



Reducing Risk in 2026

Key Updates in New York Employment & Benefits Law



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2026 New York Wage & Hour Updates

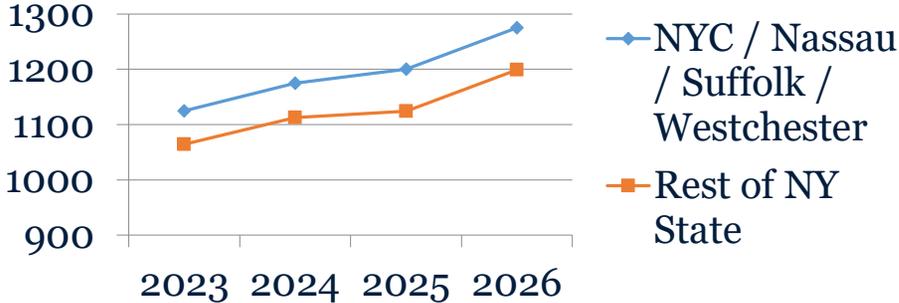
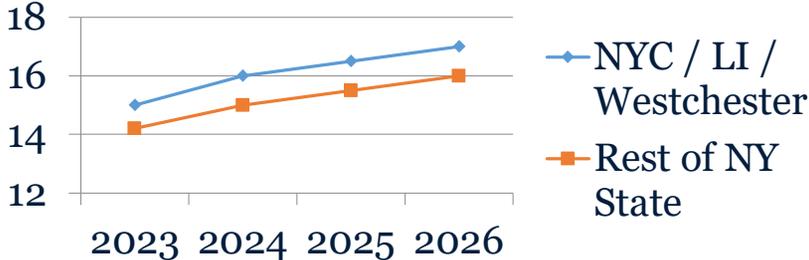
Minimum Wage (Effective Jan. 1, 2026)

NYC, Long Island, & Westchester:
\$17.00/hour
Rest of NYS: \$16.00/hour

Minimum Salary Thresholds for Overtime-Exempt Administrative & Executive Employees

NYC, Nassau, Suffolk, & Westchester:
\$1,275/week (\$66,300 annually)
Rest of NYS: \$1,199.10/week (\$62,353 annually)

Takeaways: Minimum wage increases have been phased in annually since 2023. Salary thresholds have steadily increased, raising overtime and reclassification risk.





Why This Matters for Employers

Compliance Obligations

Payroll systems, wage notices, and job postings must be updated effective January 1, 2026.

Budgeting and Workforce Planning

Higher wage floors and exemption thresholds increase labor costs and affect 2026 budgeting.

Overtime Risk and Reclassification

Employees who fall below the new salary thresholds may need to be reclassified as non-exempt, creating additional overtime exposure.

Minimum Wage & Overtime-Exempt Salary Thresholds in Practice – Hypo 1

An employer conducts a compliance audit in early 2026 and discovers that a **marketing manager** classified as **exempt** earned below the applicable New York salary threshold in 2025 due to reduced hours and a temporary salary cut. The audit also reveals that the employee fell short of the threshold for part of 2024, but no overtime was paid.

What should the employer do?

- A. Fix the salary going forward and move on
- B. Reclassify the employee but take no action on prior years
- C. Reclassify or raise salary and assess potential back overtime liability
- D. No action is required because the employee was salaried

Minimum Wage & Overtime-Exempt Salary Thresholds in Practice – Hypo 2

A small consulting firm in NYC employs a licensed engineer who performs work clearly requiring advanced, specialized knowledge. The employee is paid a salary of \$1,250 per week and is classified as exempt under the **professional exemption**. HR becomes concerned after learning that New York's exempt salary threshold is higher than the employee's current salary and concludes that the consulting firm may no longer classify this employee as exempt.

Is HR correct?

- A. Yes, the employee must be classified as non-exempt
- B. No, the employee can still be classified as exempt
- C. I'm not sure

Minimum Wage & Overtime - Exempt Salary Thresholds in Practice – Hypo 3

An employee in New York is paid **\$15.50 an hour**, plus a **monthly performance bonus** that often brings the employee's total compensation above the applicable minimum wage. After seeing an article about the 2026 minimum wage increases across New York, the employee complains that his hourly rate is below the minimum wage. The employer responds that “with the monthly performance bonus, you're well above minimum wage.”

