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New York passes landmark legislation raising minimum wage and mandating paid family leave

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New York will gradually raise its minimum wage to \$15 an hour for most workers and become the first state to require that employees receive 12 weeks of paid family leave under a bill signed by Governor Andrew Cuomo on April 4, 2016.

Minimum wage to increase at different rates depending on location

New York's minimum wage rate will increase over the next several years, but at different rates depending on the area of the state where the employee works.

Workers in New York City employed by a business with at least 11 workers will see the minimum wage rise to \$11 per hour at the end of the year, with another \$2 increase each year after to reach the \$15 minimum wage by the end of 2018.

For workers in New York City employed by businesses with 10 workers or less, the minimum wage will rise more gradually. It will go up to \$10.50 per hour by the end of 2016, then another \$1.50 per hour each year, reaching \$15 by the end of 2019.

Workers in Nassau, Suffolk and Westchester counties will see the minimum wage go up first to \$10 per hour, followed by a \$1 increase annually to reach \$15 per hour by 2021.

For workers in all counties north of Westchester County, the increases will progress at an even slower pace, starting with \$9.70 at the end of 2016 and reaching a \$12.50 per hour minimum wage by the end of 2020. In a concession to upstate lawmakers and businesses, the minimum wage there will not rise to \$15 until a study is conducted by the state and a new indexed schedule is set.

Notably, the bill also mandates an increase in the minimum wage for tipped food service workers. The bill requires tipped food service employees (who currently must earn at least \$7.50 per hour and receive a tip credit of at least \$1.50 per hour) to be paid the higher of the current tipped minimum wage or two-thirds of the state minimum wage, and receive a tip credit equal to the difference between tipped and regular minimum. For example, when the state's minimum wage eventually increases to \$15 per hour, tipped food service workers will be required to be paid at least \$10 per hour in cash wages, and to receive a tip credit of at least \$5 per hour.

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The bill also contains what Gov. Cuomo has described as a “safety valve” for the state’s economy in which the state would conduct annual economic studies beginning in 2019 to determine if the scheduled increases across the state should be suspended.

Paid family leave to go into effect beginning January 2018

The bill also makes New York workers the beneficiaries of the nation’s longest and most comprehensive paid family leave program.

Beginning in 2018, after having worked for their employer for six months, all full- and part-time employees will be eligible to take paid family leave to care for a family member with a serious health condition, to bond with a child during the first twelve months after the child’s birth or the first twelve months after the child has been placed for adoption or foster care with the employee or to relieve family pressures when a spouse or family member is called to active military service. Notably absent from the current statute, however, appears to be any protection for employees who take leave for their own serious health conditions. Otherwise, the state’s definition of a “serious health condition” in large part tracks the definition under the federal Family and Medical Leave Act (“FMLA”).

Employees who take family leave will enjoy job protection, even if they work for employers with fewer than 50 employees that are not currently subject to the federal FMLA, as the state law applies to all employers, regardless of size. Notably, however, the leave provisions are not identical to those set forth in the federal FMLA and the extent to, and manner in, which the state law will be applied may not be the same as the federal law.

Like the minimum wage rate, the paid family leave mandate will be implemented in phases. Beginning January 1, 2018, workers will be eligible for up to eight weeks of leave, paid at 50 percent of their average weekly pay, up to a maximum of 50 percent of the statewide average weekly wage (i.e., approximately \$630). By 2021, at which time the plan will be fully implemented, employees will be eligible for up to twelve weeks of leave, paid at 67 percent of the employee’s average weekly pay, up to a maximum of 67 percent of the statewide average weekly wage.

The paid family leave program will be funded through a payroll deduction on employees, a move Governor Cuomo asserts will cost businesses “nothing.” It will cost employees about \$1 per week.

What’s next?

The passage of these two pieces of legislation will create additional challenges for New York employers. In addition to the sheer cost of increased minimum wages, **all** New York employers, regardless of size, will be challenged by the prospect of accommodating employee leaves of absence that can last up to twelve weeks.

Governor Cuomo’s assertion that this legislation will cost employers “nothing” is at best myopic. Businesses are certain to incur costs in recruiting, hiring, training and paying replacement employees, not to mention lost productivity and efficiency. Many organizations with limited resources, including many small businesses, will struggle to maintain productivity and service levels when key employees take intermittent leave, which, because of its unpredictability, often precludes the hiring of replacements. In short, this legislation is likely to cost businesses in terms of lower profits, higher prices of goods and services (which will hurt with inter-state competition) and lower net pay to employees.

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