

Brown & Brown

Labor and Legislative Update

2024

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Working to create economic growth, good jobs and strong communities across New York State.



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NYS Budget Process

- Legislature Typically Meets January – June
 - 17,751 bills introduced
 - 805 bills passed both chambers
 - Sign into law - Chapter Amendments - Veto
- Fiscal Year begins April 1st.
- Proposed: \$233 billion – Final: \$237 billion
- Governor influence
- Article VII Bills



Governor's Priorities

- Require Paid Breaks for Breast Milk Expression in the Workplace
- Establish First-in-Nation Paid Prenatal Leave
- Sunset the State's COVID-19 Sick Leave Law
- Increase Short-Term Disability Leave Benefits
- Limit Liquidated Damages in Certain Frequency of Pay Violations
- Expand Recovery Tools for Stolen Wages



Paid Breaks for the Expression of Breast Milk

Section 1. Subdivision 1 of section 206-c of the labor law, is amended to read as follows:

An employer shall provide paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes, to allow an employee to express breast milk for such employee's nursing child each time such employee has reasonable need to express breast milk for up to three years following childbirth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law. (June 19, 2024)



Current NYS Labor Law 206-C

- Current NYS Law Requires Employers to provide accommodations to express breast milk in the workplace (effective June 7, 2023):
 - Reasonable unpaid break time for up to 3 years following birth;
 - At least every three hours;
 - Suitable location;
 - Notice at time of hire, returning to work following birth of a child, annually thereafter
- New Policy!
 - <https://dol.ny.gov/breast-milk-expression-workplace>



Prenatal Care Leave

- Amends NYS Paid Sick Leave Law (Labor Law §196-b)
- Requires all employers to provide an *additional* 20 hours of paid prenatal personal leave during any 52-week period.
- For health care services received by an employee during their pregnancy or related to such pregnancy:
 - Physical examinations;
 - Medical procedures;
 - Monitoring and testing;
 - Discussions with a health care provider related to the pregnancy.



Prenatal Care Leave

- Taken in hourly increments
- Paid at the employee's regular rate of pay or minimum wage
- Unused leave not required to be paid at termination
- Limits on documentation required
- Reinstatement/retaliation protections

Final Rules – Pregnant Worker Fairness Act

- PWFA Effective June 27, 2023
- EEOC [Final Rule](#) April 19, 2024
- Expansive definition of “pregnancy, childbirth, or related medical condition”
- ADA and requests for accommodation
 - Intended to cover conditions that do not rise to the level of disability applied under the ADA and is intended to help maintain the individual’s health and ability to work



Final Rules – Pregnant Worker Fairness Act

- Reasonable accommodation considerations:
 - Eliminating one or more essential functions of a job for up to 40 weeks;
 - Frequent breaks;
 - Sitting/Standing;
 - Schedule changes, part-time work, and paid and unpaid leave;
 - Remote work;
 - Reserved parking;
 - Light duty;
 - Making existing facilities accessible or modifying work environment;
 - Job restructuring;
 - Acquiring or modifying equipment, uniforms or devices;
 - Adjusting or modifying examinations or policies.



Final Rules – Pregnant Worker Fairness Act

- “Predictable Assessments”:
 - Allowing an employee to carry or keep water and drink, as needed, in or nearby the employee’s work area;
 - Allowing an employee to take additional restroom breaks, as needed;
 - Allowing an employee whose work requires standing to sit, and vice versa, as needed;
 - Allowing an employee to take breaks, as needed, to eat and drink.
- Reasonable documentation/limitations

COVID Paid Sick Leave

- Law Sunsets on July 31, 2025



Key Legislation

- S.5081-C (Ramos)/A.8907-A (Bronson) – Warehouse worker injury reduction program
- S.8358-C (Ramos)/A.8947-C (Reyes) – Retail Worker Safety Act
- S.3065-B (Ramos)/A.8934-A (Bronson) – Workplace violence/bullying – Public employers/agencies
- S.6635 (Ramos)/A.5745 (Reyes) – COMP – Stress related claims
- S.9832 (Hoylman-Sigal)/A.5631-E (Reyes) – Fashion Worker Act
- S.8608-A (Ramos)/A.9265-A Bronson – Public work payroll reporting



Key Legislation

- S.1604-E (Ramos)/A.8935-B (Bronson) – TEMP Act
- S.3258 (Hoylman-Sigal)/A.856 (Dinowitz) – Conditions/preconditions of employment
- S.9840 (Ramos)/A.10561 (Solages) – Increase Short-term disability payments; reinstatement; health insurance continuation
- S.7539 (Ramos)/A.7752 (Rosenthal) - Provides grounds for attachment and procedures where employees may hold shareholders of non-publicly traded corporations personally liable for wage theft

