



Webinar 23 – December 11, 2024

Year End Review and Supreme Court Update

WEBINAR OUTLINE

FEDERAL LAW UPDATES

- New Overtime Rule Struck Down
- NLRB Overrules Longstanding Precedent on Captive-Audience Meetings

NEW YORK STATE UPDATES TO THE LAW

- Wage and Hour (New York State and New York City)
- New York State Paid Family Leave Updates
- New York Paid Prenatal Leave Law – Effective January 1, 2025
- Paid Lactation Breaks
- COVID-19 Sick Leave Law
- New York State Freelance Isn't Free Act
- New York Retail Worker Safety Act Signed into Law

NEW YORK CITY UPDATES TO THE LAW

- New York City Enacts Legislation Requiring Notice and Posting of Workers' Bill of Rights
- New York City Amends Earned Safe and Sick Time Act to Allow a Private Right of Action
- NYC Prohibits Provisions in Employment Agreements that Shorten the Time Employees Can Bring Discrimination Claims

SUPREME COURT UPDATE

- 2024 Recap – Key Decisions that Employers Should be Aware of

HRtelligence TIPS

FEDERAL LAW UPDATES

New Overtime Rule Struck Down

- The DOL's final rule "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees," which had authorized an increase in the white-collar minimum salary thresholds for exemption from federal overtime requirements has been struck down by a federal judge on November 15, 2024.
- The rule was set to dramatically boost the salary threshold for the "white collar" overtime exemptions.
- The rule increased the minimum salary to \$43,888 per year on July 1, 2024, and effective January 1, 2024, it would have increased the minimum salary to the equivalent of \$58,656 per year for the EAP exemption and \$151,164 per year for the HCE exemption.
- The exemption threshold is back to roughly \$35K.
- The DOL has recently appealed the federal judge's decision.

NLRB Overrules Longstanding Precedent on Captive-Audience Meetings

- In a recent decision, the National Labor Relations Board reversed a 76-year-old precedent and held that employers violate the National Labor Relations Act when they compel employees to attend meetings where the employer expresses its views on unionization.
- The decision, which applies prospectively only, has significant implications for employers and unions engaged in organizing campaigns.

NEW YORK STATE LEGAL UPDATES

Wage and Hour (New York State and New York City)

Overtime Exemption Salary Threshold Increases

Effective January 1, 2025, New York's salary basis test for employees classified as exempt under the administrative and executive exemptions will increase as follows:

New York City, Westchester, and Long Island	\$1,237.50/week or \$64,350.00/year (increased from \$1,200.00/week or \$62,400.00/year)
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Remainder of New York state	\$1,161.65/week or \$60,405.80/year (increased from 1,124.20/week or \$58,458.40/year)
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Minimum Wage Increases

Effective January 1, 2025, New York's minimum wage will increase for all employees (excluding home care aides and certain other industry employees) as follows:

New York City, Westchester, and Long Island \$16.50/hour (increased from \$16.00/hour)

Remainder of New York state \$15.50/hour (increased from 15.00/hour)

Upcoming Changes to the Tip Credit for Tipped Employees

As of January 1, 2025, the allowable "tip credit" for food service workers and service employees and the minimum cash wage is scheduled to increase.

Tipped Food Service Workers

A food service worker is defined 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. The term food service worker does not include delivery workers.

This chart reflects cash wages and tip credits for food service workers, effective January 1, 2025:

New York City, Westchester, and Long Island \$11.00 cash wage and \$5.50 tip credit/hour (increased from \$10.65 cash wage and \$5.35 tip credit/hour)

Remainder of New York state \$10.35 cash wage and \$5.15 tip credit/hour (increased from \$10.00 cash wage and \$5.00 tip credit/hour)

Tipped Service Employees

A service employee is defined as an employee, other than a food service worker or fast food employee, who customarily receives tips.

This chart reflects cash wage and tip credit for service employees, effective January 1, 2025:

New York City, Westchester, and Long Island \$13.75 cash wage and \$2.75 tip credit/hour (increased from \$13.35 cash wage and \$2.65 tip credit/hour)

Remainder of New York state \$12.90 cash wage and \$2.60 tip credit/hour (increased from \$12.50 cash wage and \$2.50 tip credit/hour)

Upcoming Changes to the Meal Credit

The allowable "meal credit" for food service workers, service employees, and non-service employees will increase on January 1, 2025. It is important to note that employees covered by the Minimum Wage Order for Farm Workers will not experience a change in the meal credit.

Food Service Workers

This chart reflects the meal credit for food service workers, effective January 1, 2025:

New York City, Westchester, and Long Island	\$3.95/meal (increased from \$3.85/meal)
Remainder of New York state	\$3.95/meal (increased from \$3.80/meal)

Service Employees

This chart reflects the meal credit for service employees, effective January 1, 2025:

New York City, Westchester, and Long Island	\$4.60/meal (increased from \$4.45/meal)
Remainder of New York state	\$4.25/meal (increased from \$4.10/meal)

Non-Service Employees

A non-service employee is defined as any employee other than a service employee or a food service worker.

