

2024 New York Employment Law Update

Overtime, Non-Competes, Leave, and More

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Freelance Isn't Free Act





New York State Freelance Isn't Free Act

- Takes effect Aug. 28, 2024
- General Business Law Section 1415
- New York City Freelance Isn't Free Act still effect (since May 15, 2017)

“Freelance Worker”

- any natural person or organization composed of no more than one natural person,
- whether or not incorporated or employing a trade name,
- that is hired or retained as an independent contractor by a hiring party to provide services
- in exchange for an amount equal to or greater than \$800,
- either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding 120 days.

Exclusions



Sales representatives, as defined in New York Labor Law Section 191-a



Lawyers legally practicing law



Licensed medical professionals



Construction contractors

“Hiring Party”

- “Any person who retains a freelance worker to provide any service.”
- Government entities excluded

Written Contract Requirements

- Name and mailing address of both the hiring party and the freelance worker
- Itemization of all services to be provided by the freelance worker
- Value of the services to be provided
- Rate and method of compensation
- Date or mechanism of determining when payment will be made
- Date by which a freelance worker must submit a list of services rendered to allow the hiring party to process timely payment

Consequences of No Contract

- A freelancer can assert a violation of the Act if the hiring party did not provide a written contract upon request made before the work began.
- Even without request, the hiring party would still be at risk of evidentiary presumptions in the freelancer's favor if there is no written contract.



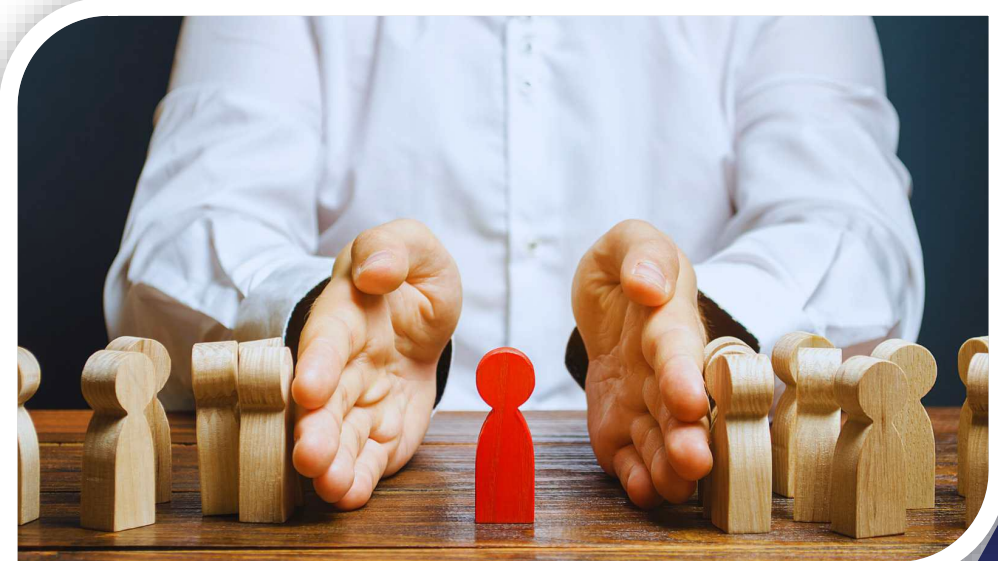
Payments

- Payment must be made either by the date specified in the contract or, if not specified, within 30 days of completing the freelance worker's services.
- The law prohibits hiring parties from demanding that freelancers accept less compensation than contracted as a condition of timely payment.

Penalties

- Borrows from wage-like remedies under NY Labor Law
- Double damages for late or non-payment
- Freelancers can recover attorneys' fees and costs
- Six-year statute of limitations re payment
- NYS Attorney General can enforce in addition to freelancer individually → Civil Penalties
- Retaliation prohibited

FTC Non-Compete Rule



Background

- Restrictive covenants primarily governed by state law
- Enforcement of non-competes varies by state
- Usually a fact-specific analysis where enforceable
- Non-disclosure and non-solicitation provisions generally more widely permitted

Pres. Biden Executive Order (July 9, 2021)

- “To address agreements that may unduly limit workers’ ability to change jobs, the Chair of the FTC is encouraged to consider working with the rest of the Commission to exercise the FTC’s statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.”

