



STAFF LEASING

2020

New York Labor Laws

UPDATES FOR EMPLOYERS

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New York employers:

It's important to stay up to date on the employment laws in your state. Knowing the latest changes can help protect you from liability and keep you in compliance. We've summarized the most important updates for New York employers to be aware of as we move through 2020.

We'll cover changes to the law in the follow categories:

1. New Compensation Requirements
2. Paid Leave
3. Harassment
4. Cannabis testing in NYC
5. Protections for 'Gig' Workers

I. New Compensation Requirements

Minimum Wage

The New York State minimum wage increased on December 31, 2019. In New York City, it is now \$15.00 per hour for all size businesses. In Nassau, Suffolk and Westchester counties, it is \$13.00 per hour. In the remainder of the state, it is \$11.80 per hour. There are different hourly rates for workers in the fast food industry and those who receive tips. These rates remain in effect until December 30, 2020. Employers must post a Minimum Wage Information poster in their establishment.

As of December 31, 2019, the minimum wage for most employers in New York state is:

- New York City with 11 or more employees...\$15.00/hour
- New York City with 10 or fewer employees...\$15.00/hour (increased from \$13.50/hour)
- Westchester and Long Island... \$13.00/hour (increased from \$12.00/hour)
- Remainder of New York state...\$11.80/hour (increased from \$11.10/hour)

As of December 31, 2019, the minimum wage for employees of “fast food establishments” working for a chain with 30 or more establishments is:

- New York City...\$15.00/hour
- Outside of New York City...\$13.75/hour

[Visit the New York's Department of Labor's website](#)
[for more info and to download required posters](#)

I. New Compensation Requirements

Salary Threshold

Incidentally, pursuant to a final rule issued by the U.S. Department of Labor on Sept. 24, 2019, effective Jan. 1, 2020, the “standard salary level” for “white collar” exemptions will increase from \$455 per week to \$684 per week.

This list reflects the new salary thresholds, effective December 31, 2019:

- New York City...\$1,125.00/week
- Westchester and Long Island...\$975.00/week (increased from \$900/week)
- Remainder of New York state...\$885.00/week (increased from \$832.00/week)

FLSA Salary Threshold

The U.S. Department of Labor (DOL) publicized its final rule raising the salary threshold for the executive, administrative, and professional (EAP) exemptions under the FLSA to \$35,568 per year, or \$684 per week.

This change is effective January 1, 2020 and reflects an increase from the current \$23,660 annual salary (or \$455 per week). Because New York’s salary threshold is greater than the federal FLSA threshold, New York employers must comply with the state threshold for administrative and executive exemptions.

Additionally, the final rule adjusted the highly compensated employee (HCE) total annual compensation requirement. The new threshold, also effective January 1, 2020, will be \$107,432 annually (up from \$100,000).

I. New Compensation Requirements

Compensation History Ban

As of Jan. 6, 2020, New York employers will be banned from inquiring about or relying on compensation history when making employment decisions. Pursuant to the new legislation, employers cannot:

- Rely on an applicant's wage or salary history in determining whether to offer employment to that individual or in determining that individual's wages or salary;
- Request or require wage or salary history from an applicant or current employee as a condition to be interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment or promotion;
- Request or require the wage or salary history of an applicant or current employee from a current or former employer, current or former employee, or agent of the applicant or current employee's current or former employer;
- Refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current employee based upon prior wage or salary history;
- Refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current employee because such applicant or current employee did not provide wage or salary history in accordance with the law; or
- Refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current or former employee because the applicant or current or former employee filed a complaint with the New York State Department of Labor alleging a violation of the law.

Related: [Legal and Illegal Interview Questions for New York Employers](#)

2. Paid Leave Benefits

Paid Voting Leave

The primaries for the U.S. presidential election started in February 2020, and the general election will take place on Nov. 3, 2020. New York employers should be mindful of a recent revision to New York state's election law, which now entitles New York employees who are registered voters up to three hours of paid time off as needed to vote in any election. Employees requiring time off to vote must be given this time at either the beginning or end of a workday, at the employer's election, and must notify their employer of their need not less than two working days before the election.



