

WHAT TO EXPECT IN 2024
DECEMBER 7, 2023

DAWN J. LANOUE, ESQ.
HINMAN, HOWARD & KATTELL, LLP
80 EXCHANGE STREET | BINGHAMTON, NY
DLANOUE@HHK.COM | (607) 231- 6917

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1

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Upstate NY Minimum Wage Increasing!

- December 31, 2023 increases to **\$15.00** (\$16 New York City and Nassau, Suffolk, and Westchester)
 - \$15.50 in 2024, then to \$16 in 2025
- Future Increases published on or before October 1 of each year



4

OTHER CHANGES


Tipped Service Workers

Year	New York City, Westchester, Nassau, Suffolk Counties	Upstate New York
2024	\$10.70	\$10.00
2025	\$11.00	\$10.35
2026	\$11.35	\$10.70

5

EXEMPT Threshold Salary

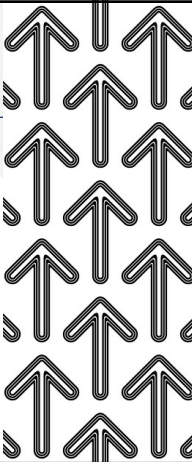
- For New York City, Westchester, and Long Island:
 - 2024 – \$1,200.00/week (\$62,400.00 per year)
 - 2025 – \$1,237.50/week (\$64,350.00 per year)
 - 2026 – \$1,275.00/week (\$66,300.00 per year)
- For the rest of New York:
 - 2024 – **\$1,124.20/week (\$58,458.40 per year)**
 - 2025 – \$1,161.65/week (\$60,405.80 per year)
 - 2026 – \$1,199.10/week (\$62,353.20 per year)



6

Exemption from Labor Law Art. 6

- S.B. 5572-Effective March 13, 2024
- Increases the salary threshold for executive, administrative **and professional** to \$1,300 for the **purpose** of who can file a claim with DOL.
- It does not change the threshold salary
- It may affect frequency of pay for employees





7

NEW CRIMINAL WAGE THEFT PROVISION

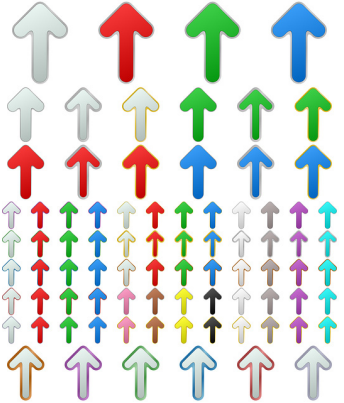
Makes it easier for prosecutors to pursue larceny charges when wages are not paid

Allows for aggregation of various counties

8

FEDERAL PROPOSED CHANGES TO OVERTIME RULES



9

WHAT'S IN THE PROPOSAL?

- Applies to white collar exemptions—Executive, Professional, Administrative, Computer Professional
- No increase for Outside Sales
- Increase from \$35,568 to \$55,068 a year (from \$684 per week to \$1,059 per week)
- California, Colorado, Maine, New York and Washington currently higher

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ONE TIP . . .

- Use the Increases as the Time to Audit
 - Be Aware of Position Creep
 - Use the Actual Tests—
 - <https://dol.ny.gov/system/files/documents/2021/12/administrative-employee-overtime-exemption-frequently-asked-questions.pdf>
 - <https://dol.ny.gov/system/files/documents/2021/03/professional-employee-overtime-exemption-frequently-asked-questions.pdf>
 - <https://dol.ny.gov/system/files/documents/2021/03/executive-employee-overtime-exemption-frequently-asked-questions.pdf>

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THE BUSY LEGISLATURE STRIKES AGAIN

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New Law Concerning Mandatory Meetings

- S4982/A6604) –Prohibits employers from disciplining employees who opt not to participate in meetings sponsored by the employer concerning the employer’s views on political and religious matters **including its views on the decision to join or support a union**

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PRIVACY AND DATA SECURITY
NY AB 836

- Prohibits employer from requesting or requiring applicant or employee to turn over login credentials for any personal accounts (email, social media, etc.)
- Doesn’t apply to a business account or an account used for business purposes
- Effective March 12, 2024

14

Human Rights Law Amendments



- Extended Statute of Limitations (3 Years)—effective February 15, 2024
- Changes to Confidentiality Preferences Agreement for pre-litigation (will apply to severance agreements)
- Prohibition on liquidated damages clause in settlement agreement

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New York Freelance Worker Law



- “freelance worker”
 - Single individual (or their business)
 - Hired as independent contractor for at least \$800
- Written contract with specific terms and record keeping requirements
- Effective May 20, 2024 and applies only prospectively

16

Unemployment and Worker’s Comp



- 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)
- https://dol.ny.gov/system/files/documents/2023/05/ia133_0.pdf
- Worker’s Compensation—decreased employer rate; increased employee payments for 2024

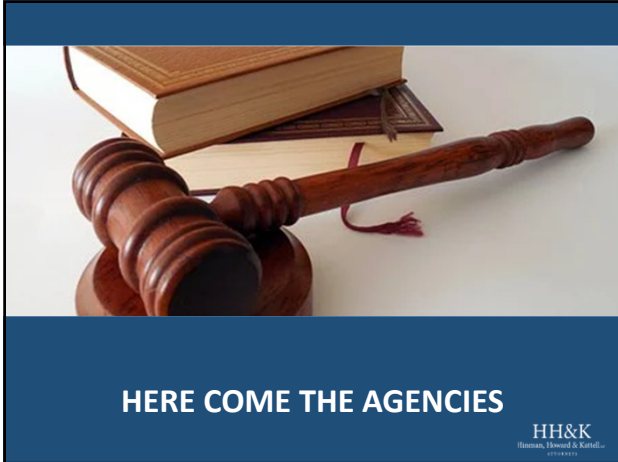
17

EMPLOYEE INVENTIONS

- Inventions developed entirely on employee’s own time, without using an employer’s property or trade secrets belong to employee
- Effective September 15, 2023 and applies to all contracts (defacto retroactive)
- Enforced by DOL

18



19



20

PROPOSED UPDATED GUIDANCE ON PREVENTING HARASSMENT

Open for Comment Until Nov. 1

- Context Matters
- Includes updated and expanded definition of sex and gender based harassment
 - Includes gender identity
 - Includes intentionally using wrong pronouns
- Workplace “culture” does not excuse harassment
- Employee may be “harassed” by conduct directed at others

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WHAT ELSE?