Can the employer rely on the bonus to satisfy new minimum wage requirements?

- A. Yes, as long as total compensation exceeds minimum wage
- B. Yes, if the bonus is paid regularly and based on objective criteria
- C. No, bonuses generally cannot be used to meet minimum wage
- D. It depends on whether the bonus is discretionary or nondiscretionary

NYC Earned Safe & Sick Time Act (ESSTA)

Effective February 22, 2026

- New 32-hour unpaid safe and sick leave bank, front-loaded at hire and annually
 - Provided in addition to existing paid ESSTA leave requirements
- Expanded permissible uses for paid and unpaid leave
 - Caregiving, public disasters, housing and subsistence proceedings, workplace violence
- Paid prenatal leave (20 hours) formally codified in NYC law
- Temporary Schedule Change Act obligations scaled back
 - Employers must respond, not automatically approve



Why the ESSTA Changes Matter for Employers

- Policies and handbooks must be revised to address multiple leave banks.
- Payroll and HR systems must separately track paid sick leave, unpaid sick leave, and prenatal leave.
- Managers and HR teams require training on expanded leave uses and scheduling rules.
- Noncompliance carries enforcement and penalty risk under NYC law.

ESSTA in Practice – Hypo 1

Mark is hired on March 1, 2026 as a non-exempt maintenance coordinator for a NYC employer with 75 employees. Mark works entirely in NYC. After 4 weeks on the job, in early April, Mark needs to take 3 days off to care for an ill family member following a health emergency.

Can Mark's supervisor deny him unpaid time off to care for his family member?

- A. Yes, because Mark has worked for the company for only 4 weeks
- B. Yes, because Mark is asking for 3 days off
- C. No, because 32 hours of leave are frontloaded at hire

Say the employer's policy requires that employees accrue **paid** safe and sick leave at the rate of 1 hour for every 30 hours worked. Can Mark's supervisor deny Mark paid time off to care for his family member?

- A. Yes, because he has not accrued enough time to take 3 days off
- B. Yes, because unpaid leave is now an available option
- C. No, but Mark may need to supplement his paid time off with his unpaid time off

ESSTA in Practice – Hypo 2

Renee is a designer for a clothing company in New York and has worked for the company for 2 years. In September, she emails her boss and says she needs to take half a day off to attend a legal hearing regarding a tenant action her landlord is taking against her related to rental assistance. She wants to take safe leave under the company's ESSTA policy—she has not taken any safe or sick leave this year. Her boss emails HR and asks what type of leave she can use.

What can HR do?

- A. Allow Renee to use her accrued paid safe leave
- B. Allow Renee to use her unpaid safe leave
- C. Require Renee to use her accrued vacation time
- D. A or B

Renee instead asks to use safe leave for a lease signing. Does she qualify for unpaid safe and sick leave?

- A. Yes
- B. No
- C. I'm not sure

Amendments to the New York General Business Law/ New York State Fair Credit Reporting Act

Consumer Credit History Restricted in Employment Decisions, Effective April 18, 2026

- Employers may not request or use consumer credit history for hiring or other employment decisions.
- Law mirrors NYC's Stop Credit Discrimination in Employment Act.
- Narrow statutory exceptions apply for certain legally required or security-sensitive positions.



Why the Consumer Credit History Ban Matters

Statewide Hiring Practice Changes Required

- Employers outside NYC must eliminate credit checks from most hiring and employment decisions.
- Background check vendors and forms may need to be revised.
- Reliance on credit history may create enforcement and discrimination risk.
- Compliance requires coordination between HR, legal, and recruiting teams.

Consumer Credit History Ban in Practice – Hypo 1

A NY company is seeking a junior account manager who works with large corporate clients. They have expense approval authority, but not authority to set budgets, sign checks, or transfer company funds.

