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**Lunch with a Lawyer:
LABOR AND EMPLOYMENT LAW
UPDATE**

2-12-26




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MINIMUM WAGE INCREASES

- NYC, Long Island, Westchester increase from \$16.50 to \$17.00
- Rest of State increases from \$15.50 to \$16.00
- Fast Food Workers Are Now the Same
- Next year tied to Consumer Price Index for Urban Wage Earners and Clerical Workers for the Northeast region



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NYS EXEMPT SALARY INCREASES

- New York City, Nassau, Suffolk, and Westchester counties from \$1,237.50 weekly (or \$64,350 annually) to \$1,275 weekly (or \$66,300 annually).
- The Rest of State from \$1,161.25 weekly (or \$60,405.80 annually) to \$1,199.10 weekly (or \$62,353.20 annually).
- Increases in 2027 tied to the minimum wage increases



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TIPPED FOOD SERVICE WORKERS

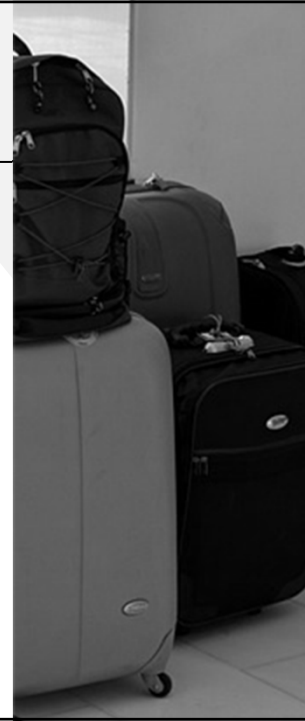
- New York City, Long Island, and Westchester Counties: cash wage \$11.35, \$5.65 credit
- Rest of New York State: cash wage to tipped food service workers \$10.70 Cash Wage; \$5.30 Credit
- Reminder: NO TIP CREDIT for fast food workers



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TIPPED SERVICE EMPLOYEES

- New York City, Long Island, and Westchester Counties cash wage to service employees will be \$14.15 Cash; \$2.85 Credit (\$3.65 Threshold)
- Rest of New York State, the cash wage to service employees will be \$13.30 Cash; \$2.70 Credit (\$3.40 tip Threshold)



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A black and white photograph of a worker in a white protective suit and mask, standing next to a large stack of metal containers, possibly in a food processing or manufacturing facility. The worker is looking down at the containers.

TRAPPED AT WORK ACT AND AMENDMENTS

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ORIGINAL LAW

- Prohibits “employment promissory notes”
- “any instrument, agreement, or contract provision that requires a worker to pay the employer, or the employer’s agent or assignee, a sum of money if the employee leaves employment before the passage of a stated period of time.”
- Makes such provisions “against public policy.”

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EXCEPTIONS IN THE ORIGINAL ACT

- Agreements requiring the worker to repay the employer for sums advanced to the worker, unless such sums were advanced to pay for training related to the employment.
- Agreements requiring the worker to pay the employer for any property sold or leased to the worker.
- Agreements requiring educational personnel to comply with the terms of sabbatical leaves.
- Agreements entered into as part of a program agreed by the worker’s collective bargaining representative.

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AMENDMENT

- Moves the effective date out to December 19, 2026
- Allows for repayment of sums not used to pay for “training related to the worker’s employment with employer”
- Allows repayment of financial bonus or relocation assistance or similar if it is not tied to education or job performance UNLESS employee is terminated for other than misconduct or employer misrepresents the job duties

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EDUCATIONAL REPAYMENT PROGRAMS

- Permits repayment programs for tuition if they are stand alone (no other conditions) and relate to “transferable” education credits
- Transferable credit includes degree, diploma, license, certificate, or documented evidence of skill proficiency or course completion that is widely recognized by employers in the relevant industry as a qualification for employment, independent of the employer’s specific business practices or “demonstrably enhance” the employee’s employability with other employers

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ELECTRONIC PAYROLL SUBMISSION UP AND RUNNING

- Contractors on covered projects must begin using the electronic certified payroll portal for their monthly submissions on January 1.
- Covered projects include public work projects, privately owned prevailing wage projects various other related projects.
- Payrolls must be submitted at least every 30 days for the length of the covered project. Failing to submit on time may result in penalties of up to \$100 per day following a 14-day grace period.
- More information is available here: <https://dol.ny.gov/news/new-york-state-department-labor-announces-new-electronic-certified-payroll-submission>.

