

Thursday Webinar

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2024 Update: New York Paid Leave & Wage and Hour Issues

Presenters



Adam P. Mastroleo, Esq.

Member – Syracuse, NY
Labor & Employment Practice Group
amastroleo@bsk.com | (315) 218-8139
<https://www.bsk.com/people/adam-p-mastroleo>



Andrew D. Bobrek, Esq.

Member – Syracuse, NY
Labor & Employment Practice Group
abobrek@bsk.com | (315) 218-8262
<https://www.bsk.com/people/andrew-d-bobrek>

Covered Topics

- ❖ Updates to New York Paid Leave Laws
 - COVID Paid Leave Law
 - New York Paid Sick Leave
 - New York Paid Family Leave
- ❖ Recent Changes to Wage and Hour Thresholds
- ❖ Recent Court Decisions Affecting Pay Frequency Rules

Updates to New York Paid Leave Laws

COVID Paid Leave

COVID Paid Leave

- Applies to public and private employers
- Applies to full-time and part-time employees
- Employers must provide up to 14 days of paid leave, depending on size.
- State and local agencies no longer issue mandatory or precautionary orders; Employees can now submit an NYS DOH Affirmation of Quarantine.
- Potential sunset of law as of July 31, 2024*

COVID Paid Leave cont'd

- Employee Benefits:
 - Employee entitled to regular rate of pay (i.e., the amount the worker would have otherwise received during leave period).
 - Cannot be charged against other leave, including sick leave
 - Return to same or comparable job
 - Discrimination and retaliation for taking leave prohibited

COVID Paid Leave cont'd

- Amount of COVID Paid Leave:
 - Employers must provide COVID paid leave in the following amounts:

Number of Employees	Amount of COVID Sick Leave (per calendar year)
100 or more	14 days
11 to 99	5 days
10 or fewer <i>and</i> net income >\$1m	5 days
10 or fewer <i>and</i> net income <\$1m	Reasonable <i>unpaid</i> leave
*All public employers	14 days

COVID Paid Leave cont'd

- Additional Periods of Leave:
 - Three periods of leave permissible
 - Second and Third periods of leave must be based on positive test “and the employee must submit documentation from a licensed medical provider or testing facility attesting that the employee has tested positive for COVID-19. The employee does not need to submit documentation of a positive result if the employee’s employer gave the employee the test for COVID-19 that showed the positive result.”

COVID Paid Leave cont'd

- Continued Employer Mandates for Quarantine or Isolation:
 - “If an employer mandates that an employee . . . remain out of work due to exposure or potential exposure to COVID-19, regardless of whether the exposure was in the workplace, the employer must continue to pay the employee at the employee’s regular rate of pay until the employer permits the employee to return to work.”

COVID Paid Leave cont'd

- Potential Sunset of COVID Paid Leave law
 - Gov. Hochul 2025 Executive Budget Proposal would end state's COVID Paid Leave as of July 31, 2024.

Paid Sick Leave

N.Y. Paid Sick Leave

- Applies to private employers and employees of charter schools, private schools, and not-for-profit corporations.
- Applies to full-time and part-time employees
- Employers must provide eligible employees with up to 56 hours, depending on size, for permitted uses.

N.Y. Paid Sick Leave cont'd

- Employee Benefits:
 - Up to 56 hours of paid sick leave for permitted uses
 - Employees receive their normal rate of pay.
 - Return to same or comparable job.
 - Discrimination and retaliation against taking leave prohibited.

N.Y. Paid Sick Leave cont'd

- Accrual of Leave
 - Employees accrue 1 hour of leave for every 30 hours worked
 - Employers may choose to frontload hours
- Carryover of Unused Leave
 - Unused leave must be carried over, subject to usage caps.
 - Employers may choose to allow employees to carryover unused sick leave or receive payment.

N.Y. Paid Sick Leave cont'd

- Permitted Uses:
 - Sick Leave
 - Mental or physical illness, injury or health condition, or diagnosis, care, or treatment of mental or physical illness, injury or health condition.
 - Safe Leave
 - Work absence when the employee or family member has been a victim of domestic violence, family offense, sexual offense, stalking, or human trafficking and took actions necessary to ensure the health or safety of the employee or the family member or to protect those who associate or work with the employee.

N.Y. Paid Sick Leave cont'd

- Amount of Paid Sick Leave:
 - Employers must provide paid sick leave in the following amounts:

Number of Employees	Amount of Paid Sick Leave (per calendar year)
100 or more	Up to 56 hours
5 to 99	Up to 40 hours
4 or fewer <i>and</i> net income >\$1m	Up to 40 hours
4 or fewer <i>and</i> net income <\$1m	Up to 40 hours (<i>unpaid</i>)

Paid Family Leave

N.Y. Paid Family Leave

- Applies to private employers; public employers may opt in
- Applies to all employees (full-time or part-time) who (i) have worked 20 hours or more for 26 consecutive weeks or (ii) worked fewer than 20 hours after working 175 days (need not be consecutive).
- Employers must provide eligible employees with up to 12 weeks paid family leave for permitted uses.
- Employees must provide 30 days' advance notice for foreseeable leaves (e.g., childbirth/adoption planned medical treatment) and as soon as practicable for unforeseeable leaves.

N.Y. Paid Family Leave cont'd

- Employee Benefits:
 - Up to 12 weeks paid family leave for permitted uses
 - Return to same or comparable job
 - Continued health insurance
 - Discrimination and retaliation for taking leave prohibited
 - May be available where an employee or family member contracts COVID, which may qualify as a “serious health condition.”