Alex is a candidate for the role. He receives a conditional offer of employment. The company runs their credit report and sees that Alex has multiple delinquent accounts and a personal bankruptcy. There is no evidence of fraud or misconduct.

Can the employer rescind Alex's offer?

- A. Yes
- B. No
- C. I'm not sure

Consumer Credit History Ban in Practice – Hypo 2

A property management company in New York looks to hire a property manager whose duties include coordinating maintenance vendors, responding to tenant complaints, scheduling inspections, and signing checks and accessing bank accounts. As a condition of employment, the company requests a consumer credit report for finalists.

Jordan applies for the job and is offered the position contingent on background screening. His credit record shows several late credit card payments and medical debt.

Can the company rescind Jordan's offer based on his credit report?

- A. Yes, but only if the position includes signatory or fiduciary authority over at least \$10,000
- B. Yes, because any position with check-signing or bank-account access qualifies
- C. No, because New York law generally prohibits using consumer credit history in employment
- D. I'm not sure

Employee Benefits – 2026 Update

New Requirements for Employee Benefits Plans

- **Legislative Update**
 - SECURE 2.0 Act
 - One Big, Beautiful Bill (OB BB)
 - New York State Secure Choice Savings Program
- **Litigation Update**
 - Supreme Court Update
 - Plan Forfeitures
- **Regulatory/Executive Order Update**
 - Private Funds (Equity, Credit, Real Estate)

Mandatory ROTH Designation for Age 50+ Catch-Up

Biggest Change for Defined Contribution Retirement Plans for 2026

BACKGROUND

- **Catch-up Contributions – General Overview (2026)**
 - Standard Limit: \$24,500
 - Catch-Up Contribution for Age 50: \$32,500
 - Participants age 50+ may contribute \$8,000 beyond standard limit.
 - Super Catch-Up Contribution for Ages 60-63: \$35,750
 - Participants age 50+ may contribute \$11,250 beyond standard limit.
- **Nature of Catch-Up Contribution**
 - Pre-2026
 - Tax-deferred **or** Roth for **all** employees participating in plan.
 - Defer income tax until retirement distribution; or
 - Pay income tax immediately, receive retirement distribution tax-free.

Mandatory ROTH Designation for Age 50+ Catch-Up

- The Setting Every Community Up for Retirement Enhancement (SECURE) Act 2.0 of 2022:
 - **Mandatory Roth Catch-Up Rule**
 - Any employee earning compensation of \$150,000 MUST remit catch-up and super-catch-up contributions on a **ROTH** basis.
 - “Compensation” = Social Security wages reported in Box 3 of Form W-2
 - **Compliance Deadline: January 1, 2026**
 - Plan documents must be amended to reflect this new rule.
 - **Operational Issues for Employers**
 - No Roth Option, No Catch-Up for High-Income Employees
 - Monitor Payroll to Identify Roth Threshold
 - Correct Compliance Errors
 - Failure to correct = disqualification of plan’s tax-advantaged status.
 - **Exemption**
 - Special section 403(b) catch-up contributions for employees of a qualified organization with 15 years of service are not subject to Mandatory Roth Catch-Up rule.

SECURE 2.0 Plan Amendment Deadline

Don't Forget Your Plan Docs!

- **SECURE 2.0 Operational Deadlines - COME AND GONE**
 - Plans needed to comply operationally with SECURE 2.0 earlier than 2026.
 - Examples:
 - Long-Term Part-Time (LTPT) Employee Eligibility
 - SECURE Acts lowered the 401(k)/403(b) eligibility threshold for part-time employees from 1,000 hours of service to 500 hours of service over 2 consecutive years.
 - SECURE Acts required plans to permit LTPT Employee participation beginning on January 1, 2024.
- **SECURE 2.0 Plan Amendment Deadline**
 - LTPT Amendment Deadline – December 31, 2025
 - Required Minimum Distribution Age (73 (2023–32); 75 (2033+)) – Dec. 31, 2022 (extended)
 - Student Loan Matching Contributions (Optional) – December 31, 2025
 - Mandatory Roth Catch-Up – Last Day of 2027 plan year.
- **Plan Document Failure = Disqualification**

