



Lowenstein Sandler's Executive Compensation and Employee Benefits Podcast: Just Compensation

Episode 57

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Megan Monson: Welcome to the Lowenstein Sandler podcast series. Before we begin, please take a moment to subscribe to our podcast series at Lowenstein.com/podcast or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, SoundCloud, or YouTube. Now, let's take a listen.

Welcome to the latest episode of *Just Compensation*. I'm your host, Megan Monson, partner in Lowenstein Sandler's Executive Compensation Employment and Benefits Practice Group. I'm joined today by two of my colleagues in my practice group, and I'll turn it over to them to introduce themselves. Amy?

Amy Wiwi: I'm Amy Wiwi, and I am also a partner in the Employment Executive Comp and Benefits Group.

Amy Schwind: And I'm Amy Schwind. I am senior counsel in the same group.

Megan Monson: Thank you both so much for joining us today. Today's discussion will focus on employment law updates and trends from 2025 and what employers should expect as 2026 continues. We'll cover increases to minimum wage and salary thresholds, state-specific updates for New York, New Jersey, and California, and broader employment trends, including non-competes, pay transparency, AI regulation, and shifts under the Trump administration.

As always, if you have questions related to particular circumstances in your workforce or regarding specific legal issues, we encourage you to consult with your legal counsel. So, let's jump right in. Let's start with the basics. What are the key minimum wage increases employers should be aware of for 2026?

Amy Wiwi: So, the federal minimum wage remains at 7.25 per hour. That has not changed, but many states have increased their minimum wage. California, for instance, has increased from \$16.50 to \$16.90. Connecticut has increased from 16.35 to 16.94, all effective January 1, 2026.

New Jersey has increased from 15.49 to 15.92, and there's a slightly lower rate for small employers. For New York City, Nassau, Suffolk, and Westchester counties, the minimum wage has increased from 16.50 to \$17 per hour as of January 1. And for outside of those counties in New York, the minimum wage has increased from 15.50 to \$16 an hour. Again, all of these changes became effective as of January 1st.

Megan Monson: Great. Thanks so much, Amy. And what about minimum salary thresholds for exempt employees?

Amy Wiwi: So, an exempt employee is someone who is not subject to the Fair Labor Standards Act or minimum wage or overtime, and that would be the same under state law. So, you would have to meet a particular state law's test as well. Exempt employees are typically paid a salary at a particular level, and they have to meet job duties tests. So, it's more than just, "Does their salary meet this?" But the federal threshold stands at \$684 per week and 35,586 annually. New Jersey and Connecticut follow the federal job duty standards and the federal thresholds. California has increased from around just over \$68,000 annually to just over \$70,000 annually for the so-called white collar exemptions, which typically include executive, administrative, and professional employees. New York City, Nassau, Suffolk, and Westchester counties increased the threshold to just over 66,000 annually. And outside of those areas, it is just above \$62,000 annually.

Megan Monson: Yeah. And those are all really helpful things to be aware of since I know exempt status is something that is looked at a lot by employers and especially in M&A transactions. So, it's really important to be adhering to all of the various salary thresholds for these purposes.

Amy Wiwi: Absolutely.

Megan Monson: So, let's move to New York State specifically. What are some key updates that employers should know about?

Amy Schwind: There are several significant New York State updates. Going back to 2025, as of January 1st, 2025, employees are entitled to up to 20 hours of paid prenatal leave during any 52-week calendar period for healthcare services during pregnancy or related to pregnancy. And this is a requirement that, for many employers, may have flown under the radar, so it is important to be aware of it. This is in addition to paid sick time under existing New York law, as well as in addition to any benefits under New York paid family leave.

The New York State Department of Labor has issued guidance in the form of frequently asked questions to help employers understand these requirements, and it's available on their page. On January 2nd, 2025, the Second Circuit reinstated the requirement that New York State employers include a notice in their employee handbooks regarding the prohibition on discrimination and retaliation based on employees' reproductive healthcare choices under the New York Reproductive Health Bias Law.

The New York Retail Workers Safety Act took effect on June 2nd, 2025, requiring employers with 10 or more retail employees in New York State to comply with workplace violence prevention policy, training program, and notice requirements. The New York State Department of Labor has also released guidance on this law and a model policy and a training program.

