



Labor & Employment Issues In Focus

Pitta LLP
For Clients and Friends
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“All that serves labor serves the Nation. All that harms labor is treason to America. No line can be drawn between these two. If any man tells you he loves America, yet hates labor, he is a liar. If any man tells you he trusts America, yet fears labor, he is a fool. There is no America without labor, and to fleece the one is to rob the other.”

Abraham Lincoln

END OF YEAR REMINDERS AND NEW CHANGES FOR 2021

As the year comes to a close, several changes to New York State’s Labor Law will go into effect soon, such as New York Paid Family Leave (“PFL”), Sick Leave and the Minimum Wage Law, that employers must note. Also, as a reminder, employers must have their employees’ complete anti-harassment training by month’s end. Below are summaries of these developments that will take place in 2021, some as soon as January 1.

New York PFL

On January 1, 2021, eligible employees will receive an increase from ten (10) weeks of paid family leave to twelve (12) weeks. The PFL provides eligible employees with paid time off for the purposes of caring for a family member with serious health condition, bonding with a new child, or providing assistance when a family member is on military deployment. In 2020, as part of the response to COVID-19, employees have been able to use paid family leave time to care for family members infected with COVID-19. In 2021, the wage replacement benefits under the PFL will increase from 60% of the employee’s average weekly wage (capped at \$840.70) to 67% of the average weekly wage (capped at \$971.61).

Sick Leave

Employees in New York started accruing sick leave on September 30, 2020 under the new state Sick Leave law and will be eligible to start using the new benefit starting on January 1, 2021.

Under the NYS Sick Leave law, employers with fewer than four (4) employees and net income less than \$1 million the previous tax year will be required to provide their employees with up to forty (40) hours of unpaid sick leave per year. New York employers with fewer than four (4) employees and a net income of \$1 million or more the previous tax year, will be required to provide their employees with up to forty (40) hours of paid sick leave per year. Regardless of net income, employers with 5-99 employees will also be required to provide employees with up to forty hours of paid sick leave, while employers with 100 or more employees must provide up to fifty-six (56) hours of paid sick leave per year. The New York City Council amended the City’s sick leave law so that it mostly matches the accrual and use provisions of the New York State.

New York Minimum Wage Update

On December 31, 2020, the hourly minimum wage will increase to \$14.00 in Nassau, Suffolk and Westchester Counties, and to \$12.50 for the rest of the state. In New York City, all employers should already be paying their employees at least \$15.00 per hour.

Anti-Sexual Harassment Training

New York State employers with fifteen (15) or more employees and all New York City employers regardless of size must require that their employees complete anti-sexual harassment training before the end of 2020. Employers are advised to keep a record of the employees' completion of the training.

Please contact the Pitta LLP attorney with whom you usually work, Jane Lauer Barker or Barry N. Saltzman if you have questions on these or other year-end matters.

TRUMP EEOC OFFERS "PASS JAIL" CARDS TO EMPLOYERS

As 2020 and the Trump Administration draw to a close, the Republican led U.S. Equal Employment Opportunity Commission ("EEOC") has issued two directives making it easier for employers to avoid liability for violation of federal discrimination laws, both described below.

On December 8, the EEOC announced that it would begin issuing opinion letters in response to employer requests for guidance, upon which employer could rely as a defense to plaintiff lawsuits. The EEOC had previously avoided such declaratory advice, issuing opinion letter only during the chairmanship of now Justice Clarence Thomas from 1982 to 1990. Current EEOC Chair and Trump appointee Janet Dhillon touched the new measure as a "significant step ... to address areas of the law that may be unclear." Critics decried the change as an unnecessary invitation to a "cottage industry" seeking advance agency approval for questionable employer policies.

On December 10, Dhillon proposed that the EEOC's commissioners worked first have to vote to approve a lawsuit rather than allow its General Counsel to initiate litigation. This change would likely slow or derail EEOC court action.

Both pro-employer changes in EEOC policy would likely survive the early years of a Biden Administration since Republican Commissioners will be in majority through at least July 2022.

**PBGC SAYS THAT MULTIEMPLOYER PROGRAM PROJECTED TO BE
INSOLVENT IN FY 2026;
SINGLE-EMPLOYER PROGRAM IMPROVES**

On December 9, 2020 the Pension Benefit Guaranty Corporation (“PBGC”) released its Fiscal Year 2020 Annual Report on the state of pensions. Since 1974, the PBGC has protected retirement security and the retirement incomes of private sector multi and single employer defined benefit pension plans. PBGC Director Gordon Hartogensis reported that the two insurance programs that PBGC manages are in dramatically different financial positions.

The report shows that multiemployer insurance programs are underfunded with liabilities of \$66.9 billion. During FY 2020, the PBGC provided \$173 million in financial assistance to 95 multiemployer plans, up from the previous year’s payments of \$160 million to 89 plans. Hartogensis said that “legislative reform is necessary to avert insolvency of the Multiemployer Program.”

In contrast, single-employer programs had assets of \$143.5 billion and liabilities of \$128.0 billion as of September 30, 2020. The positive net position of \$15.5 billion is an improvement of \$6.8 billion during FY 2020. However, the program’s exposure increased to \$176.2 billion in underfunding in pension plans sponsored by financially weak companies that could potentially become claims to PBGC.

Attached is a copy of the FY 2020 annual report:
<https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2020.pdf>.



HAPPY CHANUKAH

And the little jar of oil, with only enough fuel for one day, lasted eight as the artisans sped production, because the people had committed to light.

May the miracle of human resilience kindle your lights in home and holidays this year and next.

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