

# Legislative Update 2019

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Working to create economic growth, good jobs and strong communities across New York State.

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# 2018 Elections – One Party Rule

## NYS Assembly

106 - Democrat (Carl Heastie-Bronx)

43 - Republican (Brian Kolb-Ontario)

1 - Independent

## Attorney General

Letitia James

## NYS Senate

40 - Democrat (Andrea Stewart-Cousins – Yonkers)

23 - Republican (John Flanagan – Northport)

11,833 (4,353 Senate + 6,481 Assem) 213

3,052 (Congress) 535



# Priorities in Albany

## Passed

- GENDA
- Reproductive Health Act
- Child Victims Act
- “Red Flag ”gun control measures
- DREAM Act
- Election Reforms

# What's Happening...

- Paid Family Leave
- Election Reforms
- Legalized Adult Use Cannabis
- Sexual Harassment
- Predictive Scheduling
- Wage Theft/Pay Equity
- Miscellaneous
- Federal Update



# Paid Family Leave - Update

- January 1, 2018; up to 8 weeks of leave at 50% of the employees average weekly wage to a maximum of 50% of the state's average weekly wage;
- ➔ January 1, 2019; up to 10 weeks of leave at 55% of the employees average weekly wage to a maximum of 55% of the state's average weekly wage;
- January 1, 2020; up to 10 weeks of leave at 60% of the employees average weekly wage to a maximum of 60% of the state's average weekly wage;
- January 1, 2021 and thereafter; up to 12 weeks of leave at 67% of the employees average weekly wage to a maximum of 67% of the state's average weekly wage.

# 2019 Employee Benefits/Contribution

- Bereavement/Siblings/Domestic-Sexual Abuse
- State's Average Weekly Wage (AWW) for 2019 = \$1,357.11
- 55% of an employee's AWW to a maximum of 55% of the state's AWW = \$746.41 maximum weekly benefit.
- The 2019 employee contribution rate = 0.153%
- Maximum deduction:  $0.153\% \times \$1,357.11 = \underline{\$2.07/\text{week}}$
- Maximum deduction:  $0.153\% \times \$70,569.72 = \underline{\$107.97/\text{year}}$

# PFL Utilization

## Overall

- 76.7% Bonding
- 23.2% Caregiving
- 0.1% Military Exigencies

## Bonding

- 72% Mom (Average of 7 weeks)
- 28% Dad (Average of 4.5 weeks)

## Caregiving

- 73% Women (Average of 4 weeks)
- 27% Men (Average of 4 weeks)

# PFL Utilization

## Ages

- Average Age: 38

## Income

- Average Income: \$35,000 - \$45,000

# Long Term Market Impacts

- Carriers not offering “Stand Alone” NYS DBL / PFL
  - Limited market for Employers without other lines
- Carriers leaving NYS for NYS DBL / PFL?
  - Does NY State Fund become involved like Workers Comp?
  - Do Employers begin to share in the cost?
  - Does rate become Experience Rated like WC and NYS DBL?

# Election Day “Holiday”

- Time allowed employees to vote. 1. A registered voter [~~does not have sufficient time outside of his working hours, within which to vote at any election, he~~] may, without loss of pay for up to [~~two~~] three hours, take off so much working time as will, [~~when added to his voting time outside his working hours,~~] enable him or her to vote at any election.

# Election Day “Holiday”

- ~~[If an employee has four consecutive hours either between the opening of the polls and the beginning of his working shift, or between the end of his working shift and the closing of the polls, he shall be deemed to have sufficient time outside his working hours within which to vote. If he has less than four consecutive hours he may take off so much working time as will when added to his voting time outside his working hours enable him to vote, but not more than two hours of which shall be without loss of pay, provided that he] The employee shall be allowed time off for voting only at the beginning or end of his or her working shift, as the employer may designate, unless otherwise mutually agreed.~~



# Election Day “Holiday”

- If the employee requires working time off to vote [~~he~~] the employee shall notify his or her employer not [~~more than ten nor~~] less than two working days before the day of the election that he or she requires time off to vote in accordance with the provisions of this section.
- Not less than ten working days before every election, every employer shall post conspicuously in the place of work where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of this section. Such notice shall be kept posted until the close of the polls on election day.



