

Legislative Preview-2019

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



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2018 Elections

NYS Assembly

106 - Democrat (Carl Heastie-Bronx)

43 - Republican (Brian Kolb-Ontario)

1 - Independent

Attorney General

Letitia James

NYS Senate

40 - Democrat (Andrea Stewart-Cousins – Yonkers)

23 - Republican (John Flanagan – Northport)



Expected Priorities in Albany

- NYS abortion laws
- Teacher evaluations
- Additional gun control measures
- DREAM Act & other measures for undocumented immigrants
- Criminal justice reforms
- “Child Victims Act”
- NYC rent control & “affordable housing”
- Access to child care
- Union funding
- Legalization of marijuana

Labor and HR Issues

Support:

- Update definition of employee v. contractor
- Adopt workable pay card standards
- Update UI tax tables
- Repeal weekly pay mandate

Monitor:

- Implementation of “Secure Choice”
 - Enrollment opens after April 2020

Oppose:

- Further expansion of paid leave
 - Including paid sick leave
- Enhanced wage theft provisions
- Comparable worth and other “pay equity” provisions
- Increased DBL benefits
- Hiring Restrictions (Ban the box; wage history; credit check)
- Non-compete agreements
- Farm labor standards



Year End - Minimum Wage Increase

Minimum Wage Rate Schedule						
Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021
NYC-Large Employers (11 or more)	\$11.00	\$13.00	\$15.00			
NYC-Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of the NY State	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	*

Year End - Exempt Salary Levels

- Exempt Employees
 - Duties Test
 - Salary Basis Test
 - Salary Level Test
- Federal Salary Level
 - \$455/ per week - Executive, Administrative, Professional, Computer, Outside Sales
- NYS Minimum Salary Level
 - Executive
 - Administrative



NYS Exempt Salary Levels Executive and Administrative

Date	Upstate Employers	Nassau, Suffolk, Westchester	Small NYC Employers	Large NYC Employers
12/31/16	\$727.50	\$750	\$787.50	\$825
12/31/17	\$780 \$40,560	\$825 \$42,900	\$900 \$46,800	\$975 \$50,700
12/31/18	\$832 \$43,264	\$900 \$46,800	\$1,012.50 \$52,650	\$1,125 \$58,500
12/31/19	\$885	\$975	\$1,125	\$1,125
12/31/20	\$937	\$1,050	\$1,125	\$1,125
12/31/21	\$937	\$1,125	\$1,125	\$1,125

Sexual Harassment - Update

- Public Employees - Effective immediately
- Non-Employees – Effective immediately
- Arbitration Clauses – Effective July 11, 2018
- Nondisclosure Agreements – Effective July 11, 2018
- Model Sexual Harassment Policy – Effective October 9, 2018
- Model Sexual Harassment Training – Effective October 9, 2018
 - To be completed by October 9, 2019
 - Training Available from BCNYS
- State Contractors – Effective January 1, 2019



Paid Family Leave - Update

- January 1, 2018; up to 8 weeks of leave at 50% of the employees average weekly wage to a maximum of 50% of the state's average weekly wage;
- ➔ January 1, 2019; up to 10 weeks of leave at 55% of the employees average weekly wage to a maximum of 55% of the state's average weekly wage;
- January 1, 2020; up to 10 weeks of leave at 60% of the employees average weekly wage to a maximum of 60% of the state's average weekly wage;
- January 1, 2021 and thereafter; up to 12 weeks of leave at 67% of the employees average weekly wage to a maximum of 67% of the state's average weekly wage.

2019 Employee Benefits/Contribution

- Bereavement
- State's Average Weekly Wage (AWW) for 2019 = \$1,357.11
- 55% of an employee's AWW to a maximum of 55% of the state's AWW = \$746.41 maximum weekly benefit.
- The 2019 employee contribution rate = 0.153%
- Maximum deduction: $0.153\% \times \$1,357.11 = \underline{\$2.07/\text{week}}$
- Maximum deduction: $0.153\% \times \$70,569.72 = \underline{\$107.97/\text{year}}$

Taxability

- Premiums will be deducted from employees' after-tax wages
- Employers should report employee contributions on Form W-2 using Box 14 – State disability insurance taxes withheld
- Benefits paid to employees will be taxable non-wage income that must be included in federal gross income
- Taxes will not automatically be withheld from benefits; employees can request voluntary tax withholding
- Benefits should be reported by the State Insurance Fund on Form 1099-G and by all other payers on Form 1099-MISC



Proposed Employee Scheduling Regulations – Revised

- Amends 12 NYCRR §142-2.3 and §142-3.3
- Continue the current call-in pay practice of paying a minimum of four hours pay for employees who report to work and for whom no work is available. This would, however, be applied to each *shift* as opposed to current language regarding each *day* of work.
- *Unscheduled Shift*: Require that employers pay workers who come to work for a shift not scheduled at least 14 days in advance an additional 2 hours of call-in pay
- *Cancelled Shift*: Require employers to pay workers who have a shift cancelled less than 14 days in advance at least 2 hours of call-in pay; and for shifts cancelled less than 72 hours prior to the start of that shift an additional 4 hours of call-in pay
- *On-Call*: Require an employee who is required by the employer to be available to report to work for any shift shall be paid for at least 4 hours of call-in pay
- *Call for Schedule*: Require employers who ask workers to call within 72 hours of the start of the shift to confirm whether to report to work or not to pay an additional 4 hours of call-in pay



Proposed Employee Scheduling Regulations – Revised – Applicability

- Employees during work weeks when their weekly wages exceed 40 times the applicable minimum wage (For upstate employees in 2019 that would be in excess of \$444 per week (40 x \$11.10))
- Employees covered by a collective bargaining agreement that expressly provides for call-in pay
- New employees during their first two weeks of employment
- Certain provisions for shifts cancelled due to an act of God or other causes not in the employer's control
- Regularly scheduled employees who “volunteers to cover” for a shift scheduled to be worked by another employer



Proposed Employee Scheduling Regulations – Revised – Applicability

The revised rule extends this exemption for:

- Employees whose duties are directly dependent on weather conditions
- Employees whose duties are necessary to protect the health or safety of the public or any person
- Employers who respond to weather or other travel advisories and offer employees options to reduce or increase their scheduled hours by leaving early, arriving late, etc. or any combination thereof



Proposed Employee Scheduling Regulations - Revised

- “Safe Harbor” - In general, this would allow employers to avoid the payment of call-in pay for unscheduled shifts by creating a presumption that an employee has “volunteered to cover” an unscheduled shift. In order to take advantage of this presumption, an employer must: provide a written good faith estimate of hours to all employees upon hire (or after the effective date of these regulations for current employees), schedule shifts 14 days in advance; and request volunteers for accepting unscheduled shifts, with such requests made in writing and with a reasonable deadline for responses.



2019 Webinars

- January 24
- February 28
- March 28
- April 18
- May 23
- June 27



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