

# 2023 New York Employment Law Update

*More Employer Obligations to Protect Employees*

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# New York Minimum Wage

## Minimum Wage

- NYC, Long Island, & Westchester - \$15/hr.
- Upstate - \$14.20/hr.

## Admin/Exec Exemption Threshold

- NYC, LI, Westchester - \$1,125.00 per week
- Upstate - \$1,064.25 per week

# New York Pay Transparency Law

- ▶ Takes effect September 17, 2023
- ▶ Employers with 4 or more employees
- ▶ Unclear whether public sector is covered
- ▶ Job postings must include compensation range and, if one exists, job description
- ▶ Exclusion for temporary help firms

# Compensation Range

- ▶ Minimum and maximum annual salary or hourly range of compensation
- ▶ Based on good faith belief at the time of posting
- ▶ If job pays solely on commission, need only provide general statement that compensation is based on commission

# Job Advertisements

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“Make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity”

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Applies to a job, promotion, or transfer opportunity that will physically be performed, at least in part, in NYS or performed outside New York but reporting to a supervisor, office, or other work site in New York

# NYC Automated Employment Decision Tools Law

- ▶ Enforcement scheduled to begin April 15, 2023
- ▶ Restricts NYC employers in the use of automated employment decision tools (AEDT) to make employment decisions
- ▶ AEDT: “any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification or recommendation that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons”



# NYC AEDT Restrictions

- ▶ Can only use AEDT for employment decisions if:
  - the tool used has been subject to bias audit in past year; and
  - a summary of the results of the most recent bias audit are publicly available on the employer's website before the tool is used
- ▶ Additional notice requirements apply, including disclosure of what “job qualifications and characteristics” the AEDT will use



# Human Rights Law Amendment

“Citizenship or  
immigration status”



# Sexual Harassment Prevention

- ▶ Hotline: 1-800-HARASS-3
- ▶ Proposed new model policy



# Policy Proposals

- ▶ Advises that sexual harassment need not be severe or pervasive to be illegal in New York and that intent is irrelevant
- ▶ Expands on issues of gender, gender identity, and gender expression, as well as sexual orientation
- ▶ Incorporates bystander intervention methods
- ▶ Clarifies that sexual harassment can happen in remote workplace
- ▶ Attempts to expand the policy to harassment based on other protected characteristics

# Leave Discrimination

- ▶ Labor law amendment expressly prohibits adverse action based on employee's use of "any legally protected absence pursuant to federal, local, or state law"
- ▶ Prohibited conduct includes "assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay"
- ▶ Aims to eliminate "no-fault" attendance policies

# Common Protected Leaves

- ▶ NY Paid Sick Leave
- ▶ NY Paid Family Leave
- ▶ NY Paid COVID-19 Leave
- ▶ FMLA
- ▶ Various other specific New York leave laws
- ▶ Time off as an accommodation under the ADA or NYHRL
- ▶ Other?

# NY Paid Family Leave

- ▶ Siblings added as covered family members
- ▶ Includes step- and half- siblings
- ▶ Forms updated, including Gender “X”

**8. Employee's gender**  
 M  F  X

**9. Employee's preferred language**  
 English  Español  Русский  Polski  
 中文  Italiano  Kreyòl ayisyen  한국어  
 Other

Vietnamese  
 Other Asian  
 White  
 Native Hawaiian  
 Guamanian or Chamorro  
 Samoan  
 Other Pacific Islander  
 Other race

