

2023 New York State Legislature Concludes with Flurry of Activity Pertinent to New York Employers

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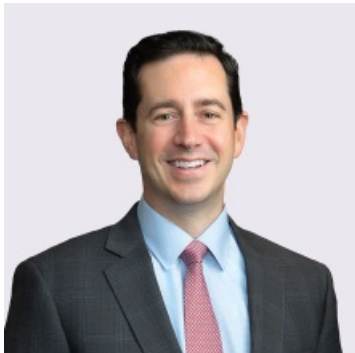
July 26, 2023

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The 2023 New York State Legislature recently concluded its legislative session (after being called back for two weeks to consider certain pieces of legislation). The session ended with a flurry of activity relevant to employers in the state, and below is an update on developments pertinent to New York employers. In sum, many items, including non-compete bans, the Freelance Isn't Free Act, Settlement Agreements and Liquidated Damages Provisions and more await forwarding to Governor Kathy Hochul's desk for her signature or veto.

It Happened

Minimum Wage Increasing

In May, Governor Hochul signed budget legislation to increase the minimum wage for workers beginning January 1, 2024, and continuing through 2026. Further, as part of the legislation, increases to the minimum wage will be indexed based on inflation by the U.S. Department of Labor's consumer price index beginning in 2027 and each year thereafter.

Minimum Wage Increases

For New York City, Westchester and Long Island:

- 2024 - \$16.00/hour
- 2025 - \$16.50/hour
- 2026 - \$17.00/hour

For the rest of New York:

- 2024 - \$15.00/hour
- 2025 - \$15.50/hour
- 2026 - \$16.00/hour

For 2027 and beyond, the New York Department of Labor (NYSDOL) will publish the minimum wage on October 1 each year for the rate to take effect on January 1. Increases will not occur for a given year if the inflation index is negative; New York State's unemployment rate increases by half a percentage point from its low during the preceding year; or total non-farm state employees decrease over the previous six (6) months.

The minimum wage increase will more than likely result in an increase to the minimum weekly salary for exempt administrative and executive employees.

Will It Become Law?

Non-Compete Agreement Ban

The New York State Legislature passed a bill that appears to generally ban non-

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compete agreements for all workers, regardless of their salary level or job function. New Labor Law Section 191-d, entitled “Non-compete agreements,” creates a private cause of action and is effective 30 days after it becomes law. The new law will apply to contracts entered into or modified on or after the effective date.

Significant lobbying of Governor Hochul is occurring over this potential legislation which, if passed in its current form, would be one of the most aggressive laws prohibiting the use of non-competes in the country. It is unclear if the Governor will sign in its current form or reach a compromise and sign with the understanding the legislation will be amended to include items such as a salary threshold prior to the effective date.

A full explanation of the potential new law can be found here: [New York Non-Compete Ban Goes to Governor - Jackson Lewis](#)

Freelance Isn't Free Act

The New York State Legislature passed a bill titled “Freelance Isn't Free,” that requires businesses to provide any freelance worker with a written contract if the value of the work is at least \$800, inclusive of cumulative small projects over a 120-day period and sets a 30-day deadline for payment in full. The bill also prohibits retaliation against freelance workers for exercising their rights under the bill. Governor Hochul previously vetoed this bill after it was passed in December 2022. The bill had overwhelming support in both houses of the legislature, but it remains to be seen what action the Governor will take.

A full explanation of the potential new law, modeled after existing NYC law, can be found here: [New York State Legislature Again Passes the Freelance Isn't Free Act - Jackson Lewis](#)

Settlement Agreements and Liquidated Damages Provisions

The New York State Legislature passed a bill that prohibits settlement agreements in claims involving sexual harassment or any other form of discrimination from containing a liquidated damages provision if the claimant violates any non-disclosure agreement included in the settlement agreement. The bill would amend Section 5-336 of New York's General Obligations Law.

In addition to the prohibition of liquidated damages provisions, the bill also bars settlements of harassment and discrimination claims from requiring a claimant to forfeit part or all of the consideration given in the agreement for violating the non-disclosure provision. The settlement agreement also may not include an affirmative statement, assertion or disclaimer stating that the claimant was not subject to either discrimination or retaliation.

If signed by Governor Hochul, the law would take effect immediately upon signing and apply to agreements entered on or after the effective date. The proposed law contains no provision that would make the law apply retroactively to agreements entered into prior to the effective date or void previously entered into settlement agreements.

Assignment of Inventions

The New York State Legislature passed a bill that would amend the state's Labor

Law to regulate the use and enforceability of invention assignment agreements adding section 203-F, which would render unenforceable any employment agreement provision that requires an employee to assign certain inventions that are made on the employee's own time and do not use the employer's equipment, supplies, facilities or trade secret information.

The proposed section specifies an exemption for intellectual property created with actual or demonstrably anticipated research of the employer or from work performed by the employee in the course of their work for the employer.

If signed, the new law would take effect immediately upon signing. However, the new law does not provide for an express right of action, create monetary penalties for offending invention assignment provisions or provide for administrative oversight or enforcement by any state agency.