<https://www.eeoc.gov/proposed-enforcement-guidance-harassment-workplace>

- Addresses Remote Work
- Addresses Temporary Employment Agencies
- Addresses Social Media and On-line Harassment
- Provides Updated guidelines on policy issues
- Provides Updated guidelines on Investigations

CHECKLIST



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ENFORCEMENT PRIORITIES

<https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028>

- Focus on Underserved Workers
- Recruitment and Training Policies
- Focus on Increased Use of Technology
- Emerging Issues
 - Pregnancy and Childbirth
 - Long Covid
 - Technology
- “Legal Issues”—Waivers, NDA, Non-Disparagement

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OSHA FINAL RULE ON WORKPLACE REPORTING

- Amends Recordkeeping requirements to require certain employers report electronically
- <https://www.federalregister.gov/documents/2023/07/21/2023-15091/improve-tracking-of-workplace-injuries-and-illnesses>
 - More Data More Public

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25



26

WHAT HAPPENED IN 2023?

- *Helix Energy Solutions v. Hewitt*—the money doesn't matter if the pay rules aren't followed
- *Groff v. DeJoy*—Changed the standard for religious accommodation to make it harder for an employer to deny the accommodation
- *Affirmative Action Decisions*—May have ripple effect on the workplace
- *Other*—Arbitration and Striking worker decisions



27



WHAT'S ON TAP FOR 2024

- ADA "Tester" Case *Acheson Hotels v. Laufer*
- *Muldrow v. St. Louis*-Lateral Transfer

28



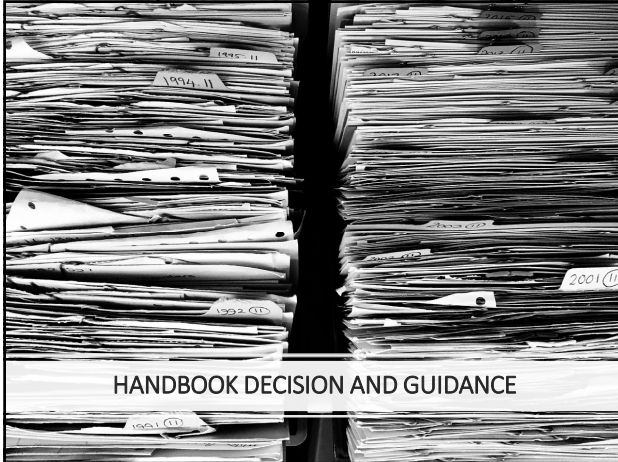
WHAT ARE THE TRENDS?

29

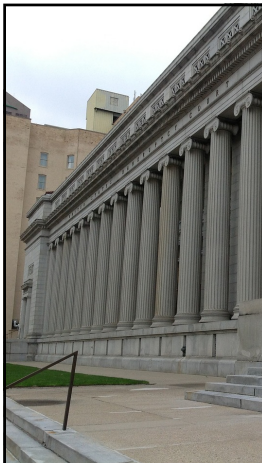


EMPHASIS ON PREGNANCY AND BREASTFEEDING ACCOMMODATION

30



31



STERICYCLE DECISION

- Employers burden--workplace conduct rules are narrowly tailored
- Employer has a legitimate and substantial business interest protected by the rule

32

Rules to Review

- Workplace Civility Rules ("respectful", "professional")
- Restrictions on Recordings



33



NON-COMPETE AGREEMENTS UNDER ATTACK



34

WHAT'S UP WITH THE NEW YORK STATE LAW?

It's Not Going Anywhere

- Hochul Offered a Compromise of a \$250,000 salary limit
- Lots of lobbying by both the business side and unions
- Probably will see a new version of the bill in 2024

Bottom Line: Non-Compete Agreements Are Still Risky. Have a Back-up Plan.

35



MENTAL HEALTH WILL CONTINUE TO BE A STRUGGLE


36

PLANNING AHEAD

- Programs for Employees
- EAP
- Manager Training on Dealing with Accommodation Requests
- Workforce Planning



37



ARTIFICIAL INTELLIGENCE IN THE WORKPLACE (AI)

38

WHAT SHOULD WE KNOW?

- Hiring Programs
- Chat GPT
- Virtual Assistants and Chatbots
- Discrimination Claims
- Privacy/Intellectual Property Claims



39



DON'T FORGET. . .

- Update Handbooks for new required policies and amendments
- Annual Harassment Training
- Wage Rate Sheets
- Do a spot check on wage and hour
- COVID Pay Is Still a Thing

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UPCOMING LUNCH WITH A LAWYER

- January 24—Ten Mistakes You are Making Handling Harassment/Discrimination Investigations
- Available on-line: *Top 10 Wage and Hour Mistakes*
- <https://www.hhk.com/lw/webinar-2023-09-top10mistakes-wage/>

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UPCOMING IN PERSON PROGRAM

- March 9 at 9 a.m.
- Employee Burnout and Improving Mental and Emotional Wellness
- Gene Raymondi, ENI

42



YOUR
QUESTIONS

43