

New York State Will Provide Paid Family Leave and \$15 Minimum Wage

Article By:

William J. Milani

Jeffrey M. Landes

Dean L. Silverberg

Susan Gross Sholinsky

Steven M. Swirsky

Nancy Gunzenhauser Popper

On March 31, 2016, **New York State**'s governor and legislative leaders announced an agreement on the state's budget for 2016-2017 ("Budget"). *Governor Andrew Cuomo* signed the [bill](#) enacting the Budget at a press conference yesterday at the Javits Center. The Budget will impact two areas important to New York employers. First, the Budget enacts a law providing the country's most comprehensive paid family leave benefit through the state's existing Disability Benefits Law ("Paid Family Leave Benefits Law"). Second, the Budget enacts a law increasing the minimum wage to \$15.00 per hour in some, but not all, counties by 2021 ("Minimum Wage Law").^[1]

Paid Family Leave Benefits

The Budget amends New York's current Disability Benefits Law to establish paid family leave benefits. Beginning January 1, 2018, employees who have worked for a covered employer for 26 or more consecutive weeks will be eligible for paid family leave benefits. At the outset, employees will be entitled to eight weeks of paid leave, increasing to 12 weeks of paid leave by January 1, 2021. Eligible employees will receive pay at a schedule established by New York State, as described below.

Eligibility for Leave

Paid family leave benefits may be taken for "family leave," defined as any leave:

- to participate in providing care, including physical or psychological care, for a family member

of the employee made necessary by a serious health condition[2] of the family member; or

- to bond with the employee's child[3] during the first 12 months after the child's birth, or the first 12 months after the placement of the child for adoption or foster care with the employee; or
- because of any qualifying exigency as interpreted under the federal Family and Medical Leave Act arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces.

Unlike New York's disability benefits, there will be no waiting period before employees become eligible to receive paid family leave benefits; benefits will be payable during the first full day when family leave is required.

Employers may establish rules limiting employees from receiving paid family leave benefits at the same time as another employee for the care of the same family member.

Family Leave Benefits—Payments and Annual Increases

The length of available leave benefits, and amount of weekly benefits, will increase yearly, on the following schedule:

Date	Length of Benefits Within a 52-Week Calendar Period	Amount of Benefits
January 1, 2018	8 weeks	50% of average weekly wage, not to exceed 50% of the state average weekly wage
January 1, 2019	10 weeks	55% of average weekly wage, not to exceed 55% of the state average weekly wage
January 1, 2020	10 weeks	60% of average weekly wage, not to exceed 60% of the state average weekly wage
January 1, 2021	12 weeks	67% of average weekly wage, not to exceed 67% of the state average weekly wage

The State Superintendent of Financial Services may delay the increases in paid family leave benefits if such increases have a negative impact on the state's economy.

Interaction with Other Laws and Benefits

Employees who are also eligible for disability benefits may only receive a combined amount of 26 weeks of disability benefits and paid family leave benefits in a 52-consecutive calendar week period. Employees may not collect benefits for disability and paid family leave concurrently.

During any time that employees are receiving paid family leave benefits, employers may permit an

employee to choose whether the employee will use accrued, unused vacation or personal time to receive a full salary while on leave. Employers may not require that employees use such accrued, unused vacation or personal time while receiving benefits. However, if an employee chooses to use such vacation or personal time, an employer may request reimbursement from the employee for any paid family leave benefits received by the employee during that period.

While an employee is receiving paid family leave benefits, employers will be required to maintain any existing health benefits on behalf of the employee.

The Paid Family Leave Benefits Law establishes non-retaliation provisions that protect employees from retaliation by employers because the employee filed for or received such benefits. Further, employers will be required to reinstate employees to the position held when leave commenced, or to be restored to a comparable position with comparable benefits, pay, and other terms and conditions of employment. The Paid Family Leave Benefits Law, however, does not diminish the rights, privileges, or remedies of any employee under a collective bargaining agreement or employment contract.

Employee Contributions

The State Superintendent of Financial Services will set the maximum employee contribution for family leave benefits, which is estimated to be a nominal weekly amount. Employers will not be required to fund paid family leave benefits.

Minimum Wage Increases

A [report](#) issued by the New York State Department of Labor in February 2016 found that raising the minimum wage would directly benefit 2.3 million workers. New York is one of many states, including Oregon and California, establishing state-wide minimum wage increases.

The Minimum Wage Law provides a tiered increase to the minimum wage for work performed in New York City from the current statewide rate of \$9.00 per hour. The Minimum Wage Law provides for a longer implementation period for small employers in New York City and for counties outside New York City. The law divides the state into three areas—(1) the five boroughs of New York City, (2) certain suburban counties (Westchester, Nassau, and Suffolk), and (3) the rest of the state. New York City, with the highest cost of living, will see the most radical change. Employers will be required to pay workers \$15.00 per hour by the end of 2018 or 2019, depending on the employee-size of the business.

The increases for work performed in New York City follow this schedule:

Effective Date	Small NYC Employers (10 or less employees)	Large NYC employers (11 or more employees)
December 31, 2016	\$10.50	\$11.00
December 31, 2017	\$12.00	\$13.00
December 31, 2018	\$13.50	\$15.00
December 31, 2019	\$15.00	

Nassau, Suffolk, and Westchester Counties will see more gradual increases over a longer time period. For these counties, the minimum wage is set to increase to \$10.00 per hour by December 31, 2016, and then \$1 every year^[4] until reaching \$15.00 per hour on December 31, 2021.

For work performed in the rest of the state, the minimum wage increase will be even more gradual. The minimum wage will increase to \$9.70 per hour on December 31, 2016, followed by a 70-cent increase every year until December 31, 2020, when the minimum wage will reach \$12.50 per hour.^[5] After December 31, 2020, the minimum wage in these counties will continue to increase on an indexed schedule to be set by the Director of the Division of Budget (“DOB”) in consultation with the Commissioner of Labor.

Tipped Minimum Wage

The Minimum Wage Law further provides that the tipped minimum wage in the hospitality industry will be calculated, based on the minimum wage in the locality, to be the greater of (i) two-thirds of the current minimum wage, rounded to the nearest five cents, or (ii) \$7.50. The employee may receive the tipped minimum wage provided that the tips, when added to the employee’s wages, are equal to or exceed the minimum wage in effect for that location.

Annual Reassessment of Minimum Wage—“Safety Valve” Provision

As with the Paid Family Leave Benefits Law, the Budget includes a so-called “safety valve” provision in case the increases have a negative impact on the state’s economy. Under this provision, on or after January 1, 2019, the DOB will conduct an annual analysis of the state of the economy in each region and the effect of the minimum wage increases to determine whether there should be a temporary suspension or delay in any scheduled increases. The DOB will issue a report and recommendation to the Commissioner of Labor, who will then decide whether or not to suspend or delay increases in the minimum wage.

What New York Employers Should Do Now

- Review family and medical leave policies to make sure that they make appropriate references to, and comply with, the Paid Family Leave Benefits Law.
- Review minimum wages for your employees based on the counties in which you do business and where employees perform work to identify workers whose wages will need to be increased.
- Consider conducting a comprehensive wage review to determine whether changes should be made to your company’s compensation structure.
- Ensure that your payroll personnel or payroll service provider takes the appropriate actions to effectuate the minimum wage increases and procedures for administering paid family leave benefits, including appropriate deductions.
- Review collective bargaining agreements covering persons employed in New York State to assess what impact, if any, the changes to the minimum wage and the adoption of paid family leave benefits may have on contractual obligations.

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