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New York Governor Zeroes in on Employee Leave and Benefits, Wage Payment Violations, and More in Proposed FY25 Executive Budget

Law and the Workplace on **January 25, 2024**

On January 17, 2024, New York Governor Kathy Hochul released the proposed Executive Budget for fiscal year 2025. The Budget includes appropriation bills and other legislation required to carry out budgetary recommendations for the coming fiscal year. This includes a number of proposals that would impact New York employers and employees alike, outlined below.

Paid Leave for Prenatal Appointments

The Budget includes a proposal that would expand the New York State Paid Family Leave Law ("NYPFL") to include partially paid leave for prenatal appointments. The NYPFL presently provides eligible employees with up to 12 weeks of partially paid leave for reasons that include caring for a covered family member with a serious health condition, bonding with a newly born or placed child, and certain reasons related to military exigency. The proposed amendment would expand the NYPFL to permit up to 40 hours of leave for eligible employees to attend prenatal appointments above and beyond the existing 12 weeks of leave currently available.

Expanding Disability Leave Protections and Increasing Maximum Short-Term Disability Benefits

Presently, covered New York employees are entitled to collect statutory short-term disability benefits due to a qualifying off-the-job illness or injury for a period of up to 26 weeks per 52-week period. Such benefits are solely a wage replacement program, and the existing law does not mandate employers offer any defined period of leave in connection with a disability. Rather, employees may be entitled to leave protections under other laws, such as the federal Family and Medical Leave Act (FMLA) or as a reasonable accommodation under the Americans with Disabilities Act or similar state/local accommodation provisions.

This significant proposal would overhaul the existing program to extend job protection to employees during a disability leave period and would further require continuation of existing health benefits during a disability leave in the same manner as is currently required under the NYPFL. This would effectively create a statewide paid "mini-FMLA" program whereby employees experiencing a period of disability may be entitled to up to 26 weeks of protected leave for such condition, upon timely return from which they would be entitled to be reinstated to their same or a comparable position, with comparable benefits, pay, and other terms and conditions of employment. The existing 26-week combined cap on receipt of disability and NYPFL benefits in a given 52 week period would continue under the proposal.

In addition, for the first time since 1989, the Budget proposes an increase to the maximum weekly benefit amount for statutory short-term disability benefits. The current maximum weekly benefit of $170 would be amended to instead eventually be tied to the Statewide Average Weekly Wage ("SAWW)" to keep pace with wage growth. The SAWW is based on the average weekly wage paid in New York State during the previous calendar year.

The increases would phase in and benefit amounts would be tiered depending on the length of a disability leave. Beginning as of January 2025, the proposed benefit rate would increase to 50% of the employee's average weekly wage ("AWW") up to a weekly maximum of $400 per week for the first 12 weeks of a disability leave, and a rate of 50% of the employee's AWW capped at $280 per week for the 12th through the 26th weeks of leave. These amounts would increase annually through 2029, landing at a rate of 67% of an employee's AWW up to a weekly maximum of 67% of the SAWW for the first 12 weeks of disability leave, and 67% of the employee's AWW capped at $280 per week for the remaining weeks. Accordingly, the proposal would increase employee contributions toward disability benefits to one-half of 1% of the employee's wages, not to exceed 40% of the average of the combination of all employee and employer contributions to disability benefits during the prior calendar year, as determined by the Superintendent of Financial Service.

Lactation Breaks

One of several amendments aimed at new and expecting mothers, the Budget includes a proposal that would require paid breaks for breast milk expression in the workplace. Presently, employers are required to provide reasonable unpaid break time or permit an employee to use paid break or meal time to express breast milk during the workday. The proposal would require employers to provide paid lactation break time for up to twenty minutes and permit employees to use existing paid break or meal time for time needed in excess of twenty minutes.

Sunset of COVID-19 Paid Leave

The Budget includes a proposal that would bring an end to the requirement that employers provide mandatory paid sick time – above and beyond what is required under the New York State Paid Sick Leave Law – for employees who are under a mandatory order of quarantine or isolation because of COVID-19. If enacted, the amendment will sunset the requirement on July 31, 2024.

Eliminating Liquidated Damages for Some Pay Frequency Claims

The Budget includes proposed legislation precluding recovery of liquidated damages for violations of the Labor Law's frequency of payment provisions. Labor Law §191(1)(a) provides that, absent authorization from the Commissioner of Labor to pay less frequently, employers must pay "manual workers" weekly and not later than seven calendar days after the week in which the wages are earned. While the longstanding enforcement mechanism for this provision was a civil penalty, a 2019 Appellate Division, First Department decision in *Vega v CM & Assoc. Constr. Mgt., LLC*, held, for the first time in the 130-year history of New York's weekly pay law, that a private right of action exists for a violation of Section 191(1) and permitted plaintiffs to seek liquidated damages equal to the amount of the late-paid wages. The Budget proposal would provide that liquidated damages are not available under Section 191(1)(a) where a manual worker was paid in accordance with the agreed upon terms of employment and not less frequently than semi-monthly. For more on this legislation, see our recent blog post on the development here.

Expanding NYDOL Enforcement Power to Include Seizure of Employer Assets

The Budget further aims to expand recovery methods for violations of certain wage payment provisions under the Labor Law. The Budget proposes legislation to amend the enforcement procedures under Labor Law §§ 218 and 219 by giving the New York Department of Labor ("NYDOL") the ability to seize employer assets to satisfy wage debts owed by employers to employees.

The proposal would empower the Commissioner of Labor to directly execute a wage violation order that has been filed with the county clerk of the employer's residence or place of business. The Commissioner would be empowered to issue a warrant to any officer or employee of the NYDOL who may then file the warrant with the appropriate county clerk. The Budget proposal grants the Commissioner (or the designated officer or employee of the NYDOL) the same power conferred upon sheriffs under the laws and rules of New York State to seize and sell the employer's property for owed wages.

Alternatively, the Commissioner would be granted the power to directly issue a warrant to the sheriff of the employer's county, commanding them to seize and sell real property of the employer-within that county. The sheriff would be responsible for filing this warrant with the appropriate county clerk and then executing the warrant.

What's Next?

While Governor Hochul is responsible for proposing a comprehensive budget, there is no guarantee that the proposed budget, in its current form, will be approved. The New York State Legislature will next review and possibly modify the budget before enaction. Upon approval, amendments will take effect on the sixtieth day after the budget is signed into law.

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Related Professionals

- **Allan S. Bloom**
  Partner
- **Evandro C. Gigante**
  Partner
- **Laura M. Fant**
  Special Employment Law Counsel