**Paid Family Leave (PFL) Request (to be completed by the employee)**

**11. Reason for PFL request:**  Bond with child  Care for family member  Military qualifying event

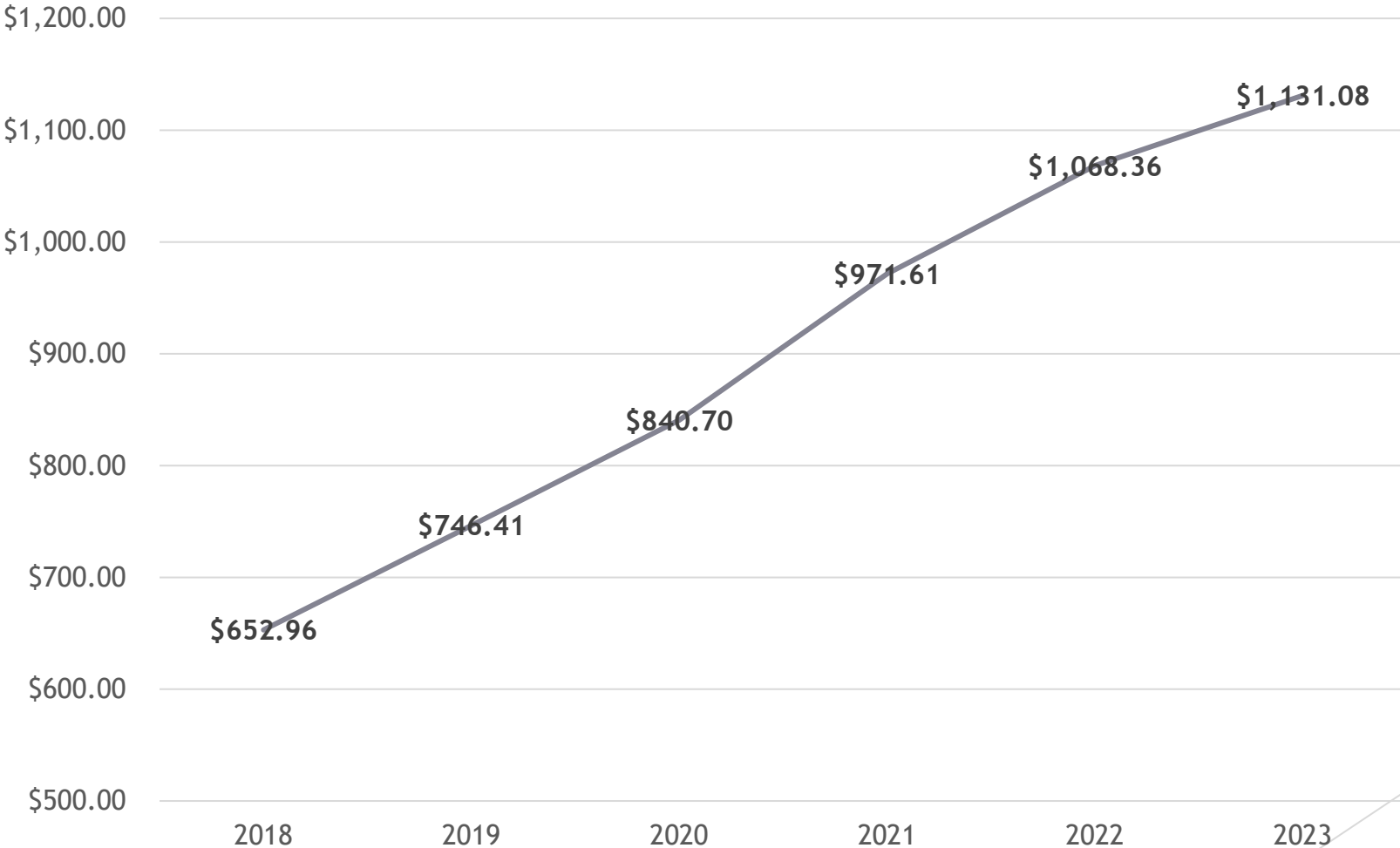
**12. The family member is employee's:**  
 Child  Spouse  Domestic partner  Parent  Parent-in-law  Grandparent  Grandchild  Sibling

*Form PFL-1 continued on next page*

# PFL Benefits

- ▶ 67% of average weekly wage
- ▶ Capped at 67% of the current New York State Average Weekly Wage (NYSAWW)
- ▶ 2023 NYSAWW: \$1,688.19
- ▶ 2023 max. weekly benefit: \$1,131.08
- ▶ Up to 12 weeks per year (across all employers)