Clean Slate Act

The New York state legislature passed A1029C and S7551A, the "Clean Slate Act." If signed by Governor Hochul, the new law will automatically seal records for certain convictions after specified periods of time. If signed, the new law would go into effect one year after signing.

Automatic Sealing

The Clean Slate Act provides for the automatic sealing of misdemeanor and felony criminal convictions upon meeting certain requirements:

- For a misdemeanor conviction, at least three years have passed since the individual's release from incarceration or the imposition of sentence if there was no sentence of incarceration;
- For a felony conviction, at least eight years have passed from the date the individual was last released from incarceration;
- The individual does not currently have a criminal charge pending; and
- The individual is not currently under the supervision of any probation or parole department.

Class A-I felonies for which a maximum life imprisonment sentence may be imposed and convictions requiring registration as a sex offender are not eligible under the Clean Slate Act.

Importantly, the Clean Slate Act would only seal convictions under New York's penal law. The Clean Slate Act would not seal criminal convictions under federal law or the criminal law of any state other than New York.

Discrimination Based Upon Sealed Records Is Prohibited

Under the Clean Slate Act, the New York State Human Rights Law would prohibit employers from inquiring about sealed records or discriminating against job applicants or employees based upon sealed conviction records.

The law would allow access to or the release of the sealed records to:

- Courts and prosecutors during a new criminal case;
- Law enforcement officers under the scope of an investigation;

- Any entity that is required under state or federal law to conduct a fingerprint-based background check or an entity authorized to conduct a fingerprint-based background check where a job applicant would be working with children, the elderly or vulnerable adults; and
- A licensing officer processing a firearm license application.

Thus, outside of these enumerated circumstances, no decisions can be based on the sealed records.

Captive Audience Meetings

The New York State Legislature passed a bill that, if enacted, would ban captive audience meetings in which employers express their religious and political beliefs, including those on labor issues such as union organizing. The legislation is similar to that just enacted in Minnesota. The legislation would make it unlawful for an employer to refuse to hire, discharge or otherwise discriminate against an employee because an employee refuses to attend an employer-sponsored meeting or listen to speech or view communications where the primary purpose is to communicate the employer's opinion concerning religious or political matters.

A full explanation of the potential new law can be found here: [Legislation Banning 'Captive Audience' Meetings Enacted in Minnesota, Awaiting Enactment in New York - Jackson Lewis](#)

Gender Identity or Expression

The New York State Legislature passed a bill that would add gender identity or gender expression as a protected class for purposes of the New York State Human Rights Law, including prohibitions in employment discrimination.

The bill would amend Section 296-c of the Executive Law, which prohibits discrimination against interns based on their membership in a protected class, and now include gender identity or expression as a protected characteristic.

This amendment would bring this section of the Executive Law in conformance with other provisions of the Human Rights Law, which have included gender identity and gender expression as protected classes since the passing of the Gender Expression Non-Discrimination Act in 2019. The new provision would be effective immediately upon signing by Governor Hochul.

Notice of Eligibility for Unemployment

The New York State Legislature also passed a bill that would require an employer to provide written notice of the right to file for unemployment benefits to any employee whose employment has been terminated or whose scheduled working hours have been reduced.

The bill would amend Section 590 of the Labor Law to require this written notice be provided to employees no more than five working days after the termination date or reduction of their working hours. The written notice will not be required if an employee is eligible for or has submitted a request for a leave of absence, vacation leave, bereavement leave, parental leave, personal leave or any other form of paid or unpaid leave established by the employer. This provision would take effect 60 days after it becomes law.

This bill is merely a formalization of current NYSDOL requirements.

Modification to the Definition of Clerical Worker

The New York State Legislature passed a bill to amend the New York Labor Law definition of “clerical and other worker.” Specifically, this legislation narrows the scope of bona fide executive, administrative or professional employees who are excluded from the definition to employees with earnings in excess of \$1,300 per week. The previous definition set the threshold at \$900 per week.

This bill impacts wage protections only available to “clerical and other worker[s].” For example, employees who qualify as a “clerical or other worker” cannot be required to utilize direct deposit for payment of wages. Further, among other things, employers who fail to pay wages within 30 days for “clerical and other worker[s]” can be found guilty of a misdemeanor.

It Did Not Happen?

Wage Theft

Another legislative session concluded without passing the Securing Wages Earned Against Theft (SWEAT) bill, which would have enabled workers to obtain an “employee’s lien” against an employer upon asserting a wage claim to temporarily obtain a lien against their employer’s assets.

The New York State Legislature passed a substantially similar bill in 2019, but it was vetoed by former Governor Andrew Cuomo. The SWEAT bill remains with the legislature in committee and has not been passed for Governor Hochul’s signature or veto.

In an attempt to combat wage theft, the legislature passed S2832A which would amend the New York Penal Law to allow prosecutors to seek stronger penalties against employers who steal wages from workers. This bill would amend the Penal Law definition of larceny to include wage theft and amend the definition of “property” to include “compensation for labor or services.” This bill passed the Senate and Assembly and awaits Governor Hochul’s signature or veto.

If you have any questions or need advice regarding any of these legislative developments or any other workplace law issues, please do not hesitate to contact a Jackson Lewis attorney.

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