

# ANDERSON KILL EMPLOYMENT LAW INSIDER

# ALERT

## New York Adopts Groundbreaking Family Leave and Minimum Wage Laws Seen as Model for Other States

By Bennett Pine

**O**n April 4, 2016, as part of the 2016-17 New York State budget deal reached with New York legislators, Governor Andrew Cuomo signed legislation providing for the most comprehensive paid family leave program of any state, and raising New York's minimum wage gradually from \$9 per hour to \$15 by the end of 2022.

### Paid Family and Medical Leave

Under the federal Family and Medical Leave Act, individuals working for employers with at least 50 employees are entitled to take up to 12 weeks of *unpaid* leave annually on account of the birth or adoption of a child, their own "serious medical condition," or to care for a seriously ill family member. However, although employees may be able to utilize accrued sick or vacation time as appropriate, there is no requirement that such leave be paid. Moreover, the law does not apply to employers with fewer than 50 employees.

The law signed by Governor Cuomo makes New York the fifth state — joining California, Rhode Island, New Jersey, and Washington, plus the District of Columbia — to provide employees with paid family leave. But New York's is the broadest state measure yet.

### Amount of Leave Time

Beginning January 1, 2018, *all* full-time and part-time employees who have worked for their employers for at least six consecutive months will be eligible to take paid family leave to:

1. bond with a child within the first twelve months of the child's birth or adoption/foster care placement;
2. care for a family member with a serious health condition; or
3. relieve family pressures due to any "qualifying exigency" when a spouse or family member is called to active military service.

ANDERSON KILL  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 278-1000

ANDERSON KILL  
864 East Santa Clara Street  
Ventura, CA 93001  
(805) 288-1300

ANDERSON KILL  
1600 Market Street, Suite 2500  
Philadelphia, PA 19103  
(267) 216-2700

ANDERSON KILL  
1055 Washington Boulevard, Suite 510  
Stamford, CT 06901  
(203) 388-7950

ANDERSON KILL  
1717 Pennsylvania Avenue, Suite 200  
Washington, DC 20006  
(202) 416-6500

ANDERSON KILL  
One Gateway Center, Suite 1510  
Newark, NJ 07102  
(973) 642-5858

[www.andersonkill.com](http://www.andersonkill.com)





who's  
who

**Bennett Pine** is a shareholder in Anderson Kill's New York and

Newark offices and is chair of the firm's employment & labor group. Mr. Pine has broad-based labor and employment law experience and regularly plays a hands-on role offering preventative maintenance advice and counseling to employers in the full range of legal issues affecting the workplace.

**bpine@andersonkill.com**

**(212) 278-1288**

**(973) 642-5006**

The information appearing in this newsletter does not constitute legal advice or opinion. Such advice and opinion are provided by the firm only upon engagement with respect to specific factual situations.

ANDERSON KILL  
NEWSLETTERS & ALERTS

**TO SUBSCRIBE PLEASE VISIT:**

[www.andersonkill.com/  
PublicationSubscription.aspx](http://www.andersonkill.com/PublicationSubscription.aspx)

**TO UNSUBSCRIBE PLEASE EMAIL:**

[unsubscribe@andersonkill.com](mailto:unsubscribe@andersonkill.com)

It should be noted that this New York family leave provision does not appear to extend to an employee's own serious health condition.

The amount of paid family leave will begin at 8 weeks of leave in a 52-week period effective January 1, 2018. This paid leave amount increases to 10 weeks on January 1, 2019, and to 12 weeks on January 1, 2021.

### **Paid Leave Benefits**

Like the amount of leave time, the paid leave financial benefit will be phased in over time and capped as follows (effective January 1, 2018): 50% of the lower of the employee's weekly wage or the statewide average weekly wage. (According to the New York State Department of Labor, New York state's average weekly wage for 2015 was \$1,296.48.) These levels increase to 55% on January 1, 2019, 60% on January 1, 2020, and are capped at 67% on January 1, 2021.

### **Cost**

According to the governor's office, the paid family leave program will be implemented *at no cost to employers*. It will be funded through a 0.5% employee payroll tax deduction. Many observers commented that this employee-funded insurance style model was essential to passage, making paid family leave more palatable to employers and Republican lawmakers.

### **Trend**

Many observers of employment legislation believe that the New York law will be the precursor to the introduction of similar paid leave laws in other states, cities and localities. Indeed, on April 5, 2016 — one day after the New York law was signed — San Francisco adopted a measure providing employees with six weeks of *fully paid* parental leave.

### **Minimum Wage**

Under the budget deal announced by Governor Cuomo, New York state's current \$9 per hour minimum wage gradually will increase — depending on employer size and location — up to \$15 per hour by the end of 2021.

For New York City employers with more than 10 employees, the minimum wage increases to \$11 per hour on December 31, 2016, \$13 per hour on December 31, 2017, and \$15 per hour on December 31, 2018.

New York City employers with fewer than 10 employees will see the minimum hourly wage increase more gradually and will have an extra year to reach the \$15 per hour level: \$10.50 per hour on December 31, 2016, \$12 per hour on December 31, 2017, \$13.50 per hour on December 31, 2018, and \$15 per hour on December 31, 2019.

For employers in Nassau, Suffolk and Westchester Counties,



the minimum wage will increase to \$15 per hour by December 31, 2021, as follows: \$10 per hour on December 31, 2016, \$11 per hour on December 31, 2017, \$12 per hour on December 31, 2018, \$13 per hour on December 31, 2019, \$14 per hour on December 31, 2020, and \$15 per hour on December 31, 2021.

For other “upstate” employers, including those in the Hudson Valley, the minimum hourly wage will increase more slowly: \$9.70 per hour on December 31, 2016, \$10.40 per hour on December 31, 2017, \$11.10 per hour on December 31, 2018, \$11.50 per hour on December 31, 2019, and \$12.50 per hour on December 31, 2020.

The minimum wage will not increase to \$15 per hour in these upstate areas until the state conducts a study and a new indexed schedule is established.

According to Governor Cuomo, this increase in the minimum hourly wage will impact 2.3 million workers.

### **Safeguards**

A “safety valve” is built into the new law. Beginning in 2019, the Division of the Budget will conduct annual economic studies to determine if the scheduled increases should temporarily be suspended in the event that the economy falters.

### **Conclusion**

Increased minimum wages are expected to have a financial impact on many employers beginning as soon as December 31, 2016. The requirement to provide paid family leave in New York, which will not begin until January 1, 2018, is being marketed as not imposing any direct financial cost on employers. But such a requirement nevertheless is bound to impose operational and logistical burdens on employers, particularly smaller ones. Employers do have until January 2018 to prepare for the obligation. We will continue to monitor developments in this area, including any regulations promulgated by the New York State Department of Labor. ▲

