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New York State's 2024-2025 Budget Brings First-of-Its-Kind Paid Prenatal Leave, Expanded Nursing Protections, and the End of Covid-19 Leave

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On April 20, 2024, New York lawmakers approved the State's 2024-2025 budget. As a part of the budgetary vote, lawmakers passed three notable amendments to New York Labor Law of which employers should be aware. **PAID PRENATAL LEAVE**: In a first-of-its-kind law in the country, lawmakers amended the New York Labor Law's sick leave provisions to require all employers (regardless of size) to provide employees twenty (20) hours of paid prenatal leave per year. Employees may use this leave to obtain healthcare services during or related to pregnancy – for example, for physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider concerning their pregnancy. This leave bank must be separate from other leave accruals, including the forty (40) or fifty-six (56)[1] hours of sick leave that New York employers are currently required to provide employees for their own illness or need for medical care (including mental illness), the care or treatment of certain covered family members, and for certain safety concerns (such as domestic violence). The law prohibits employers from discriminating or retaliating against employees because they requested or utilized prenatal leave and requires employees who use prenatal leave to be restored to the same position they held prior to such leave. The amendment does not address, for example, whether and under what circumstances employers may require advance notice or documentation regarding the use of prenatal leave, though the labor commissioner has the authority to adopt regulations and issue guidance to address these and other questions. The requirements to provide prenatal leave become effective on January 1, 2025. **PAID NURSING BREAKS**: The New York Labor Law was also amended to require all employers (regardless of size) to provide paid nursing breaks. This marks a notable change from the current law, which only requires reasonable unpaid breaks for expressing breast milk. Under the new law, which is effective June 19, 2024, employers must provide thirty (30) minute paid breaks each time an employee has a reasonable need to express breast milk for up to three (3) years following childbirth. The law also requires employers to permit employees to use other existing paid break and mealtime (e.g., under wage and hour laws) to express breast milk when breaks longer than thirty (30) minutes are needed. The statute does not address how often employees may take paid nursing breaks. However, the state interpreted the prior iteration of the statute to allow employees to take unpaid breaks at least once every three hours, with accommodations made for employees that need more frequent breaks. The state might take a similar approach with the new iteration of the law requiring paid breaks. **COVID-19 SICK LEAVE**: Finally, New York's COVID-19 leave law will be deemed repealed as of July 31, 2025. The State's COVID-19 leave law presently requires employers to provide employees up to fourteen (14) days of paid leave, separate from other leave accruals, when they are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. Although employees with COVID-19 may still qualify for leave under the State's sick leave law after July 31, 2025, New York employers will no longer be required to provide a separate COVID-19 leave bank after that date. New York employers should review and revise their existing leave and break policies to ensure compliance with these new requirements by the effective

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dates. _____ [1] The State's sick leave law currently requires: (i) employers with one hundred (100) or more employees to provide fifty-six (56) hours of paid sick leave per year; (ii) employers with between five (5) and ninety-nine (99) employees to provide forty (40) hours of paid sick leave per year; and (iii) employers with less than five (5) employees to provide forty (40) hours of unpaid sick leave per year, unless the employer has a net income of greater than $1 million per year, in which case, such sick leave must be paid.

The following Gibson Dunn lawyers prepared this update: Jason C. Schwartz, Katherine V.A. Smith, Harris M. Mufson, Danielle J. Moss, Alex Downie, and Andrew Webb*.

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