# Max Weekly Benefit

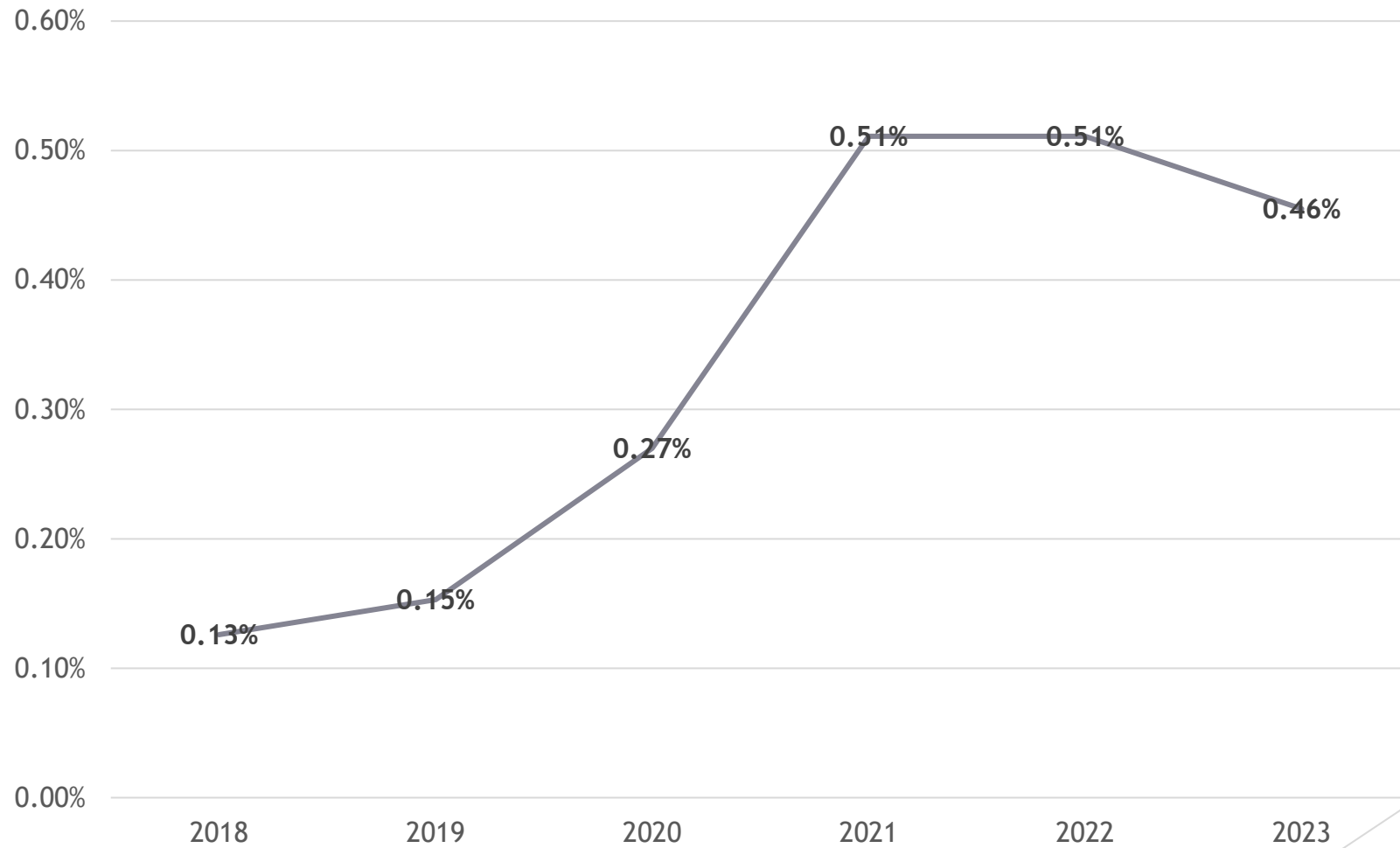


# 2023 Employee Contributions

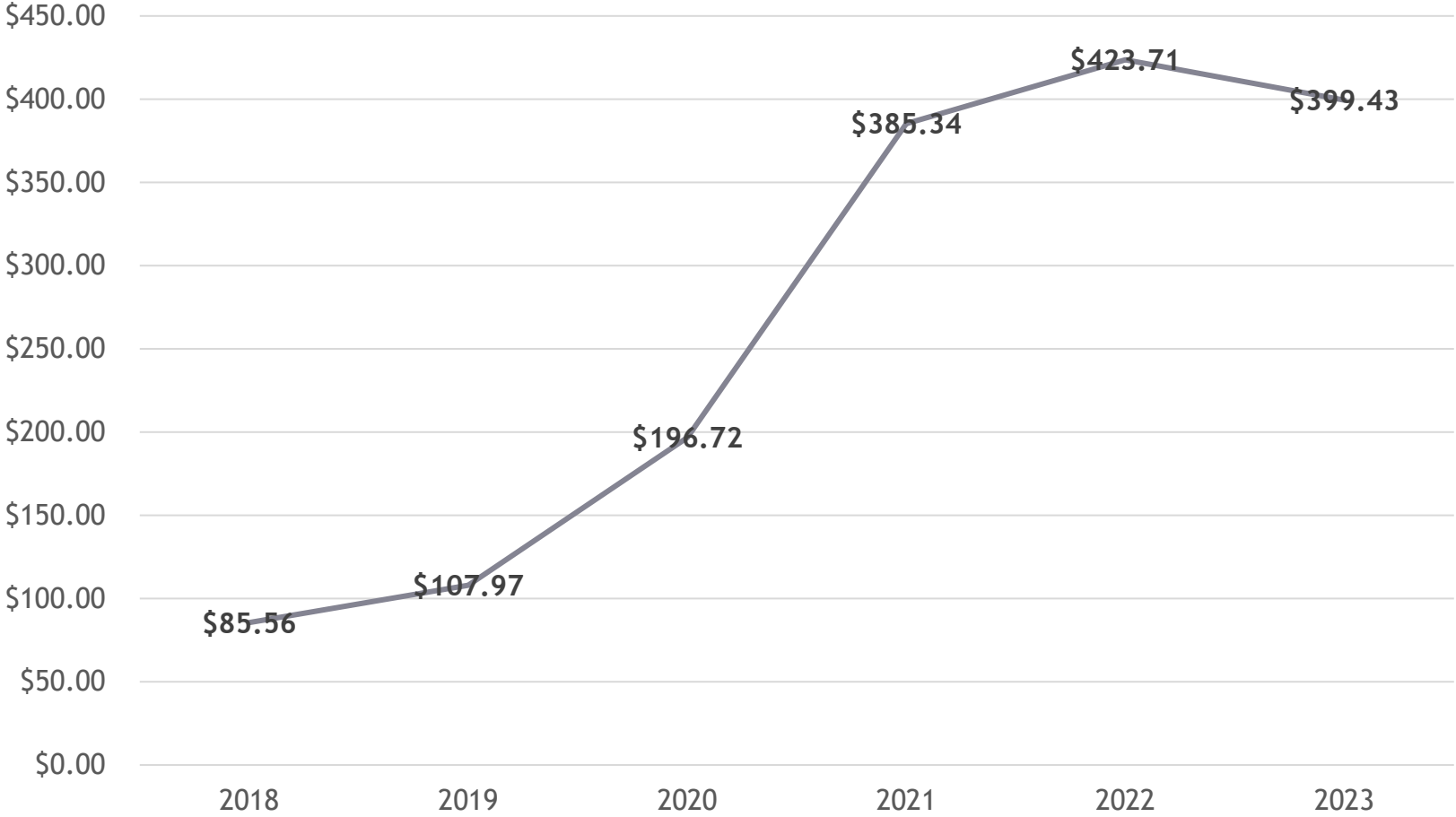
- ▶ For 2023, employees will contribute 0.455% of their gross wages per pay period
- ▶ The maximum annual contribution for 2023 is \$399.43



## Contribution Rate



### Max Annual Contribution



# NY Nursing Mothers in the Workplace Act

- ▶ Amendments take effect June 7, 2023
- ▶ Designated room:
  - Close proximity to work area, well lit, shielded from view
  - Free from intrusion by other people
  - Chair and working surface
  - Nearby access to clean running water
  - Electrical outlet
- ▶ Access to refrigeration
- ▶ Limited exemption in case of undue hardship
- ▶ Written policy required (to be written by DOL)

# Providing Urgent Maternal Protections (PUMP) for Nursing Mother Act

- ▶ Expands FLSA to require employers to provide reasonable break times
- ▶ Applies to exempt and non-exempt employees
- ▶ Took effect December 29, 2022



# Pregnant Workers Fairness Act

- ▶ Requires reasonable accommodations to known limitations related to pregnancy, childbirth, or related medical conditions
- ▶ Can't require leave if another reasonable accommodation is available
- ▶ Takes effect June 27, 2023, but similar protections already exist in New York

# Electronic Posting

- ▶ Effective December 16, 2022, workplace posters and any other documents required to be physically posted at a worksite must also be made electronically available to employees by website or email
- ▶ Employers notify employees that such documents are available electronically