[Download the required notice from the New York government website](#)

Paid Family Leave

The Paid Family Leave wage replacement benefit is increasing, and the number of weeks employees can take will continue to rise through 2021, at which time employees will be able to take up to 12 weeks of job-protected, paid time off. In 2020, employees taking Paid Family Leave will receive 60% of their average weekly wage, up to a cap of 60% of the current Statewide Average Weekly Wage of \$1,401.17. The maximum weekly benefit for 2020 is \$840.70.

[Learn more on our Paid Family Leave resources page](#)

3. Harassment

Establishing Unlawful Harassment

As of Oct. 11, 2019, harassment claims under the New York State Human Rights Law (NYSHRL) are subject to a lower evidentiary standard, making it easier to establish unlawful harassment. An individual complaining of harassment doesn't need to prove the challenged conduct was "severe or pervasive," just that it "subjects an individual to inferior terms ... of employment" because of protected class membership, unless the conduct at issue amounted to nothing more than "petty slights or trivial inconveniences," effectively mirroring the liberal standards under the New York City Human Rights Law (NYCHRL). [Source](#)

Sexual Harassment Prevention Notice

As of Oct. 11, 2019, employers must provide employees, both at the time of hiring and at every annual sexual harassment prevention training, with a notice containing the employer's anti-sexual harassment policy and the information presented at the training. The FAQs clarify that the policy and training materials, which include "any printed materials, scripts, Q&As, outlines, handouts, PowerPoint slides, etc.," may be delivered in print or electronically.

[More resources, including a toolkit and sample forms, can be found on our Sexual Harassment Prevention resource page.](#)

Protections for Non-Employees

As of Oct. 11, 2019, "non-employees" are able to bring claims of discrimination under the NYSHRL. The FAQ clarify that protected non-employees include, but are not limited to, independent contractors, "gig" workers, and temporary employees.

3. Harassment

Non-Disclosure Agreements

As of Oct. 11, 2019, employers are prohibited from including a confidentiality provision in any agreement that resolves a discrimination claim unless a certain three-part process is followed— the complainant 1) is given 21 days to consider whether to agree to confidentiality 2) expresses a preference for confidentiality in an agreement; and 3) is given seven days to revoke the agreement. The FAQ clarify that the same limitations, which previously applied only to sexual harassment claims, apply to all discrimination claims.



Non-disclosure agreements (NDA) entered into as part of employment contracts on or after January 1, 2020 must include an explicit carve-out allowing the employee or potential employee entering into the NDA to speak with “law enforcement, the Equal Employment Opportunity Commission, the state Division of Human Rights, a local commission on human rights, or an attorney retained by the employee or potential employee.” [Source](#)

Statute of Limitations

As of August 12, 2020, the limitations period for asserting a claim of sexual harassment under the NYSHRL is expanded from one year to three.

