

New York Increases the Minimum Wage and Enacts Paid Family Leave

On April 4, 2016, Governor Cuomo signed legislation, as part of the 2016-2017 state budget, enacting a \$15.00 minimum wage plan and a 12-week paid family leave benefit.

Minimum Wage Increase

The legislation includes a historic increase in the minimum wage (currently \$9.00 per hour) that will ultimately reach \$15.00 per hour for all workers in New York State. The increases vary based on employer size and geographic location as follows:

- For large employers (11 or more employees) whose employees work in New York City, the state minimum wage will increase to \$11.00 per hour on December 31, 2016, \$13.00 per hour on December 31, 2017, and \$15.00 per hour on December 31, 2018.
- For small employers (10 or fewer employees) whose employees work in New York City, the state minimum wage will increase to \$10.50 per hour on December 31, 2016, \$12.00 per hour on December 31, 2017, \$13.50 per hour on December 31, 2018, and \$15.00 per hour on December 31, 2019.
- For employers with employees working in Nassau, Suffolk, and Westchester Counties, the state minimum wage will increase to \$10.00 per hour on December 31, 2016, \$11.00 per hour on December 31, 2017, \$12.00 per hour on December 31, 2018, \$13.00 per hour on December 31, 2019, \$14.00 per hour on December 31, 2020, and \$15.00 per hour on December 31, 2021.
- For all employers with employees working outside of New York City and Nassau, Suffolk, and Westchester counties, the state minimum wage will increase to \$9.70 per hour on December 31, 2016, \$10.40 per hour on December 31, 2017, \$11.10 per hour on December 31, 2018, \$11.80 per hour on December 31, 2019, and \$12.50 per hour on December 31, 2020. The minimum wage will continue to increase to \$15.00 thereafter on an indexed schedule to be set by the Director of the Budget in consultation with the Commissioner of the Department of Labor. These increases will be published on or before October 1st of each year.

The legislation also includes a safety measure allowing the Division of Budget, beginning in 2019, to conduct an annual analysis to determine whether there should be a temporary suspension or delay in any scheduled increases. These minimum wage increases do not affect the timing and amounts of the minimum wage increases for fast food workers that were incorporated into the [Hospitality Industry Wage Order](#) effective December 31, 2015.

Paid Family Leave

In addition to a gradual increase in the minimum wage, a paid family leave program was enacted that will eventually result in eligible employees being entitled to up to 12 weeks of paid family leave when they are out of work for the following qualifying reasons: (1) to care for a family member with a serious health condition; (2) to bond with a child during the first 12 months following birth or placement for adoption or foster care; or (3) because of a qualifying exigency arising out of the fact that the employee's spouse, domestic partner, child, or parent is on active duty (or has been notified of an impending call or order to active duty) in the armed forces.

In order to be eligible for paid family leave, employees must work for a covered employer – as defined under the New York Disability Law – for 26 or more consecutive weeks. Family leave benefits will be phased in as follows:

- Beginning on January 1, 2018, eligible employees will receive up to 8 weeks of paid family leave in a 52-week calendar period at 50% of the employee's average weekly wage, capped at 50% of the state average weekly wage;
- Beginning on January 1, 2019, eligible employees will receive up to 10 weeks of paid family leave in a 52-week calendar period at 50% of the employee's average weekly wage, capped at 50% of the state average weekly wage;
- Beginning on January 1, 2020, eligible employees will receive up to 10 weeks of paid family leave in a 52-week calendar period at 60% of the employee's average weekly wage, capped at 60% of the state average weekly wage; and
- Beginning on January 1, 2021 and each year thereafter, eligible employees will receive up to 12 weeks of paid family leave in a 52-week calendar period at 67% of the employee's average weekly wage, capped at 67% of the state average weekly wage.

Like with the minimum wage increase, the legislation includes a safety measure whereby the Superintendent of Financial Services has the discretion to delay the scheduled increases listed above.

Family leave benefits may be payable to employees for family leave taken intermittently or for less than a full workweek in increments of one full day or one-fifth of the weekly benefit. Significantly, employers are not required to fund any portion of this benefit. Rather, the program is funded entirely through a nominal employee payroll deduction. The maximum employee contribution will be set by the Superintendent of Financial Services on June 1, 2017 and annually thereafter.

Entitlement to paid family leave is also subject to certain medical certification and notification requirements. Paid family leave benefits must be used concurrently with leave under the Family and Medical Leave Act. In addition, employees are prohibited from collecting disability and paid family leave benefits concurrently.

In addition to paid leave, this legislation contains a provision for the continuation of health benefits which provides as follows: "In accordance with the Family and Medical Leave Act (29 U.S.C. §§ 2601-2654), during any period of family leave the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date he or she commenced family leave until the date he or she returns to employment."

Lastly, employees who take paid family leave must be restored to their current position or to a comparable position with equivalent pay, benefits, and other terms and conditions of employment.

Clearly, there are a lot of questions that remain unanswered regarding the paid family leave program. However, covered employers should begin to prepare for the implementation of this legislation.

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