FTC Proposed Rule (Jan. 19, 2023)

- “It is an unfair method of competition for an employer to enter into or attempt to enter into a non-compete clause with a worker; maintain with a worker a non-compete clause; or represent to a worker that the worker is subject to a non-compete clause where the employer has no good faith basis to believe that the worker is subject to an enforceable non-compete clause.”

FTC Final Rule (Pub. May. 7, 2024)

- Effective date Sept. 4, 2024
- Broad ban on post-employment “non-compete clauses”
- Narrow exceptions
- Covers “workers,” not limited to employees
- Requires notice to workers that existing non-compete clause “will not be, and cannot legally be, enforced against the worker”

The slide features a decorative background. On the left side, there is a close-up of several interlocking puzzle pieces, with one prominent piece being bright red and the others being white. On the right side, there are overlapping geometric shapes in shades of blue and grey, creating a modern, abstract design.

“Non-Complete Clause”

“A term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from:

- (1) seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or
- (2) operating a business in the United States after the conclusion of the employment that includes the term or condition.”

Exceptions

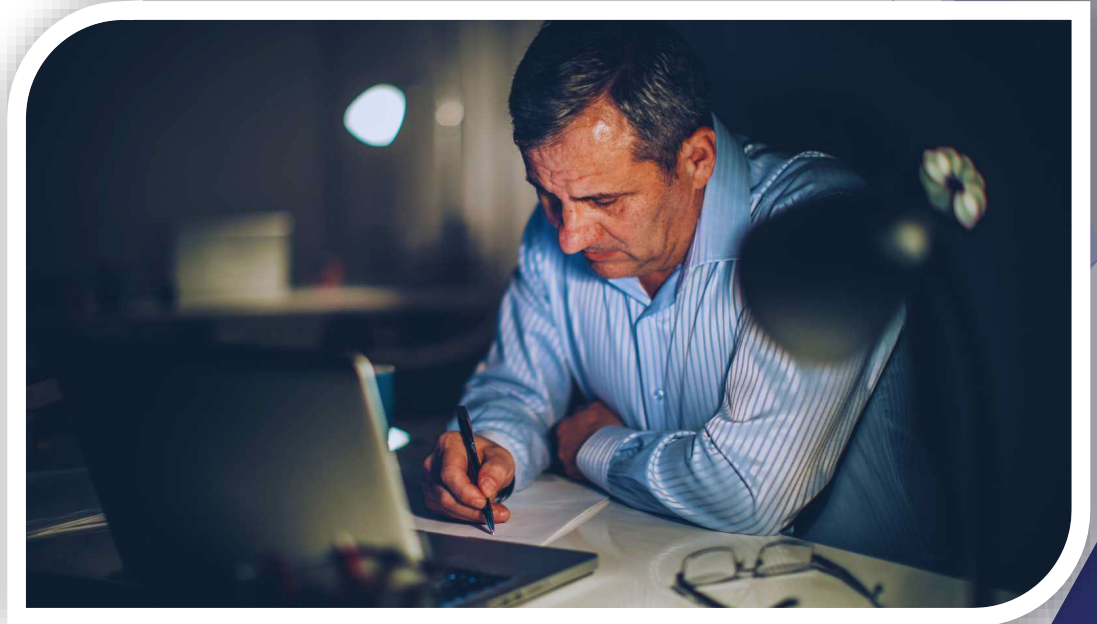
- Non-competes entered into as part of a “bona fide” sale of a business
- Existing non-compete clauses with “senior executives”
 - Annual compensation = \$151,164+, and
 - “Policy-making position” (e.g., President/CEO)
- Many non-profits outside of FTC jurisdiction

An hourglass with white sand is positioned on the left side of the slide. In the background, a calendar is visible with dates 19, 20, 21, and 29. The slide features a blue and grey geometric design on the right side.

