

### Alert: End of Year Update

As 2021 comes to a close, we are taking a look back at some of the major developments in New York City and New York state employment law this past year, and a look ahead as to what's to come in the New Year. We start our end-of-year retrospective way back in January 2021.

#### 1. New Sick Leave Law Goes into Effect

New York kicked off 2021 with a change to the state's sick leave policy. Back in April 2020, the state enacted [a permanent paid sick leave program](#) requiring all employers to provide job-protected sick leave. The amount of leave time employees can take and whether the leave is paid or unpaid [varies based on the size and profitability of the employer](#). These changes went into effect on January 1, 2021. As employees continue to get vaccinated and boosted against COVID-19, employers should be sure to comply with New York State Department of Labor ("NY DOL") guidance by giving workers [at least four hours of paid leave](#) per vaccine injection. Employers must also [permit workers to use accrued sick leave to recover from any vaccine side effects](#).

Employers are also reminded that this permanent paid sick leave is a separate allotment of leave from New York's [COVID-19 leave](#) which requires that employers provide up to fourteen days of job-protected leave to eligible employees who are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. Per NY DOL guidance, employees may qualify for COVID-19 sick leave [for up to three orders of quarantine or isolation](#).

#### 2. New Protections for Recreational Marijuana Use

In March 2021, New York State passed the Marijuana Regulation and Taxation Act ("MRTA"), which legalized recreational marijuana use for adults 21 years of age or older. Now that the use of cannabis is legal for adults under New York State law, New York employers are generally prohibited from taking adverse actions against employees for cannabis use outside of work hours. However, [as we explained back in October](#) when the NY DOL interpretive guidance was released, employers may discipline employees for the possession of cannabis on employer property or use during working hours, and for reporting to work impaired by cannabis. The NY DOL further clarified that employers should generally not drug test for marijuana. To ensure compliance with the MRTA, employers should review—and, as necessary, amend—their drug use policies.

#### 3. Laws Combatting the Spread of COVID-19 at Work

In May 2021, New York State passed the NY [HERO Act](#), which aimed to improve workplace safety by requiring every employer to adopt an "airborne infectious disease exposure prevention plan" ("EPP"). Such plans must be prominently displayed within the worksite and must be included in employee handbooks, if one exists. The HERO Act also allows employees to [sue their employer for injunctive relief](#) should the employer violate their plan in a manner that creates a substantial possibility of death or harm. Since May, the NY DOL has offered [template infectious disease prevention plans](#) as well as [various industry-specific plans](#) to help employers comply with their obligations under the HERO Act. As we are currently under an airborne infectious disease declaration—[recently extended through January 15, 2022](#)—all New York employers should have an EPP in place and activated, and have reviewed the EPP with employees.

Additionally, the HERO Act requires employers with 10 or more employees to permit employees to form joint labor-management Workplace Safety Committees to address workplace safety issues. On December 22, 2021, the NY DOL issued a [detailed proposed rule](#) on Workplace Safety Committees and scheduled a public hearing on the proposed rule for February 9, 2022. We will continue to report on employers' obligations regarding these committees as those obligations crystalize.

Relatedly, all employers with 100 or more employees should be taking steps to comply with the [OSHA Emergency Temporary Standard \(recently permitted by the Sixth Circuit to go back into effect, at least until the Supreme Court weighs in\)](#), Governor Kathy Hochul's [declaration](#) requiring vaccination or masking in indoor workplaces, at least through January 15, 2022, and the Mayor's [employer vaccine mandate](#), which required all employees to provide proof of a first vaccine dose ([or request an accommodation](#)), by December 27, 2021.

#### **4. Whistleblower Protections Expand**

In October 2021, Governor Hochul signed [legislation](#) expanding protections for private-sector employees who report what they reasonably believe to be a violation of the law. Previously, employees needed to demonstrate that their employer engaged in an actual violation of the law in order to be protected from retaliation for whistleblowing. Among other changes, the law also expands protections to former employees and to independent contractors, lengthens the applicable statute of limitations, and widens the definition of retaliatory action. These new changes go into effect on January 26, 2022 and all employers must [publish a notice](#) informing employees of their new protections.

#### **5. Paid Family Leave Expands**

On November 1, 2021, New York State [passed legislation](#) to expand New York Paid Family Leave ("PFL") to cover time off to care for injured or ill siblings. The definition of siblings includes adopted, step, and half-siblings. The change will more closely align the reasons employees may take PFL with qualifying reasons for sick leave under state law, which already permits use of leave to care for siblings. Employers will have some time to update their policies, as the change does not take effect until January 1, 2023.

#### **6. Prior Notice Required for Electronic Monitoring**

On November 8, 2021, Governor Hochul signed a [new law](#) requiring all private employers to provide notice to employees before monitoring their electronic communications. For new employees, prior written notice must be given upon hiring and must be acknowledged by the employee either electronically or in writing. Employers must also post their notice of electronic monitoring in "a conspicuous place." The law's notice requirement will take effect in May 2022 and non-compliant employers can be fined.

#### **7. Employers May Be Required to Post Salary Information**

On December 15, 2021, New York's City Council passed a [bill](#) that would make it unlawful for employers to not include in job listings "the minimum and maximum salary for such position." The bill, which has not been signed or vetoed by the Mayor, further provides that the salary range posted by an employer should represent the employer's [good faith belief](#) of what it would pay for the advertised position.

#### **8. Minimum Wages and Exemption Thresholds for Employers Outside City to Increase**

Finally, outside of New York City, minimum wage and salary exemption thresholds will tick up in 2022, as the state continues to incrementally march toward a general \$15 minimum wage. As the State's Division of the Budget has [announced](#), the minimum wage in Nassau, Suffolk, and Westchester will rise to \$15.00, the rate already in place in New York City. Meanwhile, the upstate minimum wage will move from \$12.50 to \$13.20. New York's minimum salary threshold for most overtime-exempt professionals will also rise in 2022 from [\\$1050 to \\$1,125](#) per week on Long Island and in Westchester—to match the current thresholds for City employees—and from [\\$937.50 to \\$990](#) per week in upstate New York. Employers should be sure to review their pay scales and to reclassify employees as necessary to bring themselves into compliance with these changes.

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These weren't all the changes in New York City and New York state employment law in 2021. The year also saw new rules on topics like [hiring with artificial intelligence](#) and [threatening to report an individual's immigration status](#). We will continue to report on developments in employment law in 2022.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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