One Big, Beautiful Bill (OB BB) – Benefits Impact

Expanded Health Care Plans and A New Benefits

- **Health/Cafeteria Plan Expansions (eff. January 1, 2026)**
 - **Telehealth**
 - Permanently extends pandemic-era relief that permitted a high-deductible health plan (HDHP) to offer telehealth benefits to enrollees who had not yet met the deductible.
 - This telehealth benefit does not preclude health savings account eligibility.
 - **Dependent Care FSAs**
 - Increased annual contribution limit for a dependent care flexible spending account from \$5,000 to \$7,500 (\$2,500 to \$3,750 for an individual with a tax filing status of married filing separately).
- **Educational Assistance Programs**
 - Permanently allows employers to reimburse annually up to \$5,250 of an employee's student loan payments on a tax-free basis. (Indexed for inflation starting Jan. 2027).
 - The reimbursements must be made through a qualified educational assistance program.
 - Separate plan document required.

OBBB Benefits Impact

Expanded Health Plans and A New Benefit

- **Trump Accounts – Effective July 4, 2026**
 - New tax-advantaged investment vehicle for children under the age of 18.
 - Operates like an IRA with an annual **contribution limit of \$5,000** (indexed for inflation) ***per child***.
 - Employees may make ***pre-tax salary reduction*** contributions to their dependents' Trump Accounts.
 - **Employers may contribute up to \$2,500** (indexed for inflation) annually, in the aggregate, to the Trump Accounts of the children of an employee ***on a tax-free basis***.
 - The DOL anticipates issuing rules that would permit pre-tax contributions to Trump Accounts pursuant to a cafeteria plan.
 - The employer contributions must be made pursuant to a **written plan document** to be eligible for favorable tax treatment.
 - The federal government will make a \$1,000 contribution to the Trump Account of a child born in 2025-2028.

New York State Secure Choice Savings Program

Ensuring Retirement Plan Access Across New York State

- **Issue**
 - Employers are not required to provide retirement benefits to employees.
 - Over 50% of New Yorkers do not have access to a retirement plan through employer.
- **N.Y. Legislature Solution**
 - N.Y. General Business Law, Article 43, §§ 1300-1316 (Enacted April 12, 2018).
 - Created New York State Secure Choice Savings Program (“Program”)
 - Established a state-run retirement system for private-sector employees that mandates and facilitates the creation of Roth IRAs for private sector employees who do not have access to a qualified retirement plan through their employers.
- **Delayed Implementation of Solution**
 - Delays over Program’s governing structure and need to develop State guidance for employees and employers concerning the Program.
 - Program launched October 8, 2025.
 - Participation in Program optional until **March 2026**



New York State Secure Choice Savings Program

- **Current Program Compliance Requirements for Employers**
 - **Participate or Certify Exemption**
 - Participate
 - Employer with no qualified retirement plan must participate in the Program.
 - Participating employers must automatically enroll eligible employees in the Program.
 - Participating employers must facilitate contribution remittances of employees.
 - Participants may (i) customize the contribution to their Roth IRA with the Program or (ii) opt out of the program.
 - No selection, then automatically contributions equal to 3% of gross income.
 - **Certify Exemption**
 - Employers that offer a qualified retirement plan are not required to enroll.
 - Must certify exemption by reporting plan to the Secure Choice Savings Program Board.
 - **Deadline to Participate or Certify**
 - **March 18, 2026:** Employers with 30 or more employees
 - **May 15, 2026:** Employers with 15 to 29 employees
 - **July 15, 2026:** Employers with 10-14 employees

ERISA Lawsuit Watch

Wave of ERISA Class Actions Hit Employers in 2025. Forecast is the same for 2026.

