



# New Year, New Updates for New York Employment Laws

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## Today's Topics

- New Minimum Wage Requirements and Overtime Salary Thresholds
- New Protections for Employee Social Media Accounts
- New Restrictions on Mandatory Assignments of Employee Inventions
- The “Freelance Isn’t Free Act”
- Updates to New York City’s Earned Safe and Sick Time Act
- Prohibitions on Captive Audience Meetings
- New Restrictions on Non-Disclosure Clauses in Settlement Agreements
- New York’s Vetoed Non-Compete Ban
- The Impact of the NLRB’s Final Joint-Employer Rule
- The EEOC’s Strategic Enforcement Plan

# Minimum Wage Requirements and Overtime Salary Thresholds

## Minimum Hourly Wage

- \$16 per hour in New York City, Long Island, and Westchester (including fast-food workers)
- \$15 per hour in remainder of New York State (including fast-food workers)
- \$18.55 per hour for home care aides in New York City, Long Island, and Westchester
- \$17.55 per hour for home care aides in remainder of New York State

## Minimum Salary for Exempt Executive and Administrative Employees

- \$1,200 per week (\$62,400 per year) in New York City, Long Island, and Westchester
- \$1,124.20 per week (\$58,458.40 per year) in remainder of New York State

## Protections for Employee Social Media Accounts

- Employers may not request or require employees or job applicants to disclose social media account information
- Applies to passwords, user names, login information, among other social-media-related information
- The law uses a broad definition of personal social media account
- Employer-related or other non-personal social media accounts are exempted from the law



# Restrictions on Mandatory Assignments of Employee Inventions

## Senate Bill S5640, Eff. Sept. 15, 2023

- Adds Section 203-f to New York Labor Law
- Any provision in an employment agreement that requires an employee to assign, or offer to assign, their rights to inventions developed using the employee's own property and time is **unenforceable**
- Exceptions for inventions that (1) relate “at the time of conception or reduction to practice” to the employer's business; (2) relate to the employer's “actual or demonstrably anticipated research”; or (3) result from the employee's work for the employer

**Practice tip:** Review your template invention assignment agreements, employment agreements, employee handbooks, or other policies that include invention assignment language.

## New York State's "Freelance Isn't Free Act"

- Statewide adoption of the New York City Law
- Protections for independent contractors
  - Written contract required, with rate of pay and payment date
  - Payment no later than 30 days after completion of services
  - No retaliation for enforcement of rights
  - Double damages and attorneys' fees for successful claims
- \$800 contract threshold / 120-day look-back period
- State DOL intends to publish model contracts



# Updates to New York City's Earned Safe and Sick Time Act (ESSTA)

## Final Rule, Eff. Oct. 15, 2023

- Employer size = “total number of employees nationwide,” determined by “highest total number of employees concurrently employed” during calendar year
  - Part-time and full-time employees count equally
  - Jointly employed employees count toward both employers
  - Employees on LOA, suspension, or other temporary absence count, as long as there is a reasonable expectation that employee will return to active employment

## Updates to ESSTA Cont'd

- Covered employees = employees who perform work while physically located in New York City, regardless of employer's location
  - Remote employees without a physical presence in New York City are not covered, even if employer is located in New York City
  - Remote employees are counted for ESSTA purposes if “expected to regularly perform work in New York City during a calendar year”
    - Only hours worked in New York City will count toward accrual of safe and sick leave



## Updates to ESSTA Cont'd

- New written policy requirements relating to:
  - Requiring employees to provide reasonable notice of need to use safe and sick time
  - Requiring employees to provide reasonable written documentation indicating authorized use of safe and sick time where leave is taken for more than three consecutive workdays
  - Reimbursement to employees for charges associated with obtaining written documentation
  - Employer's reporting and disclosure of safe and sick time
  - Employer's calendar year for administering safe and sick time

**Practice tip:** Update your safe and sick time policies and train relevant HR employees, managers and supervisors.



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## Ban on Captive Audience Meetings

- What is a “captive audience meeting”?
- Employers may not retaliate against an employee or applicant because of an individual’s refusal to:
  - Attend an employer-sponsored meeting primarily intended to communicate an employer’s opinion concerning religious or political matters; or
  - Listen to speech or view communications primarily intended to communicate an employer’s opinion concerning religious or political matters
- “Political matters” includes whether to join or support a labor union
- Notice of the law must be posted in the workplace

# Restrictions on Nondisclosure Clauses in Settlement Agreements

## Senate Bill S4516, Eff. Nov. 17, 2023

- Amends Section 5-336 of General Obligations Law (#MeToo statute)
- Renders the **release** of any discrimination claim, including discriminatory harassment or retaliation, **unenforceable** “if as part of the agreement resolving such claim:
  - (A) the Complainant is required to **pay liquidated damages** for violation of a nondisclosure clause or nondisparagement clause;
  - (B) the Complainant is required to **forfeit all or part of the consideration** for the agreement, for violation of a nondisclosure clause or nondisparagement clause; or
  - (C) it contains or requires any **affirmative statement, assertion, or disclaimer** by the Complainant that the Complainant was **not in fact subject to unlawful discrimination**, including discriminatory harassment or retaliation.”

# Restrictions on Nondisclosure Clauses in Settlement Agreements Cont'd

## Additional Amendments

- Protections now extend to independent contractors
- Complainant no longer required to wait 21 days before entering into confidentiality preference agreement
- Attorney General added to list of persons/agencies an employer must specifically identify in nondisclosure agreement as person with whom employee/potential employee/independent contractor may discuss facts relating to future claim of unlawful discrimination

**Practice tip:** Review your template settlement agreements.

## New York's Vetoed Non-Compete Ban

- On June 30, 2023, state legislature passed a ban on most non-competes
  - No salary thresholds
  - No carveouts for sale of business
  - Silent as to employee no-poach covenants
- On December 22, 2023, Governor Hochul vetoed the bill
  - Potential \$250,000 salary cap
  - Potential accounting for bonus and stock option grants
- The ban will likely *not* be retroactive
- Non-solicitation of clients/customers expected to remain permissible



## Impact of NLRB's Final Joint-Employer Rule

- What is the NLRB's final joint-employer rule?
  - Eff. Feb. 26, 2024 (extended from Dec. 26, 2023)
  - Rescinds and replaces the 2020 rule
  - Joint-employer status is established with indirect or reserved right to control, even if actual control is never exercised
  - Broad definition of “essential terms and conditions of employment”
  - Joint employer must engage in collective bargaining with respect to any term or condition of employment over which it has control
- Likely to result in more joint-employer findings
- Significant impact on relationships with staffing agencies, subcontractors, vendors, and other third parties

# The EEOC's Strategic Enforcement Plan for 2024-2028

- What is the Strategic Enforcement Plan?
- Topics Identified
  - Artificial intelligence biases
  - Pregnancy discrimination
  - Long COVID-19
  - Overly broad releases, non-disclosure agreements, and non-disparagement agreements



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**Questions?**

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# Speakers



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