This chart reflects the meal credit for non-service employees, effective January 1, 2025:

New York City, Westchester, and Long Island	\$5.65/meal (increased from \$5.50/meal)
Remainder of New York state	\$5.35/meal (increased from \$5.20/meal)

Updates to the Uniform Allowance

The required "uniform allowance" for employers who require employees to wear a uniform but do not launder and maintain the uniform itself will increase on January 1, 2025. A "required uniform" is defined as clothing required to be worn while working at the request of an employer, or to comply with any federal, state, city, or local law, rule, or regulation, except clothing that may be worn as part of an employee's ordinary wardrobe. It is important to note that employees

covered by the Minimum Wage Order for Farm Workers and employees of certain non profit organizations are not required to pay a uniform maintenance allowance.

This chart reflects the required uniform maintenance allowance, effective January 1, 2025:

	Workweek of More Than 30 Hours	Workweek Between 20-30 Hours	Workweek of 20 Hours or Less
New York City, Westchester, and Long Island	\$20.50/week (increased from \$19.90/week)	\$16.25/week (increased from \$15.75/week)	\$9.80/week (increased from \$9.50/week)
Remainder of New York state	\$19.25/week (increased from \$18.65/week)	\$15.30/week (increased from \$14.80/week)	\$9.25/week (increased from \$8.95/week)

New York Paid Family Leave

Starting January 1, 2025, the following changes will take effect:

- Eligible employees taking leave under the NYPFLL will continue to receive 67% of their average weekly wage, up to a cap of 67% of the current Statewide Average Weekly Wage (NYSAWW). For 2025, the NYSAWW is \$1,757.19, which means that the maximum weekly benefit for 2025 is \$1,177.32 (a \$26.16 increase from 2024).
- Eligible employees will contribute 0.388% of their gross wages per pay period, with the maximum annual contribution for 2025 set at \$354.53. Employees earning less than the current NYSAWW of \$1,757.19 will contribute less than the annual cap of \$354.53, consistent with their actual wages.

New York Paid Prenatal Leave

- On January 1, 2025, an amendment to New York Labor Law section 196-b, the state’s paid sick leave law, will go into effect. The amendment requires New York employers to provide employees with 20 hours of paid prenatal leave during any 52-week period.
- The amendment provides that paid prenatal leave may be taken for “health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy.”

- Employees may take paid prenatal leave in hourly increments at their regular rate of pay or the applicable minimum wage, whichever is greater. Paid prenatal leave is in addition to existing leave entitlements such as paid sick and safe leave, paid family leave, and leave under the Family and Medical Leave Act.

Paid lactation breaks

- Starting June 19, 2024, New York employers must provide nursing employees with 30-minute paid lactation breaks.

COVID-19 sick leave law

- This law will expire on July 31, 2025.

New York State Freelance Isn't Free Act

The New York State Freelance Isn't Free Act, which provides new protections for freelance workers throughout the state took effect on August 28, 2024. The law sets forth certain requirements for employers when retaining the services of a freelance worker.

Definition of "Freelance Worker"

Pursuant to the 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 compensation.

Written Agreement Requirement

Under the new law, when a business retains the services of a freelance worker the terms of the agreement must be memorialized in a written contract if (i) the cost of a single project is equal to or exceeds \$800, or (ii) the freelance worker has provided multiple services to the business within a 120-day period that equals or exceeds \$800 in the aggregate. Hiring parties will be required to "furnish a copy of such written contract, either physically or electronically, to the freelance worker," and each party must retain a copy of the written contract. The contract must be provided to the freelance worker and retained by the hiring party for at least six years. The contract must include:

- The names and mailing addresses of the freelance worker and the hiring party
- An itemized accounting of the services to be performed
- The rate of pay
- The payment date

- The date by which the freelancer worker must submit to the hiring party a list of services rendered under the contract to enable the hiring party to meet any internal processing deadlines to ensure timely payment.

Timely Payment

Further, the new law requires that freelance workers must be compensated either: 1) whenever such compensation is due under the terms of the contract; or (2) no later than thirty days after the completion of the freelance worker's services if the contract does not provide a specific date or specify the mechanism by which the payment date will be determined.

New York Retail Worker Safety Act Signed into Law

On September 4, 2024, Governor Hochul signed into law the New York Retail Worker Safety Act which will impose significant workplace violence prevention requirements on retail employers. Most of the law's provisions will take effect on March 1, 2025.