# Warehouse Worker Protection Act

- ▶ Applies to “warehouse distribution centers” based on NAICS codes
  - 100+ employees at single warehouse; or
  - 1,000+ employees at warehouse in NYS
- ▶ Must provide employees with written description of applicable performance quotas
- ▶ Can’t impose quotas that interfere with meal or rest periods or reasonable bathroom use
- ▶ If disciplined, employees have right to quota data for themselves and other similar employees
- ▶ Effective date delayed until June 19, 2023



# HERO Act

- ▶ Airborne Infectious Disease Exposure Prevention Plan requirement remains in effect, though no current disease declaration
- ▶ December 28, 2022, Amendment requires employers to recognize workplace safety committees within 5 days of creation
- ▶ Potential penalties include fine of \$50 per day



# NYS WARN Act

- ▶ New online notice portal expected in April
- ▶ DOL proposed new regulations, including providing:
  - NYS DOL personal contact information and pay status for each affected employee
  - Additional information regarding severance and dislocated worker assistance to employees
  - Request to DOL for exceptions to notice requirements

# Severance Agreements

- ▶ NLRB objects to confidentiality and non-disparagement provisions in severance agreements
- ▶ Offering an employee such an agreement may be found unlawful even if employee doesn't accept
- ▶ NLRB General Counsel suggests employers notify employees that such provisions in existing severance agreements won't be enforced

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# Questions?



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