Key Legislation

- S.8154 (Ramos)/A.9093 (Bronson) – Increases upstate minimum wage
- S.6757-A (Mayer) - Extends the authority and oversight of wage boards to include benefits and working conditions
- S.541-B (Hoylman-Sigal)/A.9012 (Simon) – EMPIRE Act
- S.8462 (Mayer)/A.10143 (Kelles) – NY Long Term Care Trust Act
- Pay Frequency – NYS Labor Law §191

In Other Breaking News...USDOL - "Overtime Rule"

1. The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the duties test).
2. The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the salary basis test);
3. The amount of salary paid must meet a minimum specified amount (the salary level test); and

In Other Breaking News...USDOL - "Overtime Rule"

- US Department of Labor "Overtime Rule"
 - Minimum Salary Level Increase
 - Phase 1 – July 1, 2024
 - Current \$684/week (\$35,568 annually) to \$844/week (\$43,888 annually)
 - Highly Compensated Employees from \$107,432 annually to \$132,964 annually
 - Phase 2 – Beginning January 1, 2025
 - \$844/week (\$43,888 annually) to \$1,128/week (\$58,656 annually)
 - Highly Compensated Employees from \$132,964 annually to \$151,164 annually

In Other Breaking News...USDOL - "Overtime Rule"

Location	1/1/2024	1/1/2025	1/1/2026	1/1/2027
NYC Employers of all sizes	\$16.00 \$1,200 (\$62,400)	\$16.50 \$1,237.50 (\$64,350)	\$17.00 \$1,275 (\$66,300)	TBD
Long Island and Westchester	\$16.00 \$1,200 (\$62,400)*	\$16.50 \$1,237.50 (\$64,350)	\$17.00 \$1,275 (\$66,300)	TBD
Remainder of the State	\$15.00 \$1,124.20 (\$58,458)	\$15.50 \$1,161.65 (\$60,406)	\$16.00 \$1,199.10 (\$62,353)	TBD

In Other Breaking News...FTC - Non-Compete

- Federal Trade Commission [Final Rule](#) Bans Non-compete Agreements
- Effective 120 days after it is published in the Federal Register (9/4)
- Unlawful for employers to: enter into a non-compete clause with a worker; attempt to enter into a non-compete clause with a worker; or enforce, or attempt to enforce, currently existing non-compete clauses with a worker, except for pre-existing agreements with “senior executives.”



In Other Breaking News...FTC - Non-Compete

- “Senior Executive”
 - An entity’s president, chief executive officer or the equivalent, any other officer of a business entity who has “policy-making authority”, or any other person with policy-making authority for the entity similar to an officer
 - Total annual compensation of at least \$151,164 in the preceding year
- Extremely narrow exception for non-competes entered into in connection with the “bona fide sale of a business entity, of the person’s ownership interest in a business entity, or of all or substantially all of a business entity’s operating assets
- Requires employers to send a notice to workers with existing non-competes, who are not senior executives, that communicates to the worker that their non-compete is no longer effective and may not be enforced against them.



In Other Breaking News...FTC - Non-Compete

- The FTC lacks authority to regulate certain employers. These employers are excluded from coverage under the rule:
 - Non-profit employers;
 - Banks, savings and loan institutions;
 - Federal credit unions;
 - Common carriers;
 - Air and foreign air carriers; and
 - Persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, subject to certain exceptions.



In Other Breaking News...EEOC Guidance - Workplace Harassment

- *Protections for LGBTQ+ Workers* - denial of access to a bathroom consistent with the individual's gender identity, the intentional and repeated misgendering of an individual, or the harassment of an individual because they do not present in a manner stereotypically associated with their gender
- *Pregnancy Related Conditions Covered* - discrimination (including harassment) involving decisions related to pregnancy, such as lactation, contraceptive choices, and the decision to have, or not to have, an abortion
- *Religious Expression* - while employers are required to accommodate employees' sincerely held religious beliefs pursuant to Title VII, employers also have a duty to protect workers against religiously motivated harassment
- *Virtual Harassment* - harassment that occurs virtually through email, instant message, videoconference, or other online technology can still violate Title VII and may be considered harassment.
- *Determining Employer Liability* – guidance regarding standards to apply in quid pro quo/hostile work environment harassment



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