Specifically, under the new law, retail employers with ten or more employees will be required to adopt a workplace violence prevention plan which must include:

- (1) a list of factors or situations that may place retail employees at risk of workplace violence;
- (2) methods to prevent incidents of workplace violence;
- (3) information on legal provisions regarding violence against retail employees and remedies for victims; and
- (4) an anti-retaliation statement.

In addition, covered employers must provide the interactive training to employees.

NEW YORK CITY LEGAL UPDATES

New York City Enacts Legislation Requiring Notice and Posting of Workers' Bill of Rights

Beginning July 1, 2024, New York City employers were required to post and distribute a Workers' Bill of Rights which would contain information on the rights and protections under federal, state, and local laws that apply to all workers in the City, regardless of immigration status.

New York City Amends Earned Safe and Sick Time Act to Allow a Private Right of Action

The New York City Council recently amended the New York City Earned Safe and Sick Time Act ("ESSTA"), to create a private right of action for employees claiming violations of ESSTA.

Employees will have two years from the date they first knew or should have known about the alleged violation to file a lawsuit. The new law became effective March 20, 2024.

Previously, employees alleging violations of the ESSTA could only seek administrative action by filing a complaint with the Department of Consumer and Worker Protection (“DCWP”). The new law amends Section 20-924 of the administrative code of the city of New York to allow any person to “commence a civil action in any court of competent jurisdiction” alleging a violation of the ESSTA “within 2 years of the date the person knew or should have known of the alleged violation,” and the filing of a complaint with the DCWP will be “neither a prerequisite nor a bar to bringing a civil action.”

NYC Prohibits Provisions in Employment Agreements that Shorten the Time Employees Can Bring Discrimination Claims

Effective May 11, 2024, the New York City Human Rights Law (“NYCHRL”) was amended to prohibit any term of an employment agreement that shortens the time for employees to file a claim of unlawful discriminatory practices, harassment, or violence under the NYCHRL.

SUPREME COURT UPDATES

Title VII Discriminatory Transfers—*Muldrow v. City of St. Louis* Holding

On April 17, 2024, the Supreme Court unanimously held in *Muldrow v. City of St. Louis* that employees do not need to suffer “significant” harm to state a claim for discrimination under Title VII. Instead, plaintiffs alleging Title VII discrimination must show they suffered “some harm” regarding an identifiable term or condition of employment.

Chevron Deference—*Loper Bright Enterprises v. Raimondo and Relentless Inc. v. Department of Commerce* Holding

On June 28, 2024, the Supreme Court decided two cases, *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*. In doing so, it overturned its 1984 decision in *Chevron, U.S.A. Inc. v. Natural Resources Defense Council Inc.*, which held that courts should defer to federal agencies to interpret ambiguities and gaps in the laws that the agencies implement (known as Chevron deference).

Whistleblower Retaliation – *Murray v. UBS Securities LLC*

Holding

On Feb. 8, 2024, the Supreme Court unanimously held in *Murray v. UBS Securities LLC* that whistleblower employees do not need to prove that their employer acted with retaliatory intent to be protected under the federal whistleblower protections of the Sarbanes-Oxley Act (SOX).

Decisions to Look Out For

Employee Misclassification – *E.M.D. Sales Inc. v. Carrera*

Legal Question

On Nov. 5, 2024, the Supreme Court heard oral arguments in *E.M.D. Sales Inc. v. Carrera*, a case in which the Supreme Court will decide what evidence an employer needs to show to prove it correctly classified employees as exempt from minimum wage and overtime pay under the FLSA. The Supreme Court's ruling will address a disagreement among federal appeals courts on the issue.

ADA Post-employment Discrimination – *Stanley v. City of Sanford, Florida*

Legal Question

On June 24, 2024, the Supreme Court granted certiorari in *Stanley v. City of Sanford, Florida*, to address a circuit split as to whether a former employee, who was qualified to perform their job and earned post-employment benefits while employed, has the right to sue their former employer under the ADA's antidiscrimination provision with respect to those benefits when they are no longer employed.



Every business leader knows that “the only constant is change.” In today’s constantly evolving legal landscape, it’s a business’s ability to adapt quickly and efficiently that ensures its longevity and success. Between emerging trends and ever-changing laws/regulations, it’s essential for an employer to be flexible and adaptable in order to navigate unexpected challenges. Developing the proper HR policies and strategies for implementing the updates and changes is key for legal compliance.

Employers should take the following steps to meet their current obligations and prepare for the laws:

- Review exempt employees’ salaries in light of the announced increases to the minimum wage/overtime exemptions as well as pay frequency exemptions
- Review social media policies to ensure they do not require employees to provide access to personal accounts in violation of the law
- Review employee handbook provisions concerning employee intellectual property and inventions
- Employers should verify that they are keeping accurate pay records and statements, including ensuring employees are paid for all time worked, in light of the new criminal penalties for wage theft.
- Ensure your sexual harassment prevention materials have been updated to reflect the new requirements.