- **Opening the Flood Gates – *Cunningham v. Cornell University*, 145 S. Ct. 1020 (2025)**
 - **Pre-*Cunningham* Majority Rule**
 - Plaintiffs must allege that a plan and a “party in interest” (*e.g.*, recordkeeper) engaged in a “prohibited transaction” ***and*** no prohibited-transaction exemption applied.
 - **Post-*Cunningham* Rule**
 - Plaintiff need only allege that a prohibited transaction occurred.
 - **Practical Result**
 - Harder to dismiss complaints.
 - More actions, more nuisance settlement payments.
 - **Example**
 - Pre-*Cunningham*: Plaintiff would have to plead plan transacted with a “party in interest,” such as the plan’s TPA or recordkeeper, and that, through the transaction, the plan paid unreasonable compensation to party-in-interest.
 - Post-*Cunningham*: Plaintiffs need only that plan and party in interest transacted.



ERISA Lawsuit Watch

- **Protecting Your Company Against *Cunningham* Consequences**
 - Avoid *Cunningham* prohibited-transaction litigation by paying service providers from general assets, as opposed to plan assets.
 - This approach eliminates any cause of action under ERISA.
 - Strengthen affirmative defenses by memorializing, in writing, the evaluation of the reasonableness of compensation paid to service providers.
 - This approach could either serve as the basis for a dispositive motion or a low, nuisance settlement.

ERISA Lawsuit Watch

- **Plan Forfeiture Class Action Trends**

- Definition

- Plan forfeitures are employer contributions allocated to a participant's account that are unvested at the time participant's severance from the plan.

- Example:

- Employer A has adopted the following six-year graded vesting schedule:

- 2 Years: 20% vested
- 3 Years: 40% vested
- 4 Years: 60% vested
- 5 Years: 80% vested
- 6 Years: 100% vested

- Employer A contributed \$40,000 to Participant B's account over 3 years; and
- Participant A quits job after 3 years, then
- Participant A is vested in employer contributions of \$16,000; **forfeits employer contributions of \$24,000**

ERISA Lawsuit Watch

- **Plan Forfeiture Class Action Trends**
 - What should the employer do with Participant A's forfeited employer contributions of \$24,000?
 - This question is the basis of dozens of class action lawsuits across the U.S.
 - **Conventional Wisdom – Apply Forfeitures to Reduce ER Contribution Obligation**
 - IRS Rev. Proc. 71-19 and Prop. Treasury Reg. § 1.401-7 (Feb. 2, 2023).
 - Since 1971, the IRS has allowed retirement plans *to reduce the employer's contribution obligation* with forfeited contributions.
 - This practice has never seriously been questioned until 2024.
 - **New Theory – Apply in Best Interest of Participant (Fees or Increased Benefits)**
 - More than 30 class actions have recently been filed against plans pursuing this theory.
 - Many, but not all, have been dismissed. Several have been settled for millions of dollars.
 - Litigation Risk Persists!
 - **Defense against Plan Forfeiture Litigation**
 - Amend plan to **mandate** application of forfeitures to employer contribution obligation, removing fiduciary discretion over forfeitures, reducing exposure to fiduciary duty claims.

Rapid Regulatory Changes for Benefits Plans

- **Private Funds (Equity, Credit, and Real Estate)**
 - Exec. Order, “Democratizing Access to Alternative Assets for 401(k) Investors,” (Aug. 7, 2025)
 - Directs U.S. Department of Labor to issue rules permitting retirement plans to offer “alternative assets” as an investments option to 401(k) participants.
 - Alternative Assets
 - Private Equity
 - Private Debt
 - Private Real Estate
 - Project Finance for Infrastructure Developments
 - DOL submitted proposed regulation to OMB on January 14, 2026.
- **Environmental, Social and Governance (“ESG”) & Diversity, Equity, and Inclusion (“DEI”)**
 - Exec. Order, “Protecting American Investors and Retirement Savings,” (Dec. 11, 2025)
 - Directs DOL to issue regulations that are “solely in the financial interest of American workers and retirees,” which excludes ESG and DEI factors.