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A presentation slide with a light grey background. The title 'IMPORTANT TO KNOW' is centered at the top in bold, black, sans-serif capital letters. Below the title is a horizontal line. To the right of the text is a large, stylized exclamation mark graphic. The exclamation mark is black and is set against a light grey background that has a dark grey border. The bullet points are as follows:

- Applies to bidders on competitive procurements and may also apply to noncompetitive contracts
- Must certify written policy in place and that it meets the requirements of the law
- In effect November 5, 2025

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WHAT DOES IT REQUIRE

- Requires Employer to Adopt and Publicize Policy
- Requires Publicizing Information Regarding Resources (including Hotline)
- Must Appoint a Liaison
- Various Rights for Victims to Take Time Off Work, Non-Retaliation, Special Call In Procedures
- Requirements Regarding Safety Plans



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WHAT NOW?



- Model Policy for Bidders (NOTE: It NEEDS to be adapted)
https://www.justicecenter.ny.gov/system/files/documents/2025/10/opdv-gbv-workplace-bidder-model-policy_2025.08.29.pdf
- Appoint and Train Liaison
- Optional for Employers: Training for Employees

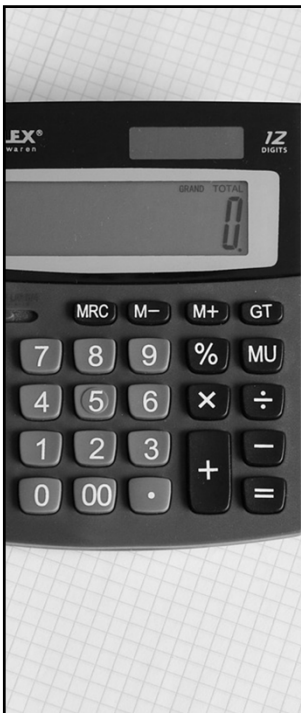
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NYS SECURE CHOICE SAVINGS PROGRAM

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WHAT IS IT?

- State-sponsored retirement program
- Eligible employees automatically signed up for a Roth IRA that they contribute to via a payroll deduction
- Default contribution is 3 percent of wages, but employees are allowed to change that rate or opt out of the program entirely.
- Employers are not required to match but must register and facilitate payroll deduction

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WHO IS COVERED?

- For-profit and nonprofit employers in the public sector who have:
 - 10 or more employees
 - Been in business for at least two years
 - Do not offer a qualified retirement savings program
- Businesses with fewer than 10 employees may also participate in New York Secure Choice but are not required to do so.
- **Registration Deadlines for Employers**
 - March 18, 2026 for employers with 30 or more employees
 - May 15, 2026 for employers with 15 to 29 employees
 - June 15, 2026 for employers with 10 to 14 employees



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NEED MORE INFORMATION?

- Website is up and running and available for registration:
<https://newyorksecurechoice.com/resources/employer>



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OVERTIME

- “qualified overtime compensation” is defined as overtime pay meeting all three of the following criteria:
 - FLSA Requirement: The overtime pay must be required under the Fair Labor Standards Act (29 U.S.C. § 207).
 - Premium Portion Only: Only the amount required to be paid under the FLSA that exceeds the employee’s regular rate of pay qualifies.
 - Proper Reporting: The overtime pay must be reported on a Form W-2, Form 1099, or another statement specified by the IRS.
- Excludes overtime pay such as state-mandated daily overtime (e.g., California’s daily threshold), contractual overtime under a collective bargaining agreement, and voluntary or incentive-based overtime
- 2025-transitional relief; 2026-watch for stricter reporting requirements

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TIPS

- employees may deduct certain tip income from federal taxation if it satisfies all the following conditions:
 - Direct Receipt: The tips must be received by the employee directly from customers or through a valid tip pool.
 - Reportable Income: The tips must be properly reported to the employer and reflected on a Form W-2, 1099 or 4137.
 - FLSA Coverage: The employee must be engaged in an occupation that customarily and regularly receives tips.



