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A L E R T

BOTH STATEWIDE PAID FAMILY LEAVE AND THE \$15 MINIMUM WAGE FOR MOST OF THE NYC METRO AREA BECAME LAW IN NEW YORK APRIL 4TH

By Scott J. Wenner

In a flurry of activity accompanying agreement with the Governor on a budget in late March, New York State lawmakers passed, and Governor Cuomo subsequently signed, legislation following California’s lead in raising the statewide minimum wage to \$15.00 per hour, and also seizing the mantle among the states as the most generous, in guaranteeing 12 weeks of paid family leave. Cuomo had been stumping in support of both issues for several months as Democrats gear up for legislative elections this year, and for a gubernatorial contest in 2017. Benefits under both of these measures, which have been the subjects of national campaigns by unions and other organized interest groups, will be phased in over several years.

Minimum Wage Hike

The minimum wage increase will become effective in yearly annual increments beginning on December 31 of this year. However, the amount and timing of each annual increase will depend on whether or not the New York employees are located in New York City, and as to employees in New York City, whether the employer employs eleven or more employees. The chart immediately below summarizes the timing and amounts of incremental increases in the minimum wage for

the categories of employers established by the new minimum wage law:

New York City

	11+ Employees	10 or fewer Employees
12/31/2016	\$11.00 per hour	\$10.50 per hour
12/31/2017	\$13.00 per hour	\$12.00 per hour
12/31/2018	\$15.00 per hour	\$13.50 per hour
12/31/2019		\$15.00 per hour

NYC Suburban Counties (Westchester, Nassau, Suffolk)

	11 + Employees
12/31/2016	\$10.00 per hour
12/31/2017	\$11.00 per hour
12/31/2018	\$12.00 per hour
12/31/2019	\$13.00 per hour
12/31/2020	\$14.00 per hour
12/31/2021	\$15.00 per hour

Other New York State Counties

	11 + Employees
12/31/2016	\$9.70 per hour
12/31/2017	\$10.40 per hour
12/31/2018	\$11.10 per hour
12/31/2019	\$11.80 per hour
12/31/2020	\$12.50 per hour

“Safety Valve”: The law increasing the minimum wage does contain a proviso, referred to by the Governor as a “safety valve,” that is supposed to offer a measure of moderation should the programmed minimum wage increases be found by the state budget director, in collaboration with the state Department of Labor, to have disrupted the economy. If such a finding is made after an analysis on a regional basis within the state, programmed increases may be temporarily suspended. However, these analyses will not commence until 2019, well after most of the increases, especially in New York City, have been baked into employee wages. There is no authority to roll wages back (barring new legislation, of course, making any relief to employers in case of economic damage from the increases not only politically unlikely, but also beyond the authority of the budget director, as most increases will have taken effect already.

Paid Family Leave

Under the New York paid family leave law, *all employers* in New York State will be required to provide paid family leave to eligible employees. There is no small employer exception for the paid family leave obligations, however, the obligation will not begin its phase-in period until 2018 and will not be fully effective until 2021.

At least as envisioned, paid leave benefits will not be paid for by employers. Instead they will be offered and administered in a manner similar to New York’s present temporary disability insurance program, and will be funded through payroll

deductions. Like SDI contributions, amounts deducted from paychecks by employers will be passed on to the state fund or to the employer’s insurance provider.

The right to receive a salary replacement benefit for qualifying leaves will begin on January 1, 2018. Those monetary benefits will be based on New York’s statewide average weekly wage - a figure that currently stands at approximately \$1,296 per week. In 2018, the monetary benefit will amount to 50% of an employee’s average weekly wage, but will be capped at 50% of the statewide average weekly wage – a cap of about \$648 using today’s numbers. Both the percentage of the statewide average weekly wage and the percentage of the employee’s own average weekly wage used in calculating the benefit will be fully implemented in 2021 at 67% of an employee’s average weekly wage, which will be capped at 67% of the statewide average weekly wage. In 2016 dollars the 2021 cap based on the average weekly wage would be about \$864. Intermediate steps to 55% and 60% of both the employee’s wage and the statewide average will be effective in 2019 and 2020.

Under the new law in New York, paid family leave will be available beginning in January 2018 to care for a family member with a serious health condition, care for a child for up to 12 months after birth or adoption, and for military families under exigent circumstances. Paid leave for an employee’s own illness will continue to be covered under the state disability insurance law.

Employers will be permitted under the law to allow employees to use accrued paid time off to make up the difference between the family leave salary replacement benefit and their full salary. However, it will not be permissible for an employer to require any employee to use accrued unused paid time off during a period of paid family leave.

Observations

- While the salary replacement benefit is funded through employee contributions, the true cost to employers of the paid

family leave program is the impact it may have on attendance and absenteeism.

- The right to and permissible conditions of time off under the current web of overlapping laws has often been a complex issue to resolve. The injection of the state family leave law into to the necessary analysis in New York, coupled with New York City requirements for paid sick leave, further complicates the picture, especially for New York City employers.
- The addition of New York as the fifth state to mandate paid family leave (along with California, Washington, Rhode Island and New Jersey), and the differing rules among those five states in determining the right to use and the extent of the leave benefit, highlights the difficult task facing national and multistate employers in framing an answer to what used to be an easy question: “Can I have some time off?” ◆

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