# Legalized Adult Use Cannabis

- Unless an employer establishes that the lawful use of cannabis has impaired the employee's ability to perform the employee's job responsibilities, it shall be unlawful to take any adverse employment action against an employee based on conduct allowed under this chapter.
- An employer may consider an employee's ability to perform the employee's job responsibilities to be impaired when the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position.
- Nothing in this section shall restrict an employer's ability to prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours, or require an employer to commit any act that would cause the employer to be in violation of federal law, or that would result in the loss of a federal contract or federal funding.



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# Legalized Adult Use Cannabis

- As used in this section, "adverse employment action" means refusing to hire or employ, barring or discharging from employment, requiring a person to retire from employment, or discriminating against in compensation or in terms, conditions, or privileges of employment.
- Collective bargaining. 1. The executive director shall require all licensees under this article with more than twenty-five employees, including registered organizations authorized pursuant to section forty of this chapter to cultivate, process, distribute and sell adult-use cannabis products, to enter into a bona-fide collective bargaining agreement with a bona-fide labor organization.



# Sexual Harassment

- For an employer, licensing agency, employment agency, or labor organization to subject any individual to discriminatory harassment because of the age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status of such individual, or because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article, regardless of whether such harassment or hostile work environment is severe or pervasive. Such discriminatory or retaliatory harassment constitutes an unlawful discriminatory practice under this subdivision unless the defendant pleads and proves that the harassing conduct does not rise above the level of petty slights or trivial inconveniences.



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# Sexual Harassment

- The aggrieved person's failure to complain about, or utilize any particular complaint procedure to complain about discriminatory harassment or any other unlawful discriminatory practices under this article is not a defense, or partial defense, to liability under this article.

# Sexual Harassment

- 1-f. **An employee** or agent of an employer, licensing agency, employment agency, or labor organization **is jointly and severally individually liable with their employer**, licensing agency, employment agency, or labor organization for an unlawful discriminatory practice if they exercised **managerial or supervisory responsibility** for the employer, licensing agency, employment agency, or labor organization over employees, agents, or independent contractors of the employer, such that they had authority to direct the employee, agent, or independent contractor's work activities or had the power to do more than carry out personnel decisions made by others.



# Sexual Harassment

- Arbitration Agreements
- Non-Disclosure Agreement
- Is void or unenforceable unless such provision includes language ensuring that the parties to the agreement still have the right to file a complaint about such factual information with a state or local agency, and testify or otherwise participate in a government investigation.

# Sexual Harassment - Reminder

- Public Employees - Effective immediately
- Non-Employees – Effective immediately
- Arbitration Clauses – Effective July 11, 2018
- Nondisclosure Agreements – Effective July 11, 2018
- Model Sexual Harassment Policy – Effective October 9, 2018
- Model Sexual Harassment Training – Effective October 9, 2018
  - To be completed by October 9, 2019
- State Contractors – Effective January 1, 2019



# Pregnancy Related Conditions

- The term "pregnancy-related condition" means a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, including but not limited to lactation;
- Pregnancy-related conditions shall be treated as temporary disabilities for the purposes of this article.

# Wage Theft

- Every employer who does not pay the wages of all of his or her employees and the officers and agents of any corporation, partnership, or limited liability company who knowingly permit the corporation, partnership, or limited liability company to violate this chapter by failing to pay the wages of any of its employees in accordance with the provisions thereof, shall be guilty...

# Wage Theft

- ...of a class A misdemeanor for failure to pay a single employee less than one thousand dollars or less than twenty-five thousand dollars to more than one employee; of a class E felony for failure to pay a single employee greater than one thousand dollars or greater than twenty-five thousand dollars to more than one employee; of a class D felony for failure to pay a single employee greater than three thousand dollars or one hundred thousand dollars to more than one employee; and a class C felony for failure to pay a single employee greater than fifty thousand dollars or greater than five hundred thousand dollars to more than one employee.