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WHAT TO DO NOW?

- Make sure systems are up to date
- Talk to accountants or others
- Prepare Managers to accurately answer questions
- Monitor implementation



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RESTRICTIONS ON USE OF CONSUMER CREDIT HISTORY

Effective April 18, 2026

- Employers will face significant restrictions on using “consumer credit history” of applicants or employees in decision to hire, terminate, promote, demote, discipline, or compensate employees, or in setting the terms, conditions, or privileges of employment.
- Regulations expected before then
- Action Item: Plan Now

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EXCEPTIONS

- Organizations required to conduct such background checks under federal or state law or by a “self-regulatory organization” (national securities exchange, registered securities association, or registered clearing agency).
- Peace Officers or Police Officers or other Law Enforcement Officials
- Background Investigations by a state agency with certain restrictions
- Positions required to be bonded
- Positions required to possess security clearances

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EXCEPTIONS CONTINUED

- Non-clerical position having regular access to trade secrets, intelligence information or national security information as defined in the statute
- Persons in a position: (a) having signatory authority over third party funds or assets valued at ten thousand dollars or more; or (b) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at ten thousand dollars or more on behalf of the employer
- Persons in a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

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Update to NY Executive Law

- Prohibit employment practices that have a discriminatory effect, even if the practice was not motivated by a discriminatory intent.
- Employer must show practice was necessary and must be supported by evidence and not hypothetical or speculative
- Employee can still show there was a better way



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Reasonable Accommodation and Anti-Retaliation

- Effective December 5, 2025
- Amends NY HRL to specifically include that it is unlawful to retaliate against a person because they requested a reasonable accommodation
 - Likely applies to both disability AND pregnancy



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RELIGIOUS ACCOMMODATION

- Second Circuit: Typically employer should NOT inquire into whether the belief is “sincerely held”
 - Mixed motive of employee is not enough to negate accommodation
 - Can ask questions about belief, but cannot challenge the belief



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New Categories of Protection under Earned Safe and Sick Time Act

- Effective October 25, 2025
- Expands Caregiver leave
- Expands workplace violence leave
- Expands public disaster leave
- Adds Legal Proceedings
- *Also* 32 hours unpaid time; 2 temporary schedule changes



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NYC TRANSPARENCY PAY-DATA REPORTING

- Requires reporting of wage and demographic data for certain large employers (200 employees)
- Likely won't start reporting until 2027



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WAGE AND HOUR GUIDANCE-JOINT EMPLOYER

Opinion Letter FLSA 2025-05

- Employee worked as a hostess for a restaurant
- Picked up shifts as a server in the members only club upstairs
- Employer position: Two separate companies
- DOL: NO. Shared kitchen, similar food and drink, related trade names, **overlapping ownership and management**
- **Employee must be paid OT for hours over 40 in a week**

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DOL OPINION LETTER FMLA

FMLA2025-02-A



- When an employee works mandatory overtime or non-traditional schedules (12 hour days), how is FMLA calculated?
- Must base FMLA hours on the actual, normally scheduled workweek including typical mandatory overtime, but excluding voluntary extra hours

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Travel Time for FMLA (FMLA2026-2)

- Does time spent traveling to and from medical appointments qualify as protected leave under the FMLA?
- Yes-if reasonably necessary to obtain treatment for a qualifying serious health condition
- NOT unrelated activities (example: stop at the mall for shopping)



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DOL OPINION LETTER RE: TIPS

FLSA2025-03

- Front of House Oyster Shuckers qualified as tipped employees
 - Interacted with customers by explaining oyster offerings and answering questions
 - DOL: Role is similar to sommeliers, sushi chefs
 - BUT: Those who worked in the kitchen did not qualify
- NOT THE SAME as the Treasury Department under One Big Beautiful Bill Act

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WAGE AND HOUR GUIDANCE- UNION CONTRACT

Opinion Letter FLSA 2026-3

- Union and Employer agreed to a 15 min. "roll call" that was designated as not time worked for overtime purposes
- DOL: NO. Union and employer cannot contract away right to overtime for employees and cannot designate time as non-working time.



