



CLIENT ALERT

Big Changes to New York's Employment Landscape In 2018

As the calendar inches closer to 2018, we take this opportunity to remind you of major employment law changes in New York that have recently taken effect or will take effect as of the first of the year. For more detailed information, please see the "Resources" section of our website at www.egsllp.com.

1) Increases in Minimum Wage

The minimum wage will increase for all employers in New York effective December 31, 2017. However, the minimum wage varies according to the location and/or size of the employer. The following minimum wage will apply effective December 31, 2017 for regular, non-tipped, non-exempt employees (other than to fast food employers): NYC employers with 11 or more employees: \$13.00; NYC Employers with 10 or fewer employees: \$12.00; Nassau / Suffolk / Westchester – All Employers: \$11.00; Rest of New York State– All Employers (Outside NYC, Nassau, Suffolk, & Westchester): \$10.40.

If an employee's rate of pay is increasing, you must issue a new 195.1 Notice of Pay Rate Form notifying the employee of their new pay rate.

Please note that there are also changes to the maximum tip credit that may be taken from the wages of tipped employees in both the hospitality industry and other industries that employ tipped employees, as well as the circumstances under which certain tipped employees may be paid a sub-minimum wage due to the employer's application of the tip credit to the full minimum wage.

2) Increase in Salary Threshold to Maintain Exempt Status

Effective December 31, 2017, the minimum weekly salary thresholds that employers must pay in order for their executive and administrative employees to be exempt from overtime pay obligations under New York State law will increase. As in 2017, the minimum salary thresholds varies according to the location and/or size of the employer. The following thresholds will apply from December 31, 2017 through December 30, 2018: NYC employers with 11 or more employees: \$975.00/week; NYC Employers with 10 or fewer employees: \$900.00/week; Nassau / Suffolk / Westchester – All Employers: \$825.00/week; Rest of New York State– All Employers (Outside NYC, Nassau, Suffolk, & Westchester): \$780.00/week.

If any of your exempt employees do not currently earn this minimum threshold, you will either need to (i) increase the employee's salary to meet the threshold, or (ii) reclassify them as non-exempt employees and pay overtime for all hours worked over 40 in a workweek.

If you will be reclassifying any employees, you must ensure that each employee begins tracking their hours by clocking in at the time they start work, clocking out and back in for meal breaks (and any other break longer than 20 minutes), and clocking out at the end of the day.

If the employee's salary is increasing, or their payment structure is changing, you must issue a new 195.1 Notice of Pay Rate Form notifying the employee of their new pay rate and, if applicable, exemption status.

3) New York State Paid Family Leave

As we previously advised, under the New York Paid Family Leave Benefits Law (“Paid Leave Law”), effective January 1, 2018, practically all employers will be required to provide employees with paid family leave (“PFL”).

At the most basic level, in 2018, employees will be entitled to up to eight (8) weeks of PFL to (i) to care for the employee’s family member who suffers from a serious health condition, (ii) to bond with the employee's child during the first twelve months after the child's birth or the first twelve months after the placement of the child for adoption or foster care with the employee, or (iii) because of any qualifying exigency arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on or is called to active military duty.

In 2018, employees using PFL will be paid 50% of their regular wages or 50% of the average statewide weekly wage, whichever is less. PFL will be funded by employee payroll deduction. If you have not done so already, you should arrange for your payroll provider to commence making these deductions (and notify your employees that you will be doing so in accordance with the Paid Leave Law), and ensure that you have a PFL policy that is compliant with the Paid Leave Law ready for distribution by January 1, 2018.

Please note that the number of weeks of leave and the benefit rate will increase over the next three (3) years.

4) New York City Bans Salary Inquiries

As we previously advised, as of November 1, 2017 New York City has banned employers from inquiring about a job candidate’s salary history. All employers in New York City, both public and private and regardless of size, may no longer (i) inquire about the salary history of an applicant for employment; or (ii) rely on the salary history of an applicant in determining that applicant’s salary at any stage in the employment process, unless the applicant “unprompted” and “willingly” discloses his or her prior salary information.

The law prohibits both asking the applicant directly about his or her salary history – whether on an employment application or during the hiring process – and searching of publicly-available records or reports.

5) New York City Fair Workweek Law

NYC’s Fair Workweek Law (which is actually a collection of numerous bills) went into effect as of November 26, 2017.

In sum, under the Fair Workweek Law, fast food employers in NYC must give workers good faith estimates of when and how much they will work, predictable work schedules and the opportunity to work newly available shifts before hiring new workers. A “fast food establishment” is one: (i) that has as its primary purpose serving food or drink items; (ii) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out or delivered to the customer’s location; (iii) that offers limited service; (iv) that is part of a chain; and (v) that is one of 30 or more establishments nationally (including franchisors and franchisees if they own or operate 30 or more establishments in the aggregate).

The Fair Workweek Law also affects retail employers, i.e., any business with 20 or more employees within New York City that is engaged primarily in the sale of consumer goods. Under the law, retail employers may not (i) schedule a retail employee for any on-call shift; (ii) cancel any regular shift for a retail employee within 72 hours of the scheduled start of such shift; (iii) require a retail employee to work with fewer than 72 hours’ notice, unless the employee consents in writing; or (iv) require a retail employee to contact a retail employer to confirm whether or not the employee should report for a regular shift fewer than 72 hours before the start of such shift.

6) **New York City Fast Food Deduction Law**

As of November 26, 2017, fast food employers must honor employee requests to deduct voluntary payments from their paychecks to send to nonprofits that have registered with the Department of Consumer Affairs.

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If you have questions or would like additional information, please contact The Employment Law Practice Group Leader Amanda M. Fugazy (afugazy@egsllp.com) or the primary EGS attorney with whom you work.

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THE EMPLOYMENT LAW PRACTICE GROUP

Amanda M. Fugazy, Esq.

Paul P. Rooney, Esq.

Valerie J. Bluth, Esq.

Stephania C. Sanon, Esq.

Robert J. Anderson, Esq.

Allison Vieyra, Paralegal

1345 Avenue of the Americas, New York, NY 10105

Telephone: (516) 801-8139/(212) 370-1300

afugazy@egsllp.com | www.egsllp.com