# Ensure Equal Pay

- For an employer or employment agency in writing or otherwise, to rely on, or inquire about, the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.

# Ensure Equal Pay

Differential in rate of pay because of protected class status prohibited.

No employee **who is a member of a protected class** shall be paid a wage at a rate less than the rate at which an employee **substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions**, except where payment is made pursuant to a differential based on:

- a. a seniority system;
- b. a merit system;
- c. a system which measures earnings by quantity or quality of production; or
- d. a bona fide factor other than **the protected class status**, such as education, training, or experience. Such factor: (i) shall not be based upon a differential in compensation **that was originally derived from a protected class status** and (ii) shall be job-related with respect to the position in question and shall be consistent with business necessity. Such exception under this paragraph shall not apply when the employee demonstrates
  - (A) that an employer uses a particular employment practice that causes a disparate impact on the basis of **protected class status**,
  - (B) that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and (C) that the employer has refused to adopt such alternative practice.

# Other Legislation

- Predictive Scheduling
- Credit Checks
- Ban the Box
- Method of Payment of Wages
- Tipped Wage
- Comparable Worth
- EMPIRE Act
- SWEAT Act
- Non-Compete Agreements
- Workers' Compensation/Opioids
- Prevailing Wage/Subsidized Jobs
- UI for Strikers

# Federal Update

## Department of Labor

- Drug testing for unemployment benefits
- Persuader rule
- Administrators Interpretation 2015-01 – Independent Contractors
- Administrators Interpretation 2016-01 – Joint Employers
- Overtime Rule - \$679 week (\$35,308 annualized)

# NYS Exempt Salary Levels

## Executive and Administrative

Date	Upstate Employers	Large NYC Employers	Small NYC Employers	Nassau, Suffolk, Westchester
12/31/16	\$727.50	\$825	\$787.50	\$750
12/31/17	\$780 \$40,560	\$975 \$50,700	\$900 \$46,800	\$825 \$42,900
12/31/18	\$832.50 \$43,290	\$1,125 \$58,500	\$1,012.50 \$52,650	\$900 \$46,800
12/31/19	\$885	\$1,125	\$1,125	\$975
12/31/20	\$937	\$1,125	\$1,125	\$1,050
12/31/21	\$937	\$1,125	\$1,125	\$1,125

# Federal Update

- *Hy-Brand Industrial Contractors (365 NLRB No. 156 (2017))* – Reverses Browning-Ferris re: Joint Employment
- General Counsel Memo GC-18-02 rescinds GC-15-04
  - Policies and Procedures (Employee Handbooks)
    - Disrespectful Conduct
    - Use of Company Logo
    - No Camera/Recording
  - Use of employer's email system (*Purple Communications*)
- General Counsel Memo regarding Uber/Independent Contractors



# Federal Update

## EEO-1 Form

- **Who?** Employers of 100 or more and to federal contractors and first-tier subcontractors of 50 or more employees.
- **What?** Component 1 and Component 2 for 2017 and 2018
- **When?** Component 1: May 31, 2019; Component 2: September 30, 2019
- **Why?** To identify wage inequality



# Federal Update

- Supreme Court - *Janus vs AFSCME*
- PAID program



# Labor and HR Advocacy

## Support:

- Update definition of employee v. contractor
- Adopt workable pay card standards
- Update UI tax tables
- Repeal weekly pay mandate

## Monitor:

- Implementation of “Secure Choice”
  - Enrollment opens after April 2020

## Oppose:

- Further expansion of paid leave
  - Including paid sick leave
- Enhanced wage theft provisions
- Comparable worth and other “pay equity” provisions
- Increased DBL benefits
- Hiring Restrictions (Ban the box; wage history; credit check)
- Non-compete agreements
- Farm labor standards



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