

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

JANUARY 23, 2024

Covid Paid Leave Repeal, New Paid Prenatal Leave, Paid Breaks for Breastmilk Expression and More: Labor & Employment Law Proposals to Watch in Gov. Hochul's Executive Budget Proposal

Governor Hochul's 2025 Executive Budget Proposal released last week includes a number of significant legislative proposals that would directly impact employers in New York state.

Sunset of COVID Paid Leave

Arguably the most highly anticipated proposal is the possible end to the requirement to provide paid leave for New York State employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. As the governor's [memorandum in support](#) notes, New York already has "nation-leading paid sick leave laws" for employees regardless of illness, and "[a]s the federal COVID-19 state of emergency has concluded, it would be prudent for this COVID-19 sick leave initiative to conclude as well." Employers across New York state would surely agree with this sentiment. The governor's proposal would end the state's COVID-19 Sick Leave Law as of July 31, 2024.

Previously, [a bill was advanced](#) to sunset the law after a review of usage by the New York state Departments of Labor and Health. The governor's latest proposal does not include this requirement; it simply repeals the leave law with no further steps required.

Paid Prenatal Leave

Another significant proposal would amend the New York Paid Family Leave (PFL) law to provide up to 40 hours of paid leave for pregnant employees per calendar year to attend prenatal healthcare appointments. This would be the first law of its kind in the nation. The leave would be in addition to the current allotment of 12 weeks of PFL or 26 weeks of disability leave. The benefits would be available in hourly increments, and employees would have up to 30 days following the leave to provide written proof of the need for the time off. If enacted, this bill would take effect Jan. 1, 2025.

Paid Breaks for Breast Milk Expression

Staying on the theme of paid time off for New York workers, the governor proposed paid break time for employees to express breast milk in the workplace. New York already requires employers to provide unpaid break time for employees for this purpose, under Labor Law § 206-c. The governor's proposal would amend Section 206-c to require paid breaks for up to 20 minutes. The [governor's memo](#) notes that this bill would "preserve equal wages for working mothers who are nursing while driving greater worker retention." If passed, the bill would take effect 60 days after enactment.

Increased Short-Term Disability Payment Amounts

Statutory disability insurance payments in New York state have been stagnant for 35 years. The current \$170 per week benefit cap has been in effect since 1989. The governor's [memorandum in support](#) notes that the benefit today is worth less than half of what it was worth when the cap was set. The proposal would eventually increase the amount to two-thirds of the employee's average weekly wage (AWW), capped at two-thirds of the Statewide Average Weekly Wage (SAWW) for the first 12 weeks of disability, and then capped at \$280 weekly for the remainder of the 26 weeks. The change would happen incrementally as follows:

First 12 weeks of benefits:

- 2025: 50% AWW up to \$400
- 2026: 50% AWW up to \$630
- 2027: 50% AWW up to 50% SAWW
- 2028: 60% AWW up to 60% SAWW
- 2029: 67% AWW up to 67% SAWW

Between the 12th and 26th weeks:

- 2025: 50% AWW up to \$280
- 2028: 60% AWW up to \$280
- 2029: 67% AWW up to \$280

This bill would also make changes to the minimum benefit available to employees and cap employee contributions. If passed, the new rates would apply to all policies issued, renewed, modified, altered or amended on or after Jan. 1, 2025.

Limitation of Liquidated Damages in Certain Frequency of Pay Violations

The governor also proposed a welcome clarification to the state's Labor Law, Section 198, related to the requirement that manual workers be paid on a weekly basis and the damages available in the event of a violation. As recently written by [Bond](#), there is a split among New York courts as to whether employers who violate the state's frequency of pay provisions for manual workers are liable for liquidated damages when the employees in question were paid on a semi-monthly, rather than a weekly basis. [As the governor noted](#), there has been a proliferation of lawsuits against employers, large and small, "resulting in large payouts for workers and plaintiff's attorneys, causing some employers serious financial harm." The bill would clarify that if the employee was paid at least semi-monthly, they are not entitled to 100% liquidated damages. If passed, the bill would take effect 60 days after enactment.

Expanded Recovery Tools for Stolen Wages

For employers who do violate the Labor Law's wage payment provisions, the governor proposed greater enforcement tools. Specifically, an amendment to Section 218 of the Labor Law would allow the state to seize the assets of employer to satisfy debts to employees. The state would be authorized to follow the same enforcement process currently authorized for the collection of unpaid unemployment insurance contributions. This bill would take effect immediately upon passage. As noted above, these are all legislative proposals. They will be subject to negotiation during the budget process that will occur over the next several months. The fate of these proposals will come into clearer focus as we get closer to the state's April 1, 2024 budget deadline. Bond's government

and regulatory affairs and labor and employment teams will continue to track these developments and be available to assist clients with compliance if and when they become law in New York state.

If you have any questions about the information presented in this memo, please contact [Kristen Smith](#), any attorney in Bond's [government and regulatory affairs](#) or [labor and employment](#) practices or the attorney at the firm with whom you are regularly in contact.

