

Client Alert **Employment & Labor**

A Wave of Recent and Transformative Pro-Employee Measures in New York

New York State and New York City lawmakers have taken several actions recently to expand employee rights and benefits. New York State has passed a [2016-2017 budget](#) (“Budget”) that will significantly impact New York employers by creating a law governing paid family leave and enacting a statewide plan to incrementally increase the minimum wage resulting in a \$15 minimum wage rate for some employers. Mayor Bill de Blasio also recently signed several bills amending the New York City Human Rights Law (“NYCHRL”), including 3 amendments that will strengthen existing employee protections.

Paid Family Leave

The New York State Budget enacts a paid family leave policy for New York employees (the “Paid Family Leave Law”) that will provide wage replacement to employees taking time off for covered reasons. Beginning January 1, 2018, employees who have worked for at least 6 months will be eligible for 8 weeks of paid leave benefits for the purpose of (1) caring for a family member with a serious health condition, (2) caring for a new child during the first 12 months after the child’s birth or after the first 12 months after placement of the child for adoption or foster care with the employee, or (3) addressing certain exigencies when a family member, including a spouse, domestic partner, child or parent, is called to active military service. Leave will be paid at a rate of 50% of the individual’s average weekly wage, not to exceed 50% of the state average weekly wage.

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The length of leave benefits and amount of benefits paid to eligible employees will increase incrementally. Once fully implemented on January 1, 2021, the Paid Family Leave Law will provide employees with up to 12 weeks of paid family leave to be paid at a rate of 67% of the individual’s average weekly wage, not to exceed 67% of the state average weekly wage.

Until New York passed the Paid Family Leave Law, only 3 states offered any paid family leave: California, New Jersey and Rhode Island. While New York State lauds its Paid Family Leave Law as the “[longest and most comprehensive in the nation](#),” this week San Francisco’s city supervisors voted to require employers with more than 20 employees to give workers six weeks of fully paid leave – a measure that is even more expansive than California’s current leave law that provides benefits for 55% of an employee’s average weekly wage. If signed into law, San Francisco’s paid leave law may be considered the most far-reaching in the nation.

But how does New York’s Paid Family Leave Law stack up against paid family leave insurance benefits offered by its neighbor across the Hudson?

	New York	New Jersey
Employers Covered	All Employers	All Employers
Employees Eligible	All employees who have worked for at least 6 months in NY	All employees who have worked 20 calendar weeks
Reasons for Leave	<ul style="list-style-type: none"> » Care for newborn/newly adopted/foster child » Care for family member with serious health condition » Address exigencies associated with certain family members on active military service 	<ul style="list-style-type: none"> » Care for newborn/adopted child » Care for family member with serious health condition
Length of Benefits	12 weeks, once fully implemented	6 weeks during any 12 month period, with a different rate for intermittent leave
Amount of Benefits	67% of average weekly wage, not to exceed 67% of the state average weekly wage, once fully implemented	2/3 of employee’s average weekly wage, up to \$524 per week maximum, with a different rate for intermittent leave
Job and Benefits Protection	Requires reinstatement to the position held immediately prior to taking leave, or to a comparable position with comparable benefits.	No job protection

Minimum Wage

New York's Budget incorporates minimum wage increases throughout the State, which will increase the wage significantly from the current \$9 per hour rate. The increases will be implemented in incremental phases and will vary by location within New York State and by the size of the employer's business. By the end of 2018, many New York City businesses will be required to pay employees \$15 per hour, which is the swiftest and most significant increase set forth in the Budget. However, New York City employers with 10 or fewer employees will experience smaller increases over a longer period leading to a \$15 minimum wage rate at the end of 2019. Employers in other counties around New York City will reach the \$15 per hour minimum wage rate by the end of 2021. Other areas in New York State will experience lesser increases, reaching a \$12.50 minimum wage rate by the end of 2020 with further increases to be determined. New York is the second state to institute a \$15 minimum wage rate, preceded by California which also recently implemented a phased-in increase to its minimum wage rates that will begin next year.

The Budget incorporates a "safety valve" provision, which provides that starting in 2019 the State Director of the Division of Budget will annually assess the impact of the minimum wage increases to determine whether it is necessary for the State to temporarily suspend the scheduled increases. Based on the Director's recommendation and report, the Commission of Labor will determine whether or not to suspend or delay further increases to the minimum wage rate.

NYCHRL

The recent amendments to the NYCHRL, which already had some of the broadest employee protections in the country, further strengthen employee protections in New York City. Specifically, the NYCHRL has been amended to benefit employees by:

- codifying three judicial decisions, including by expressly stating that the statute must be interpreted liberally to accomplish "uniquely broad and remedial purposes" regardless of whether similar civil and human rights provisions under federal or state law have been similarly construed and that any and all exceptions and exemptions found in the statute must "be construed narrowly in order to maximize deterrence of discriminatory conduct."
- permitting a claimant to recover attorneys' fees, expert fees and other costs in an administrative proceeding before the New York City Commission on Human Rights; and

- repealing several provisions that were previously interpreted to limit protections related to sexual orientation.

Each of these amendments is effective immediately.

Tips for Employers

New York employers should review their policies regarding leave and ensure any necessary updates are made in advance of the Paid Family Leave Law's January 1, 2018 implementation date. Similarly, the varied and incremental increases to the minimum wage rate throughout New York State will require New York employers to closely monitor their payroll practices to ensure that they properly implement minimum wage requirements. The employment-related amendments to the NYCHRL do not create affirmative requirements on employers. However, employers should bear in mind that New York City's ever expanding NYCHRL creates unique challenges for employers seeking to defend claims. We will continue to update you as courts interpret these new measures, and if and when regulations are issued to address more nuanced concerns about the new legislation.

The following attorneys in our Employment and Labor Law Practice Group can assist employers in understanding and complying with these workplace developments.

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