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DATE: April 14, 2016
TO: All New York Clients
FROM: Kane Kessler, P.C.
[Labor and Employment Practice Group](#)
RE: Governor Cuomo Signs Into Law Paid Family Leave and A State-Wide Minimum Wage Increase to \$15.00

On April 4, 2016, Governor Cuomo signed into law a twelve (12) week paid family leave policy and a \$15 state minimum wage rate across all industries, both of which will be phased in over the next five years.

Twelve (12) Week Paid Family Leave

New York State has joined four other states (New Jersey, California, Rhode Island and Washington) in enacting a paid family leave law. The law, which is the broadest in the country, will require employers to provide employees with up to twelve (12) weeks of paid, job-protected leave when caring for an infant, a family member with a serious health condition, or to relieve family pressures when someone is on active military service or on notice of a call or order to active duty. The law will be phased in as follows:

- Beginning in 2018, an employee can take up to eight (8) weeks of paid leave at a rate of 50 percent of his or her average weekly wage, capped to 50 percent of the statewide average weekly wage¹,
- Over the next two years, the amount of paid leave will increase to ten (10) weeks and the rate of pay will cap at 60 percent of the statewide average weekly wage,
- The law will be fully implemented in 2021, when employees can take up to twelve (12) weeks of paid leave at a rate of 67 percent of their average weekly wage, capped to 67 percent of the statewide average weekly wage.

¹ The New York State Average Weekly Wage (“NYSAWW”) is the average weekly wage paid in New York State during the previous calendar year as reported by the Commissioner of Labor to the Superintendent of Financial Services on March 31 of each year. The New York State Department of Labor’s Research and Statistics Division has computed the NYSAWW for calendar year 2015 to be \$1,296.48.

This program will be funded through what the Governor's Office calls "a nominal payroll deduction" on employees and both full-time and part-time employees will be eligible to participate after having worked for their employer for six months. How such benefits accrue is not expressly provided for by the legislation but regulations promulgated in furtherance of the law may provide more information. Employers may require paid leave to run concurrently with any unpaid leave an employee is eligible to take under the Family and Medical Leave Act ("FMLA").

Finally, while the bill contains language that the law is not intended to diminish the rights of employees under a collective bargaining agreement, it is expected that regulations promulgated pursuant to the law will require parties to a CBA to provide the same or comparable benefits. We will keep you apprised of any regulations that provide further guidance for employers.

\$15 Minimum Wage

New York has already moved toward a \$15 minimum wage for fast food employees, public sector workers, and SUNY employees. With Governor Cuomo's new bill, all workers in all industries across the state will see their wages increase to \$15 an hour over a period of five years as follows:

- For workers in New York City employed by large businesses (those with at least 11 employees), the minimum wage rises to \$11 at the end of 2016, then another \$2 each year after, reaching \$15 on December 31, 2018,
- For workers in New York City employed by small businesses (those with 10 employees or fewer), the minimum wage rises to \$10.50 by the end of 2016, then another \$1.50 each year after, reaching \$15 on December 31, 2019,
- For workers in Nassau, Suffolk and Westchester Counties, the minimum wage increases to \$10 at the end of 2016, then \$1 each year after, reaching \$15 on December 31, 2021,
- For workers in the rest of the state, the minimum wage increases to \$9.70 at the end of 2016, then another .70 cents each year after until reaching \$12.50 on December 31, 2020 – after which the minimum wage rate will continue to increase to \$15 on an indexed schedule to be set by the Director of the Division of Budget ("DOB") in consultation with the Department of Labor.

For tipped employees, the minimum wage will be two-thirds (2/3) of the minimum wage rates set forth above. The State's Department of Labor is expected to amend regulations by identifying the maximum tip credits employers may take, which will likely be the difference between the minimum wage rate and the tipped wage rate. We will keep you apprised of any amended regulations to this effect.

Further, the bill provides a safety valve to possibly protect against the impact of the increases. Beginning in 2019, the DOB Director will conduct an annual analysis of the economy in each region and the effect of the minimum wage increases statewide to determine whether a temporary suspension of the scheduled increases is necessary. That analysis is submitted to the Department of Labor by the DOB.

Conclusion

Regarding the paid family leave law, employers will have to revise their policies and practices beginning on or around January 2018. The expectation is that the state will promulgate regulations providing further guidance on the law and its requirements. With respect to the minimum wage laws, which are phased in at the end of the year, the notice requirements under New York state law will be triggered at that time. You will recall that employees must be notified seven (7) days before any changes to certain employment information, such as the wage increases discussed in this memorandum. Our previous memorandum discussing an employer's notification requirements under state law can be found here: <http://www.kanekessler.com/files/Dec. 31 2014 - Regarding Wage Theft Protection - Changes effective 2015.pdf>.

If you have any questions, please do not hesitate to contact [David R. Rothfeld](#), [Robert L. Sacks](#), [Lois M. Traub](#), [Alexander Soric](#), [Michael C. Lydakis](#), [Jaclyn Ruocco](#) or [Jennifer Schmalz](#).

This memo is provided for informational purposes only.

It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.