

KD Alert: New York Employment Law Changes for 2019

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With 2019 quickly approaching, it is important that all New York employers take note of some of the recent employment law changes that have either recently gone into effect, or will take effect in 2019. A summary of some of the most significant changes is discussed below.

CHANGES TO NEW YORK MINIMUM WAGE LAWS

New York's minimum wage continues to increase towards \$15 per hour in accordance with State legislation enacted in 2016. Effective December 31, 2018, the minimum wage will again increase, consistent with the rate schedule below:

Location	FOR 2019
	(Effective 12/31/18)
New York City- 11 or more employees	\$15.00 per hour
New York City- 10 or fewer employees	\$13.50 per hour
Nassau, Suffolk and Westchester Counties	\$12.00 per hour
Outside of New York City, Nassau, Suffolk and Westchester Counties	\$11.10 per hour

Employers should not only be prepared to comply with the new minimum wage, but should also ensure that any changes to the permissible tip credits or allowances are properly followed. With wage changes, employers are also reminded to update employee wage notices to comply with New York Labor Law § 195(1). The failure to properly amend these forms, which is required when an employee's rate of pay is changed, can lead to significant monetary penalties.

CHANGES TO THE NEW YORK STATE SALARY BASIS THRESHOLD

Effective December 31, 2018, New York State's salary basis threshold for exempt employees will increase. In order to maintain such an exemption, employers may have to increase the salaries of employees classified as exempt.

The salary basis test threshold will increase as follows:

Location	FOR 2019
	(Effective 12/31/18)

New York City- 11 or more employees	\$1,125 per week (\$58,500 per year)
New York City- 10 or fewer employees	\$1,012.50 per week (\$52,650 per year)
Nassau, Suffolk and Westchester Counties	\$900 per week (\$46,800 per year)
Outside of New York City, Nassau, Suffolk and Westchester Counties	\$832 per week (\$43,264 per year)

In other words, if an employee does not earn the requisite weekly salary, the exemption may be lost. In addition to possibly modifying employees' salaries, employers are also encouraged to take this opportunity to re-evaluate their employees who are classified as exempt and determine if the employees' actual job duties also meet the minimum requirements under the applicable duties test. Simply because an employee is paid the appropriate salary does not mean he or she will be exempt from receiving overtime pay.

NEW NYC REQUIREMENTS FOR ACCOMMODATION REQUESTS

As of October 15, 2018, NYC employers with four or more employees will be required to engage in a "cooperative dialogue" with a person who may be entitled to a workplace accommodation. While the "cooperative dialogue" largely mirrors the "interactive process" required under the Americans with Disabilities Act, the application of the laws and the documenting requirements differ. The new NYC law requires that employers engage in a cooperative dialogue when there is a request for an accommodation because of: (a) religion, (b) disability, (c) pregnancy, childbirth, related medical conditions, or (d) the needs of a victim of domestic violence, sex offenses or stalking. The NYC law applies more broadly than the ADA. The NYC law also requires that an employer document the cooperative dialogue. Specifically, employers must provide the employee with a "written final determination identifying any accommodation granted or denied." If an employer determines, after engaging in the cooperative dialogue, that there is no reasonable accommodation that will allow the employee to satisfy the essential functions of their job, the determination must be put in writing to the employee.

Employers should review their procedures for requests for reasonable accommodations to ensure they are compliant with the new NYC requirements. Moreover, employers should educate the individuals in management/human resources on how to handle both these requests, and the cooperative dialogue process.

NEW YORK & NYC SEXUAL HARASSMENT LAWS

New York State and New York City have each enacted legislation to address sexual harassment in the workplace. For more information regarding an employer's obligations under these laws, please visit our prior alerts on this topic. In sum, employers are now required to have all employees complete annual sexual harassment prevention training in compliance with the state law by October 9, 2019. Training of new employees who were not otherwise present for the annual training is encouraged by New York State to take place as soon as possible. The laws also mandate that a compliant sexual harassment policy be disseminated to employees. Employers should make sure their sexual harassment policy is updated and compliant.

WESTCHESTER COUNTY PAID SICK LEAVE LAWS

Previously, Westchester County did not require employers to provide employees with any paid sick leave. Those days will soon come to an end when the Earned Sick Leave Law ("ESLL") takes effect on April 10, 2019. Under the ESLL, employers with five or more workers must provide paid sick leave to its employees. Employers with four or fewer employees must allow employees to take sick leave, but the time off is not required to be paid. The ESLL covers any person employed in Westchester County for more than 80

hours in a calendar year.

The ESLL mirrors the New York City Earned Sick and Safe Time Act (“ESSTA”) in many regards. Under the ESLL, covered employers will need to provide covered employees with at least one (1) hour of paid sick leave for every thirty (30) hours worked, up to a cap of forty (40) hours per year. Employees will begin to accrue paid sick leave at the commencement of their employment, however, under the ESLL, it cannot be used until the 90th calendar day after hire. Employees will be permitted to carry over forty (40) hours of accrued and unused sick leave to the following year, but employers will not be required to allow use of more than forty (40) hours of sick time a year, similar to the ESTAA. Unlike the ESTAA, under the ESLL, employees have the option to pursue a private right of action in court against their employer.

Employers should review their sick leave policies in advance of the upcoming effective date.

SUFFOLK COUNTY PAY HISTORY LAW

Suffolk County is following in Westchester County and New York City’s footsteps by enacting a bill that will prohibit employers and their agents from inquiring about job applicants’ wage or salary history during the hiring process. The Restricting Information on Salaries and Earnings Act (the “RISE Act”) takes effect on June 30, 2019. The RISE Act will prohibit an employer or employment agency (or an employee or agent of same) from inquiring about an applicant’s current or prior earnings or benefits during the hiring process and relying on the salary history of an applicant for employment in determining the wage or salary amount for such applicant at any stage in the employment process. As currently drafted, the RISE Act does not address exceptions to the prohibition such as when an applicant makes an unprompted disclosure of his or her salary history to the employer.

In advance of the effective date, employers should review their interview procedures to ensure those conducting interviews are aware of their obligation to comply with the RISE Act.

For more information about the upcoming employment law changes, or this alert, please contact Keith Gutstein or Erika Rosenblum by email at KGutstein@kaufmandolowich.com, ERosenblum@kaufmandolowich.com, or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck’s Labor & Employment Law Practice Group.