a private right of action, applicants or employees may file a complaint with the New York Commissioner of Labor. Employers that fail to comply with the law may be subject to civil penalties not to exceed $1,000 for the first violation, $2,000 for the second violation, and $3,000 for the third and subsequent violations. The Commissioner of Labor is expected to issue rules and regulations related to the law prior to the effective date of the law.

## New York City Pay Transparency Law

As a reminder, the New York City Pay Transparency Law went into effect on November 1, 2022. As we previously reported, and similar to the New York State Pay Transparency Law discussed above, the New York City law requires employers with four or more employees and all employment agencies to disclose the minimum and maximum salaries or hourly wages offered in advertisements for jobs, including remote positions that can or will be performed, at least in part, in New York City.

## Adult Survivors Act

On November 24, 2022, the New York Adult Survivors Act went into effect. The Adult Survivors Act created a one-year window during which survivors of sexual assault that occurred when they were over age 18 can sue alleged offenders regardless of any applicable statute of limitations. Claimants must allege that they were the victim of a sexual offense as defined by New York Penal Code Art. 130, which includes sexual misconduct, rape and sexual assault. In addition, the act allows claimants to file related claims of negligence or intentional conduct against public or private institutions, employers, and organizations if they were connected to the alleged offender and abuse.

The one-year window is set to expire on November 24. Before that date, employers may be sued for various claims including negligent hiring or retention relating to a sexual offense, notwithstanding any previously applicable statute of limitations.

## The Bottom Line

In sum, there are many employment law updates that New York employers should be tracking in 2023, and there will likely be more to follow. Employers are encouraged to stay up to date with these evolving laws and to review their workplace policies to ensure that they are complying with the laws.

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For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

# Authors




### Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



### Howard Fetner
Counsel

New Haven, CT | (203) 752-5012

hfetner@daypitney.com



### Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com




## Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com





## Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com





## James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com





## Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com