

Wage and Hour Law Update

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



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Topics

- Independent Contractors
- Pay Equity
 - Revised EEO-1 Form
 - Prohibitions on salary history inquiries
- Exempt Salary Levels
- NYS Proposed Rules on Employee Scheduling
- Quick PFL Update



Independent Contractors

- Obama Era Administrator's Interpretations
 - Independent Contractors – Administrator's Interpretation 2015-01
 - Joint Employment – Administrator's Interpretation 2016-01
- No Single Factor – The “Common Law Test”
 - Is the worker subject to the control and supervision of the employer in performing the job?
 - Is the work performed part of the usual work of the employer's business?
 - Does the worker have an independently established business offering similar services to the public?
- NYS Department of Labor's “17 Questions”



1. Provided a copy of any contracts, or substance of oral agreement
2. Describe the services performed
3. Are these individuals in an independently established business?
4. Can similar services be performed for others in a competitive business?
5. Can work assignments be refused?
6. Is there a requirement to devote a specific amount of time to the services performed?
7. Are they covered under your insurances?
8. Are deductions made?
9. Who provides tools or supplies, materials or equipment?
10. When services are not performed (illness), who furnishes a replacement?
11. Who sets the rate of pay and what is the basis of compensation?
12. How are services obtained?
13. Where are services performed?
14. Is there a requirement to report at established times?
15. Do you supervise or review their work?
16. Do you provide reimbursement of expenses? Fringe benefits?
17. Do you provide training or require attendance at training sessions?



Pay Equity

- Obama Era Revised Form EEO-1
- On August 29, 2017, the Office of Management and Budget announced it was suspending implementation of the revised form to review effectiveness
- EEO-1 Form must be filed by March 31, 2018 – providing traditional EEO information. No salary data required



Pay Equity

- NYS Executive Order 162
- Signed January 9, 2017

Requires all state contractors (and subcontractors) to disclose data on the gender, race, ethnicity, job title, and salary of all its employees in all state contracts.

- Prime contracts in excess of \$25,000 – Quarterly
- Prime construction contracts in excess of \$100,000 – Monthly



Pay Equity

- Executive Order 161
 - Prohibition on state entities inquiring about salary history
- NYC Prohibition on Salary Inquires at any point in the employment process – Effective 10/31/2017
- Albany County Law



Exempt Salary Levels

- Exempt Employees
 - Duties Test
 - Salary Basis Test
 - Salary Level Test
- Federal Salary Level
- NYS Minimum Salary Level
- NYS Minimum Wage



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	*



NYS Exempt Salary Levels Executive and Administrative

Date	Upstate Employers	Large NYC Employers	Small NYC Employers	Nassau, Suffolk, Westchester
12/31/16	\$727.50	\$825	\$787.50	\$750
12/31/17	\$780	\$975	\$900	\$825
12/31/18	\$832	\$1,125	\$1,012.50	\$900
12/31/19	\$885	\$1,125	\$1,125	\$975
12/31/20	\$937	\$1,125	\$1,125	\$1,050
12/31/21	\$937	\$1,125	\$1,125	\$1,125



Employee Scheduling

- 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.
- 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
- Require employers to pay workers who have a shift cancelled less than 72 hours prior to the start of that shift an additional 4 hours of call-in pay
- 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



Employee Scheduling - Exceptions

- Employees during work weeks when their weekly wages exceed 40 times the applicable minimum wage (For upstate employees in 2018 that would be in excess of \$416 per week; 40 x \$10.40)
- Employees covered by a collective bargaining agreement that expressly provides for call-in pay
- New employees during their first two weeks of employment
- “Regularly scheduled employees” who “volunteer to cover” for a shift scheduled to be worked by another employer
- Certain provisions for shifts cancelled due to an act of God



Employee Scheduling

- Proposed Rules
- 11/22/17 State Register
- 45-Day Comment Period
- Preempt NYC?
 - Fast Food/Retail
 - Effective 11/26/17



Paid Family Leave Update

- Forms Available
 - ww.ny.gov/programs/new-york-state-paid-family-leave
- Public Employers Notification Requirements
 - PAU@wcb.ny.gov
- FMLA Look-back period
- Handbook Revisions
 - Bonding Leave Restrictions
- Identify Waiver Eligible Employees



Next Webinar

Final Paid Family Leave Preparations/Preview of the 2018 NYS Legislative Session

It's here! New York State's paid family leave law will be fully implemented on January 1, 2018. We'll discuss all the things you will need to have in place for effective administration of this new law. We will also preview the 2018 State Legislative session to identify topics of interest to human resource professionals.

Thursday, December 14, 2017

11:00 am. – 12:00 pm

This program has been approved for HRCI certification