Legal Challenges

- Multiple cases filed seeking to block the rule
- Northern District of Texas expected issue decision by July 3, 2024
- If FTC rule fails, more states may act to restrict/ban non-competes
- NYS legislature voted in favor of ban in 2023, but Governor Hochul vetoed it, signaling she may support similar bill with allowance for executive non-competes

FLSA Overtime Rule



2024 New York Minimum Wage

Minimum Wage

- NYC, Long Island, & Westchester - \$16/hr.
- Upstate - \$15/hr.

Admin/Exec Exemption Threshold

- NYC, LI, Westchester - \$1,200.00 per week
- Upstate - \$1,124.20 per week

FLSA Overtime Salary Threshold

- ▶ Current: \$684/wk. (\$35,568 annual)
- ▶ July 1, 2024: \$844/wk. (\$43,888 annual)
- ▶ Jan. 1, 2025: \$1,128/wk. (\$58,656 annual)
- ▶ Jan. 1, 2027: Automatic increases every 3 years

FLSA Highly Compensated Employee Threshold

- ▶ Current: \$107,432/yr.
- ▶ July 1, 2024: \$132,964/yr.
- ▶ Jan. 1, 2025: \$151,164/yr.
- ▶ Jan. 1, 2027: Automatic increases every 3 years

FLSA vs. NYS

	FLSA	NYC/LI/WC	Rest of NYS
Current	\$684	\$1,200	\$1,124.20
7/1/24	\$844	\$1,200	\$1,124.20
1/1/25	\$1,128	\$1,237.50	\$1,161.65
1/1/26	\$1,128	\$1,275	\$1,199.10
1/1/27	????	????	????

NYS Updates



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 (prepared by DOL)

2023

Paid Break Time

- 2007 required employers to permit employees to take reasonable unpaid break time to express breast milk
- Effective June 19, 2024, employers must provide “paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes to express breast milk . . . each time such employee has a reasonable need to express breast milk.”
- For up to 3 years following birth

Paid Prenatal Leave

- Takes effect January 1, 2025
- Employees entitled to 20 hours of paid prenatal leave during any 52-week calendar period
- Beyond existing sick leave entitlement
- Used for “health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy”
- Available in hourly installments



