

## New York Employers: Key Law Changes You Need to Know for 2025, by Keith J. Gutstein, Esq. and Matthew Cohen, Esq., 1-8-2025

As 2025 gets underway, New York employers should be aware of employment law changes to ensure compliance. A summary of some of the most noteworthy changes are provided below:

### Paid Prenatal Leave.

All private sector employees are now entitled to up to 20 hours of Paid Prenatal Leave during any 52-week calendar period as a result of the New York State Paid Prenatal Leave Law, which went into effect on January 1, 2025. This 52-week calendar period is calculated going back from any date during which Paid Prenatal Leave is used. For example, if on March 15th, an employee requests to utilize Paid Prenatal Leave, the employer would have to confirm the amount of Paid Prenatal Leave used by that employee in the 52 weeks prior to March 15th to determine how many hours of Paid Prenatal Leave that employee has available to use.

There is no minimum number of hours that an employee must work in order to be eligible for Paid Prenatal Leave. As such, even a newly hired employee could be entitled to 20 hours of Paid Prenatal Leave immediately upon being hired.

Employees can utilize Paid Prenatal Leave on an hourly basis and must be paid at their regular rate of pay (which must be at least the minimum wage) for all such leave used. It is also important to remember that if an employee is receiving a tip credit against the minimum wage, that employee must be paid the applicable minimum wage while utilizing Paid Prenatal Leave.

Employees can utilize Paid Prenatal Leave for health care services during their pregnancy or related to their pregnancy, including, but are not limited to, physical examinations, medical procedures, monitoring, testing, discussions with a health care providers related to the pregnancy, fertility treatment (including in vitro fertilization), care appointments, and end of pregnancy care appointments. Paid Prenatal Leave cannot be utilized for postnatal or postpartum appointments.

Employees are only eligible to utilize Paid Prenatal Leave if they are the individual directly receiving health care services like the examples listed above. Spouses, partners, or other support persons cannot utilize Paid Prenatal Leave to attend prenatal appointments with a pregnant person.

In addition, employees cannot be required to disclose any personal or confidential information about their health condition or the nature of their prenatal appointment. Similarly, employers cannot require employees to submit medical records as a prerequisite for qualifying for Paid Prenatal Leave. To request the use of Paid Prenatal Leave, employees can simply request the use of such leave pursuant to the employer's existing procedures for providing notification of a need to take time off.

It is also important to remember that even if an employee utilized all 20 hours of Paid Prenatal Leave during the applicable 52-week period, the employee may still be able to utilize Paid Sick Leave for the absence to the extent said distance is one covered under New York State's Paid Sick Leave Law and/or New York City's Earned Safe and Sick Time Act.

### Increases to the New York State Minimum Wage

The New York State minimum wage increased by \$0.50 per hour on January 1, 2025. As a result, the minimum wage in New York City, Westchester County, and Long Island has increased to \$16.50 per hour, and the minimum wage in the remainder of New York State has increased to \$15.50 per hour.

In addition, as of January 1, 2025, employers in the hospitality industry can pay food service workers in New York City, Westchester County, and Long Island \$11.00 per hour provided that they properly take a tip credit of \$5.50 per hour. Employers in the remainder of the State can pay food service workers \$10.35 per hour provided that they properly take a tip credit of \$5.15 per hour. Importantly, if a food service worker's hourly tip total does not equal at least their tip credit, the employer must make up the difference to ensure that the employee is paid at least the minimum wage. The New York State Department of Labor defines a "Food Service Worker" as "any employee who is primarily engaged in the serving of food or beverages to guests, patrons or customers in the hospitality industry, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receives tips from such guests, patrons or customers." Delivery workers are not considered food service workers.

Also, as of January 1, 2025, employers in the hospitality industry can pay other service employees in New York City, Westchester County, and Long Island \$13.75 per hour provided that the service employee's weekly average of tips equals at least \$3.55 per hour and the employer properly takes a tip credit of \$2.75 per hour. Similarly, as of January 1, 2025, employers can pay service employees in the remainder of New York State, \$12.90 per hour provided that the service employee's weekly average of tips equals at least \$3.30 per hour and the employer properly takes a tip credit of \$2.60 per hour. The New York State Department of Labor defines a "service employee" as "an employee, other than a food service worker or fast-food employee, who customarily receives tips at or above the Tip Threshold rate."

### Freelance Isn't Free Act

Employers are reminded that the New York State Freelance Isn't Free Act went into effect on August 28, 2024. This act requires hiring parties to enter into written contracts with freelance workers and memorialize key provisions to include: (i) the names and mailing address of the freelance worker and the hiring party; (ii) an itemized list of all services to be performed by the freelance worker; (iii) the rate of pay; (iv) the payment date; and (v) the date by which the freelance worker must submit to the hiring party a list of services under the contract to enable the hiring party to ensure timely payment. The hiring party is then required to keep a copy of the contract for at least six years.

With regards to the payment date, the Freelance Isn't Free Act requires the hiring party to remit payments to freelance workers on or before the date the compensation is due under the written contract, or if the contract does not specify the due date for payment, no later than thirty (30) days after the completion of the freelancer's services.

Under the Freelance Isn't Free Act, a freelance worker is defined as "any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days." It is important to note the Freelance Isn't Free Act includes the following four exemptions to the definition of freelance worker: (1) attorneys, (2) licensed medical professionals, (3) sales representatives, and (4) construction contractors. Even though sales representatives are not covered by the Freelance Isn't Free Act, if they are being paid a commission, they must enter into a written commission agreement signed by both the employee and employer.

The Freelance Isn't Free Act further defines a "hiring party" as "any person who retains a freelance worker to provide any service" other than the United States government, New York State, a municipality, or foreign government. Under this broad definition, all natural persons and companies of any size and type are covered under this law.

### The Retail Worker Safety Act

The Retail Worker Safety Act, which was signed into law on September 5, 2024, requires employers with at least ten retail employees to develop and implement workplace violence prevention programs, directs the New York State Department of Labor to produce a model workplace violence prevention training program, requires employers to provide training on such programs, and mandates the installation of panic buttons at certain larger workplaces (employers with at least 500 employees) or that wearable or mobile phone-based panic buttons be provided. The policy and training requirements of the Retail Worker Safety Act take effect March 3, 2025 (although potential amendments being discussed between the Governor and State Legislature could move the effective date to June 2, 2025) with the panic button requirement for larger employers taking effect January 2027. As proposed amendments have not been finalized, employers should prepare to comply with the March 3rd deadline.

Authors: Partner Keith J. Gutstein, Chair of the Labor and Employment Law Practice Group and Partner Matthew Cohen