

New York Enacts Paid Family Leave Law and Minimum Wage Increases

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Governor Cuomo signs legislation enacting comprehensive paid family leave policy and minimum wage increases.

NEW YORK PAID FAMILY LEAVE PROGRAM

On April 4, **New York Governor Andrew Cuomo** signed legislation that will require all employers to provide paid family leave benefits to eligible employees as part of the state's already-existing temporary disability insurance program. Notably, the family leave benefits program is currently designed as funded entirely through employee contributions and expressly relieves employers of any obligation to contribute.

PAID FAMILY LEAVE BENEFITS

Under the program, which is included in New York's 2016-17 state budget, eligible employees will be provided paid family leave benefits to

- provide physical or psychological care to a family member with a serious health condition;
- bond with a biological, adopted, or foster child during the first 12 months after the child's birth (or placement for adoption or foster care with the employee); or
- relieve family pressures when the employee's spouse, domestic partner, child, or parent is on active military duty.

An employee must work a minimum of six months to be eligible for paid family leave benefits and, to the extent the leave is foreseeable, must provide the employer with at least 30 days' notice prior to taking leave.

Paid leave benefits will be available starting January 1, 2018 and will gradually increase as follows:

Effective Date	Amount of Paid Family Leave Per Any 52-Week Calendar Period	Amount of Benefit	Cap
January 1, 2018	8 weeks	50% of the employee's average weekly wage	50% of the state average weekly wage
January 1, 2019	10 weeks	55% of the employee's average weekly wage	55% of the state average weekly wage
January 1, 2020	10 weeks	60% of the employee's average weekly wage	60% of the state average weekly wage
January 1, 2021	12 weeks	67% of the employee's average weekly wage	67% of the state average weekly wage

Once in effect, paid family leave benefits cannot drop below \$100 per week, except if the employee's wages at the time are less than \$100 dollars per week (in such instance, the employee will receive his or her full wages as the amount of benefit). Further, employers may provide family leave benefits for those employees taking intermittent leave or leave that is less than a full workweek in increments of one full day (i.e., 1/5 of the weekly benefit).

Funding. Paid leave benefits will be funded through payroll deductions, subject to certain caps. The State Superintendent of Financial Services will retain discretion to delay the increases in the family leave benefit level depending on a number of factors, including the following:

- The current cost to employees of the family leave benefit
- The current number of insurers issuing policies with a family leave benefit
- The impact of the benefit increase on the employers' business and the overall stability of the program
- The impact of the benefit increase on the financial stability of the disability and family leave insurance market and carriers
- Any additional factors that the superintendent deems relevant

Additionally, employers may offer employees the option of using, in lieu of the paid family leave benefit, accrued-but-unused vacation time or personal leave.

Reinstatement. The law requires employers to reinstate any employee who takes paid family leave to the position he or she held immediately prior to taking leave, or to a comparable position with comparable benefits. The law also protects against the loss of any employment benefit accrued prior to the employee taking family leave.

Concurrent Use of Leave. The law precludes employees from collecting both full disability benefits and paid family leave benefits concurrently. Benefits available under the Family Medical Leave Act, on the other hand, must be used concurrently with the new paid state family leave benefits unless otherwise permitted by employers.

Same Family Member. Employers are not required to permit more than one employee to use the same period of family leave to care for the same family member. For example, spouses with the

same employer cannot use the same period of family leave to care for their child.

Proof from Healthcare Providers. Employees must also provide their employers with written notice and proof of the need for family leave from the family leave care recipient's healthcare provider. Further, family leave care recipients may be required to undergo a physical examination by a qualified healthcare provider for additional verification.

Notice/Penalties. Employers will be required to conspicuously post notice indicating that they have complied with the paid family leave requirements and must provide employees who take paid family leave for more than seven consecutive days a written notice of their rights under the law. Penalties for noncompliance include monetary fines ranging from \$100 to \$2,000 and/or potential imprisonment.

INCREASES IN THE MINIMUM WAGE

The budget also includes a measure to raise New York's minimum wage to \$15 per hour. The increase will not occur uniformly. For New York City employers, the state's current \$9 hourly wage will increase to \$15 in three years—although businesses with fewer than 11 employees will have four years to reach that number. The hourly minimum will reach \$15 in Long Island and Westchester County in six years. The increase will occur more gradually upstate, reaching \$12.50 in six years, with further increases to \$15 tied to economic indicators such as inflation and set by state budget and labor officials. Notably, these increases are in addition to the recent increases in minimum wages for employees in the fast food industry.

	Current	12/31/2016	12/31/2017	12/31/2018	12/31/2019
NYC large employers (11 or more employees)	\$9	\$11	\$13	\$15	—
NYC small employers (10 or less employees)	\$9	\$10.50	\$12	\$13.50	\$15
Nassau, Suffolk, and Westchester employers	\$9	\$10	\$11	\$14	\$15
Upstate employers	\$9	\$9.70	\$10.40	\$11.10	\$11.80
NYC fast food employers	\$10.50	\$12	\$13.50	\$15	—
Fast food employers outside NYC	\$9.75	\$10.75	\$11.75	\$12.75	\$13.75

No Announced Increase in State Salary Basis. To be eligible as exempt from the state's overtime laws, New York's current labor laws require that an otherwise exempt employee receive \$675 per week. Unlike California, which also recently passed an increase in the state minimum wage to \$15 per hour, New York's salary basis requirement is not directly tied to the state's minimum wage.

While it is expected that the state salary basis requirement will be increased as a result of the increases in the minimum wage, there have been no such announcements to date.

IMPLICATIONS

We note in particular that the paid family leave program shifts the cost of providing family leave benefits from employers to employees and, in that regard, should allay some employer concerns. We expect that regulations will be issued that answer many of the questions raised by this newly enacted legislation, and we will continue to keep our clients apprised of any developments.

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