New York COVID-19 leave expired on July 31st, 2025. After five years, it finally sunset. It had provided up to three periods of leave while an employee was subject to a quarantine or isolation order. Employees will now need to rely on other existing leave options if they do become ill with COVID. The New York Trapped at Work Act initially became effective December 19th, 2025, but it has since been delayed for a year. So, there is a little while now before that becomes effective. On February 13th, 2026, the governor signed a chapter amendment that expands the scope of the act in some ways but also sets forth new exceptions.

An employer cannot, as a condition of employment, require a contract provision that requires the employee to repay the employer if the employee's employment relationship with the employer terminates before a stated period under this law. There are certain exceptions, including an exception permitting repayment provisions related to financial bonuses, relocation assistance, or other non-educational incentives or payments that are not tied to specific job performance. The repayment in that instance can generally only be required if the employee quits or is terminated for misconduct. So, this is certainly something to be mindful of as the end of the year nears with respect to sign-on and other bonuses.

Coming up, the New York Fair Credit Reporting Act will take effect on April 18th, 2026, prohibiting employers from requesting or using consumer credit history for employment decisions with some narrow exceptions. New York City has also banned employer credit checks with limited exceptions since 2015. So, for New York City employers, this very similar New York State law will not have much impact or change.

Megan Monson: So, focusing on New York City then, Amy, are there any specific updates there that we should be aware of?

Amy Schwind: Absolutely. New York City has been busy as usual. As of May 8th, 2025, employers must conspicuously post a copy of their written lactation accommodation policy in an area accessible to employees and also electronically post that policy on the employer intranet if there is one. They must also distribute that policy to new hires and provide 30 minutes of paid break time to pump breast milk.

On July 2nd, 2025, New York City adopted rules relating to the Earned Safe and Sick Time Act to incorporate New York State's paid prenatal leave that I mentioned earlier. This includes an updated notice of employee rights that must be posted and provided to each employee, a requirement for a compliant written prenatal leave policy distributed at hire, and prenatal leave balance notification and recordkeeping requirements.

Recently, on February 22nd, 2026, changes to New York City Earned Sick and Safe Time went into effect formally codifying paid prenatal leave requirements into local law. Currently, New York City Paid Sick Time Law requires employers to provide safe and sick time to employees working in New York City for

statutorily defined reasons. And depending on employer size, covered employees are entitled to either 40 hours or 56 hours of leave annually.

The changes now provide for additional unpaid time. It's 32 hours immediately upon hire and on the first day of each calendar year with immediate use and no carryover, and employers must track and report both paid and unpaid time balances to comply with the recordkeeping requirements. There are now also additional reasons for uses that include caregiving, pursuit of subsistence benefits, or housing, workplace violence, and public disasters.

And on February 19th, 2026, the New York City Department of Consumer and Worker Protection issued updated frequently asked questions on their website, as well as an updated notice of employee rights that address the new unpaid sick time along with other changes. So just to be clear, in New York City, there is now required paid sick time as well as additional unpaid sick time.

There are also changes to the Temporary Schedule Change Act. Employers had been required to approve up to two temporary schedule changes annually for personal events, but now employers are no longer obligated to approve, and they can approve, deny, or propose an alternative to such a request.

Megan Monson: Thanks so much, Amy. I think that's really helpful to be aware of all of these changes that have come about in New York City for employers who have employees located there. So, shifting gears a little bit, let's talk about New Jersey. What are some significant updates there?

Amy Wiwi: New Jersey has not been quite as busy as New York, but it has adopted pay transparency requirements. As of June 1st, 2025, New Jersey employers with at least 10 employees must disclose, in each posting for new jobs and transfer opportunities, the hourly wage or salary or a range and a general description of benefits and other compensation programs. The proposed regulations indicate a range spread must be no more than 60% of the minimum hourly rate of pay or minimum salary. So that just prevents you from saying zero to a million dollars.

You have to think about it and you see what you've got in your budget. The proposed regulations say that benefits are defined as fringe benefits such as health, life, disability insurance, paid time off, including vacation, holidays, personal leave, sick leave, any sort of training and any kind of pension. The regulations will become effective after the New Jersey Department of Labor publishes a notice of adoption. The law does not prohibit any employer from increasing wages, benefits, and compensation identified in the job posting at the time that it makes a job offer to an applicant. So, you can offer them more than what was originally in your advertisement.