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WAGE AND HOUR GUIDANCE-REGULAR RATE OF PAY AND BONUSES

Opinion Letter FLSA 2026-02

- Employees had a base rate of pay
- Employees also received bonus money per hour under the “Safety, Job Duties, and Performance” bonus plan.
- “Detailed criteria”: plan rewards an employee’s “punctuality, attendance, consistency in completing daily safety tasks, driving safety, compliance with traffic laws, proper attire, and performance efficiency.”
- **DOL: Must include the bonus in calculating the “regular rate” for overtime purposes.**

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WAGE AND HOUR—Learned Professional Exemption

Opinion Letter FLSA 2026-01

- Social Worker with Master’s Degree likely qualifies for exemption if work they are doing falls into the clinical category
- Employer may classify someone who meets the exemption as non-exempt and pay hourly

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WHAT IS REQUIRED

- Effective March 2025
- Adds a checkbox to the WARN notice form, asking if layoffs stem from technological innovation or automation. If checked, employers must identify the specific technology (e.g., AI).
- As of June 2025, no companies filing WARN notices in New York have attributed layoffs to AI, suggesting either limited AI-driven layoffs or reluctance to disclose.

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FEDERAL LAW PENDING

- AI-Related Job Impacts Clarity Act
- Bipartisan Support
- Starts with publicly traded companies and expands to “large” employers after
- Require Reporting:
 - Number of employees laid off because of AI
 - Number of new jobs because of AI
 - Number of vacant positions left unfilled because of AI
 - Number of workers retrained or assisted because of AI

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OTHER UPDATES

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UNEMPLOYMENT INSURANCE

- Expanded Notice Requirements for unemployment--Any time eligibility for unemployment insurance drops below 30 hours per week or less than \$504 per week (effective November 13)
- Pay Off the Trust Fund Debt (est. saving of \$100 per employee in 2026 and \$250 in 2027)
- Increase in max UI amount to \$869 per week
- Striking Workers eligible for UI after 2 week waiting period

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INCREASE IN PAY FOR JURY DUTY

- Employer of 10 or more employees, must pay
- \$72 per day or daily wage (whichever is lower) for first 3 days of service
- Retaliation for jury service is a crime
- Jury Information for Employers
https://www.nyjuror.gov/pdfs/hb_EE.pdf

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NY DOL Guidance on Protecting Employees During Extreme Weather

- Applies to:
 - high heat
<https://dol.ny.gov/system/files/documents/2024/08/p198-extreme-heat-8-5-24.pdf>
 - poor air quality
<https://dol.ny.gov/system/files/documents/2024/10/wildfire-smoke-guidance-p197.pdf>
 - heavy precipitation
<https://dol.ny.gov/system/files/documents/2025/01/employer-guidance-protecting-outdoor-workers-from-extreme-precipitation-p195.pdf>
- DOL added Extreme Cold
<https://dol.ny.gov/news/new-york-state-department-labor-announces-new-guidance-protect-outdoor-workers-extreme-cold>

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WHAT'S NEXT?

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UPCOMING

- Pending Legislation--Ban on Non-Competes for those earning under \$500K per year
- Reminder: Large retailers (500 plus employees) implement panic buttons Jan 1, 2027



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Upcoming Events



March Event

- **Lunch with a Lawyer –
Employee Performance, Management and Discipline**

Thursday, March 19

Managing employee performance is one of the most critical and complex responsibilities facing employers today. Join us as we discuss the best practices for performance management, documentation, and progressive discipline, along with common pitfalls that can lead to disputes. From setting clear expectations to navigating discipline with consistency and care, leadership decisions can significantly impact workplace culture and productivity.

https://www.hhk.com/le-webinar-lwl-employeePMD_2026-0319/

April Event

- **STAHR Event - Using Emotional Intelligence to Reduce and
Resolve Unproductive Conflict in the Workplace**

Thursday, April 16

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