Proskauer

Enacted New York State Budget Includes First-in-Nation Statewide Paid Prenatal Leave (But Other Proposals are Left on the Table)

Law and the Workplace on **April 24, 2024**

On April 20, 2024, New York Governor Kathy Hochul signed into law New York State's Budget for fiscal year 2025. The enacted Budget includes appropriation bills and other legislation required to carry out the budget for the coming fiscal year. Among hundreds of new initiatives, the Budget includes several bills that impact New York employers and employees alike.

Paid Leave for Prenatal Appointments

The enacted Budget expands the New York State Paid Sick Leave Law to include additional paid time off for prenatal appointments. Under the enacted proposal, New York is now the first state in the nation to require employers to provide up to 20 hours of paid leave during any 52-week period specifically for employees to attend prenatal appointments or obtain health care services during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy. The prenatal leave time does not accrue, but instead is available in a single bank and may be taken in hourly increments. Prenatal leave time does not impact or reduce other paid sick time available to an employee under the New York Paid Sick Leave Law. The prenatal leave provision takes effect on January 1, 2025.

Paid Lactation Breaks

The enacted Budget amends the New York Labor Law to require employers to provide employees with paid break time for breast milk expression. Presently, employers are required only to provide reasonable *unpaid* break time or permit an employee to use existing paid break or mealtime to express breast milk during the workday for up to three years following child birth. Under the enacted proposal, employers will now be required to provide 30 minutes of *paid* break time for breast milk expression, and to permit the employee to use existing paid break time or meal time for lactation time needed in excess of thirty minutes. This is an increase from the 20-minute paid break time provision initially included in the proposed budget. The paid lactation break provision takes effect on June 19, 2024 (60 days following enactment).

Sunset of COVID-19 Paid Leave

The enacted Budget will bring an end to the requirement that employers provide paid sick time—above and beyond what is required under the New York Paid Sick Leave Law—for employees who are under a mandatory order of quarantine or isolation because of COVID-19. Under the enacted proposal, the COVID leave requirement will sunset on July 31, 2025 (extended by a year from the sunset date of July 31, 2024 initially included in the proposed budget).

Excluded Budget Proposals

Some of Governor Hochul's original proposals did not make the cut in the final enacted Budget. Employment-related exclusions included a significant overhaul of disability leave protections and an increase of maximum short term disability benefits, as well as the expansion of the New York Department of Labor's enforcement power to aid in recovery methods for violations of certain wage payment provisions (discussed in more detail in our blog on the proposed budget).

Also noticeably missing was Governor Hochul's proposal to eliminate liquidated damages for some pay frequency violations. As reported in January, this proposal would have amended the New York Labor Law to confirm that liquidated damages are not available as a remedy for a violation of Labor Law § 191(1)(a)(1), which requires—absent a waiver from the Commission of Labor—that for-profit employes pay "manual workers" on a weekly basis. The longstanding enforcement mechanism for this provision was a civil penalty, but 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. However, on January 17, 2024, the Appellate Division, Second Department held the opposite, concluding that no such private right remedy exists under the plain language and legislative history of the Labor Law.

Governor Hochul's proposal to expressly exclude liquidated damages as a remedy was clearly designed to revise what the Governor perceived as an unintended judicial interpretation of the Labor Law in *Vega*, and in doing so would have resolved the split in appellate authority. However now, unless new legislation addressing the issue is introduced prior to June, New York State's highest court, the Court of Appeals, will be set to resolve the appellate split.

What's Next?

We will continue to report on any key developments involving the enacted Budget proposals as they move toward implementation, as well as the Court of Appeals consideration of *Vega* or any further legislative action regarding New York's pay frequency provisions. Employers are advised to review their existing policies and make any necessary changes to account for the enacted Budget provisions.

View original.

Related Professionals

- **Allan S. Bloom**
  Partner
- **Evandro C. Gigante**

Partner

- **Laura M. Fant**

  Special Employment Law Counsel