Engage PEO Client Alert: New York

Year End Legislative Updates

NEW YORK TO INCREASE SALARY THRESHOLD

What's New: Effective December 31, 2022, the New York State Department of Labor will incrementally increase the salary threshold for New York employees classified under the Executive and Administrative exemptions. Employers in New York City, as well as those in Nassau, Suffolk, and Westchester counties must continue to pay employees exempt under the Executive and Administrative exemptions at least $58,500 annually (i.e., $1,125.00 weekly).

Why It Matters: Employers operating in multiple locations throughout New York State will need to apply different salary thresholds depending on where their employees are located within the state. The base salary increases are detailed in the chart below.

Base Salary Per Week For Exempt Executive and Administrative Employees		
Area	**Effective Date**	**Rate of Pay**
New York City Large Employers (11 or more employees)	12/31/2018	$1,125.00 Weekly ($58,500 annually)
New York City Small Employers (10 or fewer employees)	12/31/2019	$1,125.00 Weekly ($58,500 annually)
Nassau, Suffolk, and Westchester Counties	12/31/2021	$1,125.00 Weekly ($58,500 annually)
Employers in All Other New York State Counties	**12/31/2022**	**$1064.25 Weekly ($55,341 annually)**

New York State employers must provide employees with written notice of changes to compensation and other terms of employment at least seven days in advance of those changes going into effect. However, other than hospitality employers, notice is not required for each increase in pay where the increased rate of pay is reflected on the employee's next wage statement.

Notably, where an employee's wage rate is reduced, an employer must notify the employee in writing, prior to implementation of the reduction.

Hospitality industry employers must provide a new notice to employees every time their wage rate changes.

Employers are not required to use the state-provided forms, but doing so ensures compliance, as they are available in multiple languages. For downloadable forms in multiple languages visit the NYS DOL website: https://dol.ny.gov/notice-pay-rate.

What Employers Should Do: Employers should review the salaries of exempt employees to make sure they meet the required threshold in 2023. Additionally, employers planning to change the wage or status of a New York employee from non-exempt to exempt or vice versa should provide a Wage Notice.

VACCINATION LEAVE EXTENDED

The New York law providing up to 4 hours of paid leave to receive the COVID vaccine has been extended to December 31, 2023.

NEW YORK PAID FAMILY LEAVE EXPANSION

As of January 1, 2023, the definition of "family member" under New York's Paid Family Leave law will expand to include siblings, including biological, adopted, step and half-siblings. New York Paid Family Leave provides eligible employees up to 12 weeks of paid, job-protected leave to care for family members with serious health conditions.

Additionally, the New York State Workers' Compensation Board updated the Paid Family Leave request forms for 2023, which are available on the Paid Family Leave website at https://paidfamilyleave.ny.gov/. The new forms address the expansion of the law to include siblings, have a "Gender X" option, and remove certain pronouns.

Links to the revised forms are below:

- Bond with a Newly born, Adopted or Fostered Child (Forms PFL-1 and PFL-2) (http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/PFL2.pdf)
- Care for a Family Member with a Serious Health Condition (Forms PFL-1, PFL-3, and PFL-4) (http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/PFL3.pdf)
- Assist Families in Connection with a Military Deployment (Forms PFL-1 and PFL-5) (http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/PFL5.pdf)
- Request for COVID-19 Quarantine DB/PFL – Self (Forms PFL-1 and SCOVID19) (http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/scovid19.pdf)
- Request for COVID-19 Quarantine PFL – Child (Forms PFL-1 and CCOVID19) (http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/ccovid19.pdf)

You may also contact your Benefits Specialist for the appropriate forms.

NEW YORK BANS NO-FAULT ATTENDANCE POLICIES

No-fault attendance policies that discipline employees for absences protected by federal, state, and/or local law, including point-based attendance policies, will be prohibited as of February 19, 2023.

Point-based attendance policies issue points to employees for absences, regardless of the reason for the absence, and direct termination upon the accrual of a certain number of points.

Employers should review and, if necessary, revise attendance policies to ensure the policy does not include a no-fault policy and is not based on a point system.

NEW YORK STATE EMPLOYERS MUST PROVIDE ELECTRONIC ACCESS TO WORKPLACE POSTINGS

Effective immediately, digital versions of workplace postings must now be made available via an employer's website or email. Additionally, employers must notify employees that legally required physical postings are also available electronically.

Employers should notify employees of this change via email or other method that will reach all employees.

NEW YORK CITY RESTRICTS USE OF A.I.

Effective April 15, 2023, New York City employers are prohibited from relying on automated decision-making tools to screen applicants and employees for hiring, recruiting, and promotion, unless they:

- conduct a bias audit of the tool,
- publicly produce a summary of the audit (including the date the tool will be distributed),
- notify candidates and employees in New York City of the employer's intent to use the tool (including how the tool will measure qualifications and characteristics),
- allow candidates and employees to request an accommodation or different process, and
- provide information regarding the tool's collection and sourcing of data, including data retention.