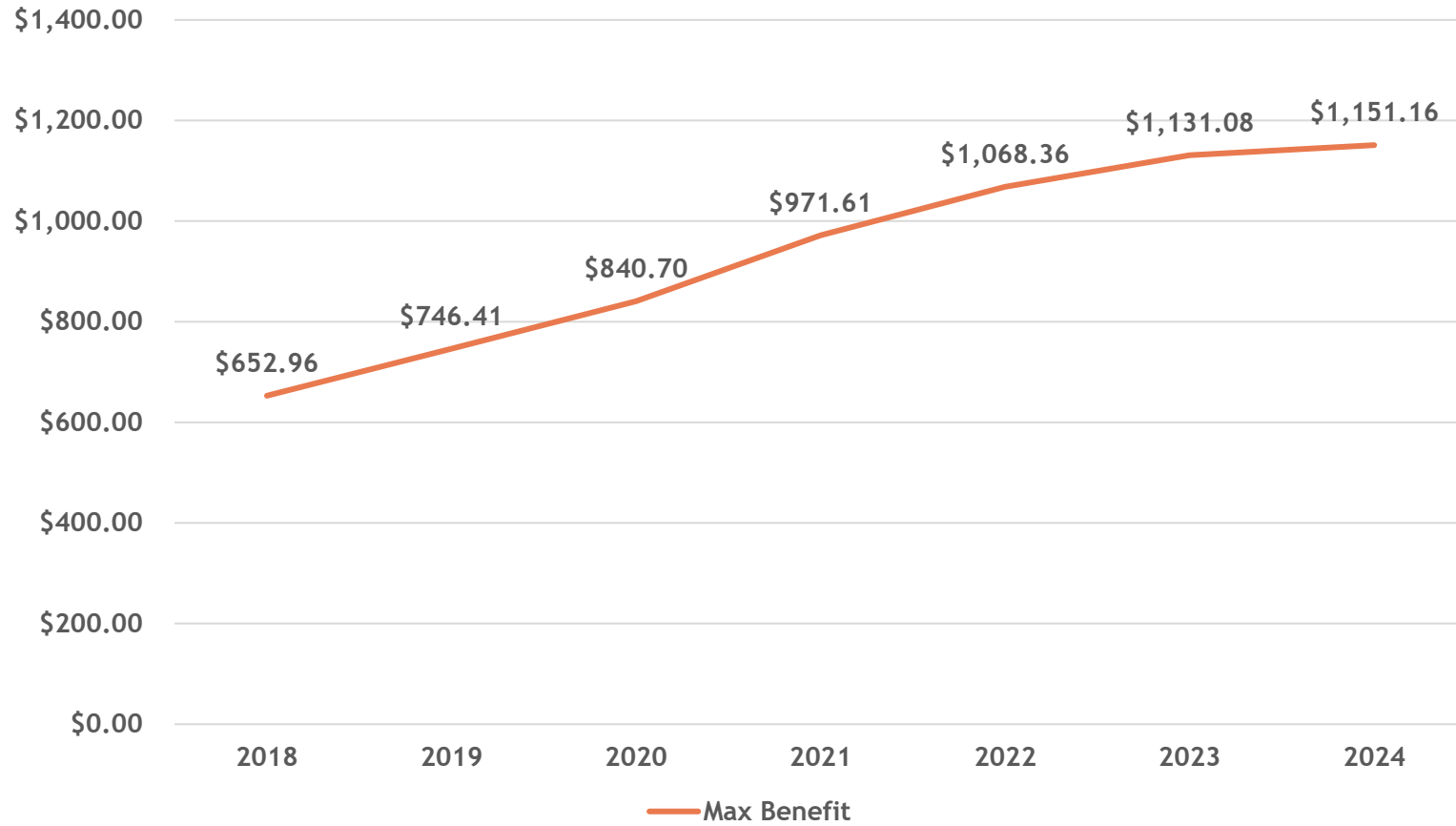
Paid COVID-19 Leave

- Existing law will expire July 31, 2025
- Some uncertainty whether it's still practically available in most cases due to current guidelines

PFL Benefits

- ▶ 67% of average weekly wage
- ▶ Capped at 67% of the current New York State Average Weekly Wage (NYSAWW)
- ▶ 2024 NYSAWW: \$1,718.15
- ▶ 2023 max. weekly benefit: \$1,151.16
- ▶ Up to 12 weeks per year (across all employers)