N.Y. Paid Family Leave cont'd

- Permitted uses:
 - Bond with new child, care for a family member with serious health condition, or to assist loved ones when a family is deployed abroad on active military service.
 - “Family member” – a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.
 - “Serious Health Condition” – illness, injury, impairment, or physical or mental condition . . . that involves either:
 - Inpatient care in a hospital, hospice, or residential care facility.
 - Continuing treatment or supervision by a health care provider.
 - Paid family leave to bond with a new child must be take within 52-weeks following the child’s birth or adoption.

N.Y. Paid Family Leave cont'd

- NY PFL is funded by payroll deductions
 - In 2024, employees will contribute 0.373% of their gross wages per pay period; max contribution for 2024 is \$333.25 (\$66,18 less than 2023).
- Employees apply through insurance carrier.
- Employees taking PFL receive 67% of average weekly wage, capped at \$1,151.16 per week.

N.Y. Paid Family Leave cont'd

- Gov. Hochul has proposed adding Paid Prenatal Leave.
 - Up to 40 hours to attend prenatal appointments
 - In addition to PFL and disability leave
 - Available in hourly increments
 - If enacted, effective Jan. 1, 2025

Changes to New York Wage and Hour Thresholds

2024 Wage & Hour Thresholds

New York State Minimum Wage

- Effective on January 1, 2024 –
 - Increased from \$15 to \$16 in downstate New York (New York City, and Nassau, Suffolk and Westchester counties).
 - Increased from \$14.20 to \$15.00 in upstate New York.
- Increases of \$0.50 on Jan. 1, 2025, and another \$0.50 on Jan.1, 2026, in all New York regions.

Region	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026
Downstate New York	\$15.00	\$16.00	\$16.50	\$17.00
Upstate New York	\$14.20	\$15.00	\$15.50	\$16.00

2024 Wage & Hour Thresholds

Minimum Salary for Executive and Administrative Exemptions

- Effective on Jan. 1, 2024 – \$1,200 in downstate New York; \$1,124.20 in upstate New York.
- Effective on Jan. 1, 2025 – \$1,237.50 in downstate New York; \$1,161.65 in upstate New York.
- Effective on Jan. 1, 2026 – \$1,275 in downstate New York; \$1,199.10 in upstate New York.
- No minimum salary under New York law for professional exemption.
 - With a few exceptions (such as for teachers, doctors and lawyers), employers still must comply with the federal minimum weekly salary (\$684) in order to classify employees as exempt under the professional exemption.

Region	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026
Downstate New York	\$1,200.00	\$1,237.50	\$1,275
Upstate New York	\$1,124.20	\$1,161.65	\$1,199.10

2024 Wage & Hour Thresholds

Hourly Tip Credits for Food Service Workers and Service Employees

- Effective Jan. 1, 2024:
 - Food service workers – \$5.35 tip credit/\$10.65 minimum wage in downstate New York and \$5.00 tip credit/\$10.00 minimum wage in upstate New York; and
 - Service employees – \$2.65 tip credit/\$13.35 minimum wage in downstate New York and \$2.50 tip credit/\$12.50 minimum wage in upstate New York.
- In all New York regions:
 - Tip credit for Food service workers will increase by \$0.15 per hour on Jan. 1, 2025, and Jan. 1, 2026,
 - Tip credit for service employees will increase by \$0.10 per hour on Jan. 1, 2025, and Jan. 1, 2026.

Recent Court Decisions Affecting Pay Frequency Rules

Grant v. Global Aircraft Dispatch, Inc. (2d Dep't Jan. 17, 2024)

- On January 17, 2024, New York Appellate Division, Second Department held that there is no private right of action to recover monetary damages for a violation of N.Y. Labor Law Section 191.
- **New York Labor Law Section 191** –
 - Requires employers to pay “manual workers” on a weekly basis, within seven calendar days of the week during which the wages are earned.
 - “Manual workers” defined as “a mechanic, workingman, or laborer” who spends more than 25% of working time engaged in “physical labor.”
 - “Physical labor” interpreted broadly (e.g., heaving, lifting, stocking shelves, unpacking boxes, cleaning and standing or walking for extended periods of time).
 - Applies to all private sector employers, except non-profitmaking organizations.

Grant v. Global Aircraft Dispatch, Inc. cont'd

- *Grant* directly conflicts with First Department's holding in *Vega v. CM & Associates Construction Management, LLC* (1st Dep't 2019).
- *Vega v. CM & Associates Construction Management, LLC* –
 - Prior to 2019, Section 191 violations were limited to civil penalty assessed by DOL; employees could not directly sue employer for untimely wages.
 - In *Vega*, First Department held that manual workers could bring private right of action (i.e., directly sue employers for untimely wages).
 - Entitled workers to sue for significant sums of money (i.e., liquidated damages under NYLL 198), despite receiving all wages due.
- Section 191 litigation greatly increased following the *Vega decision*.

Grant v. Global Aircraft Dispatch, Inc. cont'd

- *Grant* creates a split among the Appellate Division; does not definitively determine whether a private right of action exists for Section 191 violations.
- Court of Appeals likely to decide the issue within the near future.
- Notable legislation:
 - On Jan. 16, 2024, Gov. Hochul proposed an amendment to NYLL 198 to specifically exclude violations of Section 191 from a remedy of liquidated damages.
 - If accepted by the legislature, this would definitively prevent employees from receiving a windfall, despite being paid all wages due.

Thank You

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