Regarding promotions, an employer has to make reasonable efforts to announce or post opportunities for promotion that are advertised internally or externally to all current employees in the affected departments prior to making a promotion decision. That is obviously to give folks the opportunity to apply. There are exceptions for promotions that are awarded on the basis of years of experience or performance and promotions made on an emergent basis due to an unforeseen event. So, it shouldn't really hold folks up from making

promotions. It's just intended to ensure relevant folks are aware of it and can make an application.

New Jersey also now mandates separation reporting. The New Jersey Department of Labor's online Employer Response Portal was launched on December 8th, 2025. So now employers must report employee separations electronically through the portal, whether it is a layoff, a termination, a resignation, a retirement, or on any other basis.

The employers must register for an employer access account with the New Jersey Department of Labor and provide separation information within seven days of separation. There are fines, so it can be \$500 fine or 25% of any amount fraudulently withheld, whichever is greater, and employers must also continue to give separated employees the traditional BC-10 form, which gives them instructions about filing for unemployment.

Megan Monson: Thanks, Amy. That's all really helpful. What about independent contractor classification in New Jersey? Are there any updates there?

Amy Wiwi: Well, the New Jersey Department of Labor has proposed new rules to codify its interpretation of this ABC test, which has been the rule in New Jersey for a period of time under a New Jersey Supreme Court case called Sleepy's. So currently, a worker is considered an employee and not a contractor unless the following three provisions are met.

So, the worker has to be free from control or direction over the performance of the work, both under contract and in fact. B, the work has to either be outside the usual course of the business for which the service is performed or the work is performed outside of all the places of business of the enterprise.

And the worker has to be customarily engaged in an independently established trade, occupation, profession, or business. The proposed rule adopts this Sleepy's test, and it makes it more difficult to properly classify a worker as an independent contractor in New Jersey. So, the public comment period has closed, and we will likely soon see the final rules.

Megan Monson: Great. No, I really appreciate that, Amy, especially because employee versus independent contractor classification I feel like is another very hot topic in the employment space, and so it's really important to be aware of what those tests are when you're bringing on new service providers.

Amy Wiwi: Yeah, it is an enforcement priority for a number of states at the moment.

Megan Monson: So, shifting gears a little bit, what about California? What are the major updates there?

Amy Schwind: As can be expected, California has several important updates. As of January 1st, 2026, it is unlawful to include in any employment contract an obligation to pay back money, personal property, or their equivalent if the worker's employment terminates unless a limited exception applies. So, this is actually in effect now in

California. Employers will need to review any programs requiring repayment of educational costs, relocation costs, visa or immigration costs, signing bonuses, and retention incentives to ensure compliance. Repayment for a discretionary or unearned monetary payment, including a signing bonus, is acceptable if specific requirements are met.

Also, as of January 1st, 2026, the content of Cal-WARN notices under the California WARN Act can no longer simply include the Federal WARN Act content. There is additional information and new requirements specific for California. California has expanded the reasons an employee can take time under the statewide Paid Sick and Safe Time Law. As of October 1st, 2025, employees can take that time if they are appearing in court as a witness to comply with a subpoena or other court order, or if they are serving on a jury.

As of January 1st, 2026, employees can also take that time if they or a family member is a victim of certain crimes and are attending judicial proceedings related to that crime. The Workplace Know Your Rights Act requires employers to provide a standalone annual written notice to all current employees, and the compliance date was by February 1st, 2026, and then annually after that and to new hires upon onboarding.

The notice must describe the right to workers' compensation benefits, the right to notice of inspection by immigration agencies, protection from unfair immigration-related practices, the right to organize a union or engage in concerted activity, and constitutional rights when interacting with law enforcement at the workplace. Employers do not need to reinvent the wheel to try to create this. There is a template notice that is available on the California Department of Industrial Relations website.

By March 30th, 2026, California employers must allow employees to designate an emergency contact and at hiring for new employees and specify whether that contact should be notified if the employee is arrested or detained on the work site or during performance of job duties offsite. So that is clearly an immigration-related new law.

Also, as of January 1st, 2026, personnel records relating to performance must now include education or training records with specific information such as the name of the training provider, the duration and date of training, core competencies of training, and certification. So if an employer is offering training, the training records need to go in the personnel file.

Megan Monson:

And that's a wrap for part one of this episode of *Just Compensation*. We've walked through a few state-specific changes employers should have on their radar this year. Stick with us for part two, we're going to zoom out and dig into the broader trends shaping the year ahead.

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