Financial Advisor Compensation

- Financial advisors at varying financial institutions have brought claims for unvested deferred compensation forfeited in connection with their voluntary termination of employment
- Ongoing disputes over whether deferred FA compensation is an ERISA pension plan or exempt bonus program
- Developments: DOL Advisory Opinion 2025-03A; Merrill Lynch litigation



Potential SEC Compensation Disclosure Reform

- SEC Signals potential changes to executive compensation disclosure requirements in 2026
- SEC Roundtable (June 2025): Commissioners and panelists questioned whether current executive compensation disclosure requirements are overly complex and not always decision-useful for investors
- SEC has received over 70 comment letters

Section 162(m) Expansion

- Expansion of Section 162(m) effective for tax years beginning after December 31, 2026
- Current Rule:
 - Limits public company tax deduction to \$1 million per year for compensation paid to each “covered employee”
 - Covered employees include the CEO, CFO, and next three highest-paid executive officers
 - Once an individual becomes a covered employee, they remain a covered employee for all future years
- American Rescue Plan Act of 2021 (ARPA) adds a new category of covered employees
 - Covered employees includes the next five highest-compensated employees for the tax year
 - The “next five” category includes any employee and not just executive officers
 - Unlike the executive group, these “next five” are determined annually and not subject to the once covered, always covered” rule



Section 409A Operational Errors

- Noticed increase in operational failures of nonqualified deferred compensation plans, particularly in older or legacy plans
- Operational errors can result in significant adverse tax consequences for affected individuals
- Recommended Actions:
 - Inventory and audit of nonqualified deferred compensation arrangements
 - Assess third-party administrator and payroll processes for 409A compliance
 - Implement periodic compliance checks

Amendments to the Trapped at Work Act

“Stay-or-Pay” Agreements Prohibited

- Prohibits agreements requiring repayment of training costs or financial penalties upon separation
- Applies to agreements executed on or after December 19, 2026 (delayed effective date)
- Applies to *employees*, not independent contractors or other non-employees
- Exceptions for clawbacks of non-training-related wage advances
- Excludes tuition repayment agreements, if the agreement relates to “transferable” educational credentials
- No private right of action



Why the Trapped at Work Act Amendments Matter

- Employers must reevaluate financial incentive and clawback agreements.
- Agreements that were previously enforceable may now be prohibited. However, it depends on the nature of the training program involved, its portability, and whether it's mandatory.
- Legal uncertainty requires close monitoring and conservative compliance approaches.
- Penalties can be assessed by the NYS Department of Labor.

Trapped at Work Act in Practice – Hypo 1

Company ABC employs customer support specialists across New York. New hires must complete a mandatory onboarding and systems training program during their first 60 days. As a condition of employment, ABC requires employees to sign a Training Cost Agreement stating ABC values the training at \$4k and if the employee leaves ABC within 12 months, they must repay the full amount, regardless of the reason for separation.

Lena is hired as a customer support specialist. After 6 months, she gets an offer from another company and gives her notice. After informing HR, HR informs her if she leaves, she will have to repay the \$4k, but if she stays for another 6 months, she won't have to.

Is this legal under the Trapped at Work Act?

- A. Yes
- B. No
- C. I'm not sure

Trapped at Work Act in Practice – Hypo 2

Atlantic Company offers to pay \$8,000 in tuition for employees to complete a 12-week certificate program for cybersecurity. The program is voluntary, is provided by a third party, and is recognized within the industry and can be used at other employers.

Atlantic asks employees who enroll to sign a tuition repayment agreement that requires repayment on a prorated basis (not wage deductions) if the employee resigns within 18 months, and the agreement excludes mandatory or employer-specific training. Maya completes the program successfully. Eight months later, she resigns.

Can Atlantic seek repayment under the agreement?

- A. Yes
- B. No
- C. I'm not sure

Key Employer Action Items for 2026

- **Employment**

- Review and update wage-and-hour practices, including exempt classifications and pay rates
- Revise leave policies to address ESSTA changes and track multiple leave banks
- Audit employment policies and practices for actual or predictable disparate impact under NYSHRL
- Review training repayment, tuition assistance, and clawback agreements for Trapped at Work Act compliance
- Update hiring practices and background checks to eliminate improper use of credit history
- Train HR and managers on new requirements and retaliation risks

- **Benefits**

- Update Plan Documents
- Respond to NYS Secure Choice Savings Program
- Defend against Litigation Risk



**Thank You.
Any Questions?**



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