Max Weekly Benefit



2024 Employee Contributions

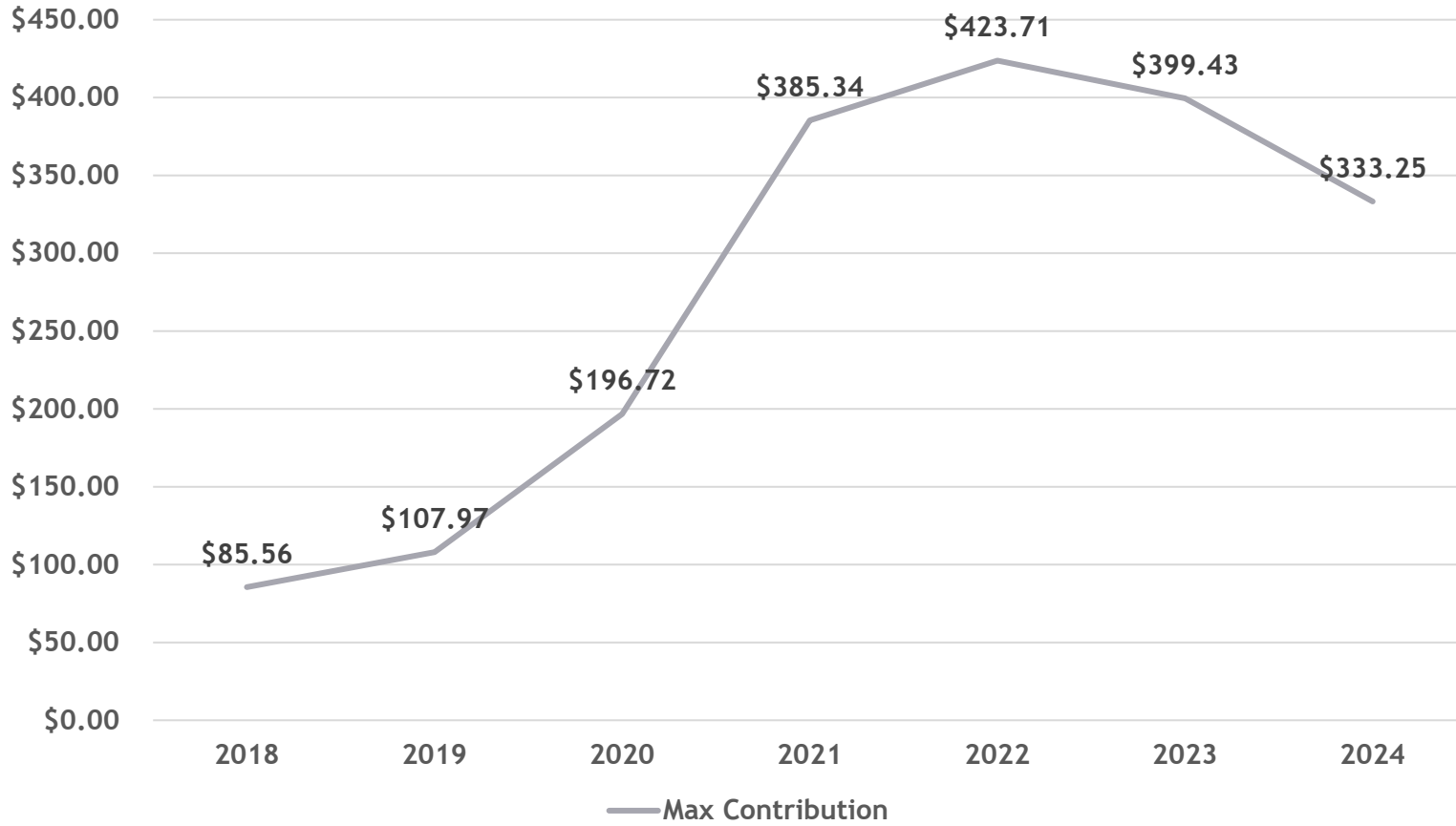


For 2024, employees will contribute 0.373% of their gross wages per pay period



The maximum annual contribution for 2024 is \$333.25

Max Annual Contribution



Employee Social Media Accounts

- Took effect March 12, 2024
- Protects employees' "personal accounts"
- "An account or profile on an electronic medium where users may create, share, and view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, instant messages, or internet website profiles or locations that is used by an employee or an applicant exclusively for personal purposes."

Employee Social Media Accounts

- Section 201-i of the New York Labor Law prohibits employers from requesting, requiring, or coercing any employee or applicant to do any of the following regarding personal social media accounts:
 - Disclose any password or other authentication information;
 - Access their personal account in the employer's presence;
 - Reproduce any photographs, video, or other information contained in a personal account that was accessed through the above prohibited means.

Exceptions

- Employers may require employees to provide usernames/passwords for “accessing nonpersonal accounts that provide access to the employer’s internal computer information systems”
- No restriction on seeking access to accounts used for business purposes
- Doesn’t prohibit management from connecting with employees on social media or viewing information that is voluntarily shared or publicly available
- Doesn’t apply to law enforcement agency, fire department, or department of corrections and community supervision

Penalties

- None specified in the new Labor Law section
- Violations of Labor Law generally punishable as misdemeanors and subject to fines
- Employee/applicant may have a retaliation claim if they suffer adverse job action based on refusal to provide information protected by law

NYC Workers' Bill of Rights

কর্মক্ষেত্রে আপনার অধিকার সম্পর্কে জানুন
Conozca sus derechos en el trabajo
了解您的职场权利
瞭解您的職場權利
Know your rights at work
Connaître ses droits au travail
Konn dwa w nan travay la
귀하의 직장 권리 알기
کام پر اپنے حقوق کو جانیں
Poznaj swoje prawa pracownicze
اعرف حقوقك في العمل
Знайте свои трудовые права



NYC Consumer and
Worker Protection

nyc.gov/workers | 311

NYC Workers' Bill of Rights

- All NYC employers must post by July 1, 2024
- Also must distribute to employees
- Other languages if available and spoken by at least 5% of employees
- First violation = warning; subsequent violations = \$500 fine

Questions?



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