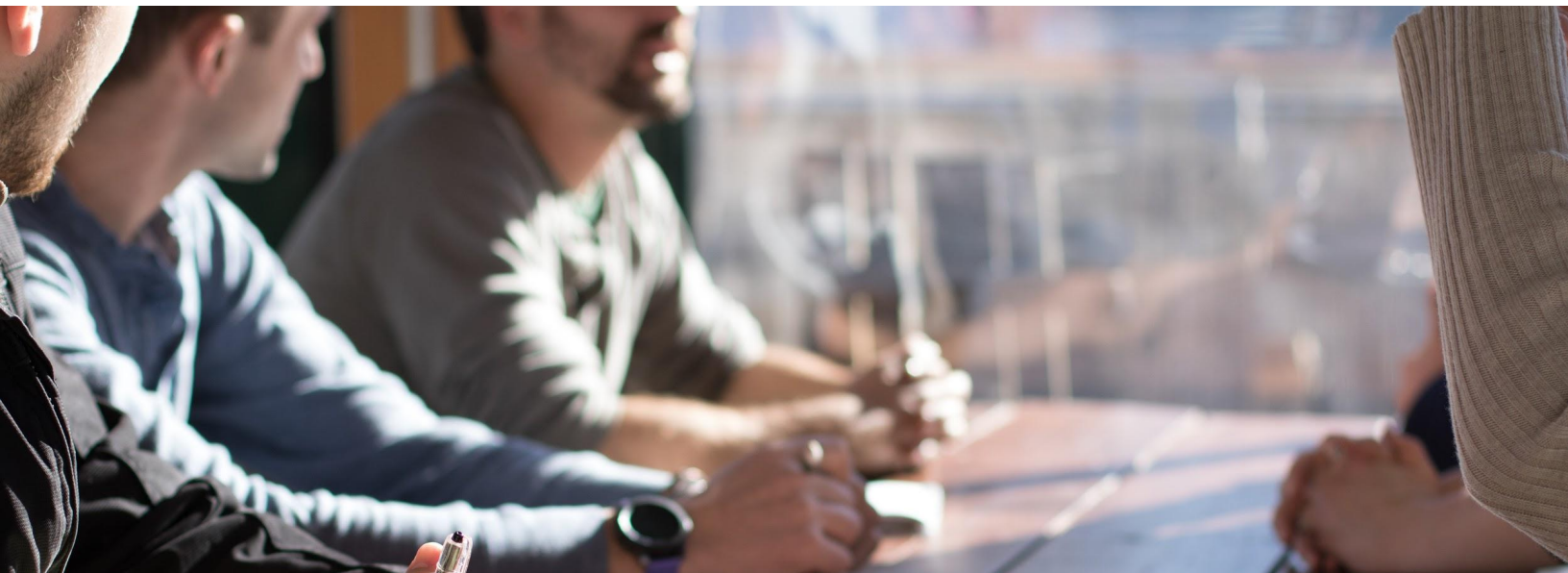
4. Cannabis testing in NYC

Effective May 10, 2020, most employers in New York City will no longer be allowed to require applicants to submit to a pre-employment test for cannabis. In New York City, [Int. No. 1445-A](#) prohibits employers, labor organizations, and employment agencies and their agents from requiring prospective employees to submit to a marijuana test as a condition of employment.

Some exceptions to the law include certain:

- Law enforcement positions,
- Positions requiring supervision of children and medical patients,
- Positions requiring a CDL,
- Positions requiring federal drug testing, and
- Federal/state contractor positions.

Because this legislation is specific to prospective employees, employers remain free to test their current employees for the presence of cannabis. However, [current New York State law](#) considers certified users of medical marijuana as having a disability under the State Human Rights Law, entitled to all the legal protections of other employees and applicants with disabilities.



5. Protections for Gig Workers

The gig economy is growing fast. About 36% of U.S. workers are part of the gig economy, according to a 2018 Gallup report. A 2017 report from Upwork and Freelancers Union forecasts that the majority of workers will be freelance by 2027. ([More HR trends for 2020 here](#)) Laws are being amended to keep up with this growth.

The Dependent Worker Act

Although the 2019 legislative session ended without the passage of the Dependent Worker Act—a bill proposing to classify gig workers as “dependent workers” and extend to them certain rights traditionally reserved for employees—the bill is expected to be debated next legislative session. The bill seeks to amend the New York Labor Law (NYLL) by making a “dependent worker” subject to many of the same employment §191’s frequency of pay requirements, §192’s direct deposit protections, §195’s wage theft notice and record-keeping requirements, and §196-d’s gratuity appropriation protections, and the regulations promulgated thereunder.

[Source](#)

Related external articles for further reading on this topic:

- [With Cuomo Promising Gig Economy Regulations, New York Leaders Consider Pros and Cons of California Model](#)
- [New York wants to write its own rules for the gig economy](#)
- [New York’s Gig Economy Legislative Proposals For 2020 Begin To Take Shape](#)

Amendments to the NYCHRL

As of Jan. 11, 2020, gig workers in New York City will statutorily secure new express protections against unlawful discrimination with amendments to the NYCHRL.

New York's employment laws are always evolving.
It's hard to keep up while running a business.

**Let the experts keep you in
compliance while reducing your
liabilities as a New York employer.
Contact our team.**



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