

Hot Topics in Public Sector Labor Relations

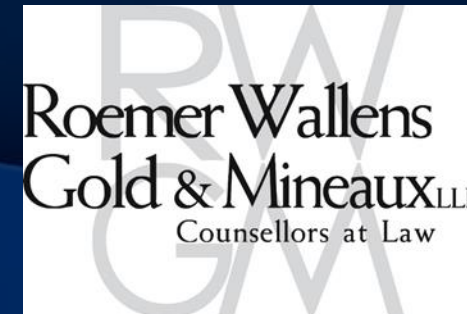
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NYSAC
NEW YORK STATE
ASSOCIATION OF COUNTIES

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Webinar Topics and Outline

- Collective Bargaining Issues
 - Health Insurance Issues
 - Salary Trends

- Statutory and Negotiated Employee Benefits
 - Voting Leave
 - Cancer Screening Leave
 - Paid Family Leave

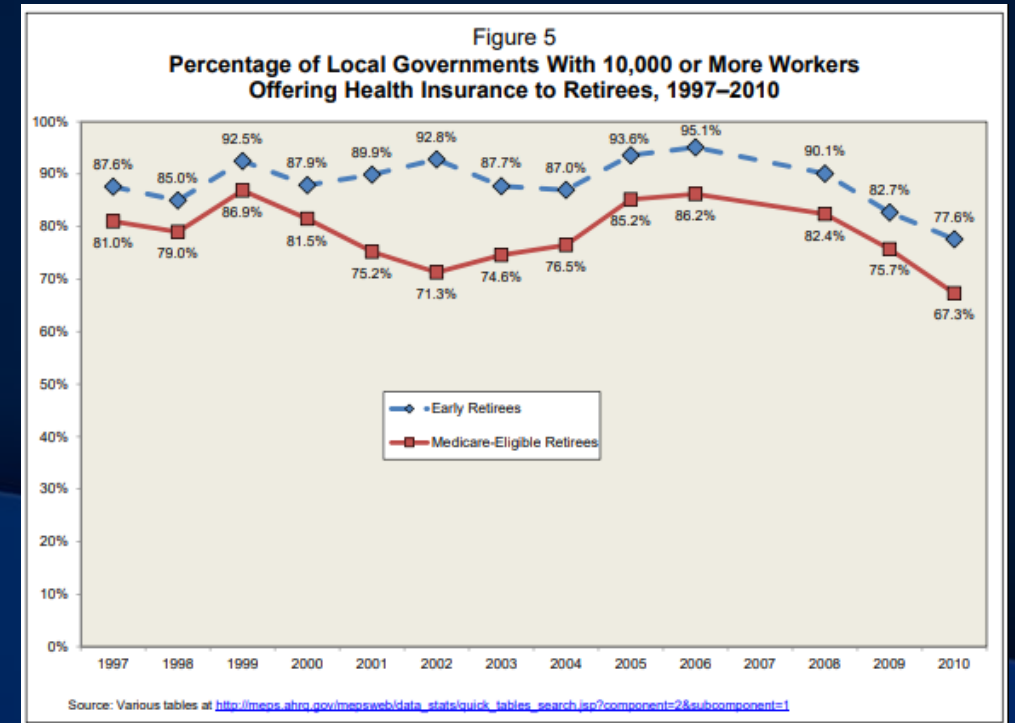
- Trending Employee Issues
 - Body Cameras
 - Medical Marijuana
 - Taylor Law Amendments

- Questions and Answers

Health Insurance Issues and Trends

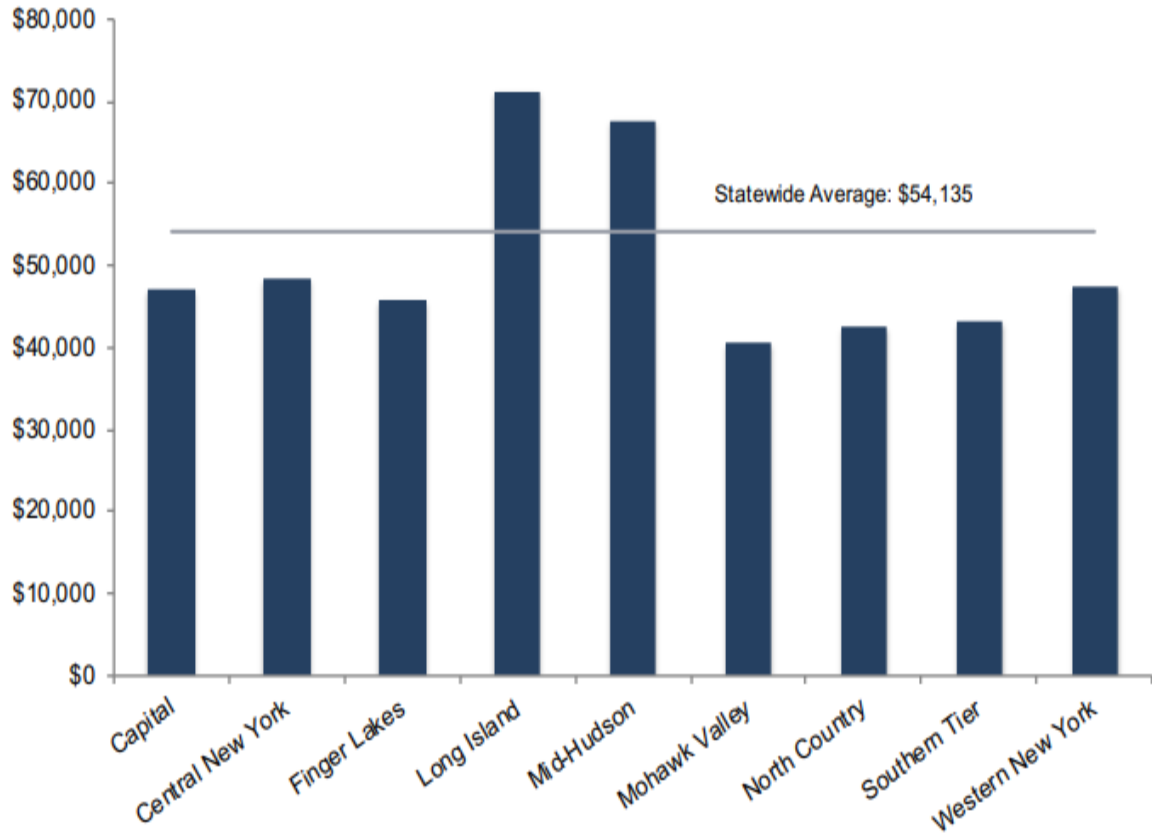
- ❑ Mid-Atlantic Region (New York and New Jersey) Statistics for State and Local Governments
 - ❑ 87% of employees have access to health insurance through employer with 80% take up rate
 - ❑ Average employer share of premium contribution is 87% for single and 84% for family

- ❑ Retiree Health Insurance
 - ❑ Decrease in % of employers offering retiree benefits
 - ❑ Increase in employee/retiree contribution
 - ❑ Tightened restrictions on new retiree eligibility

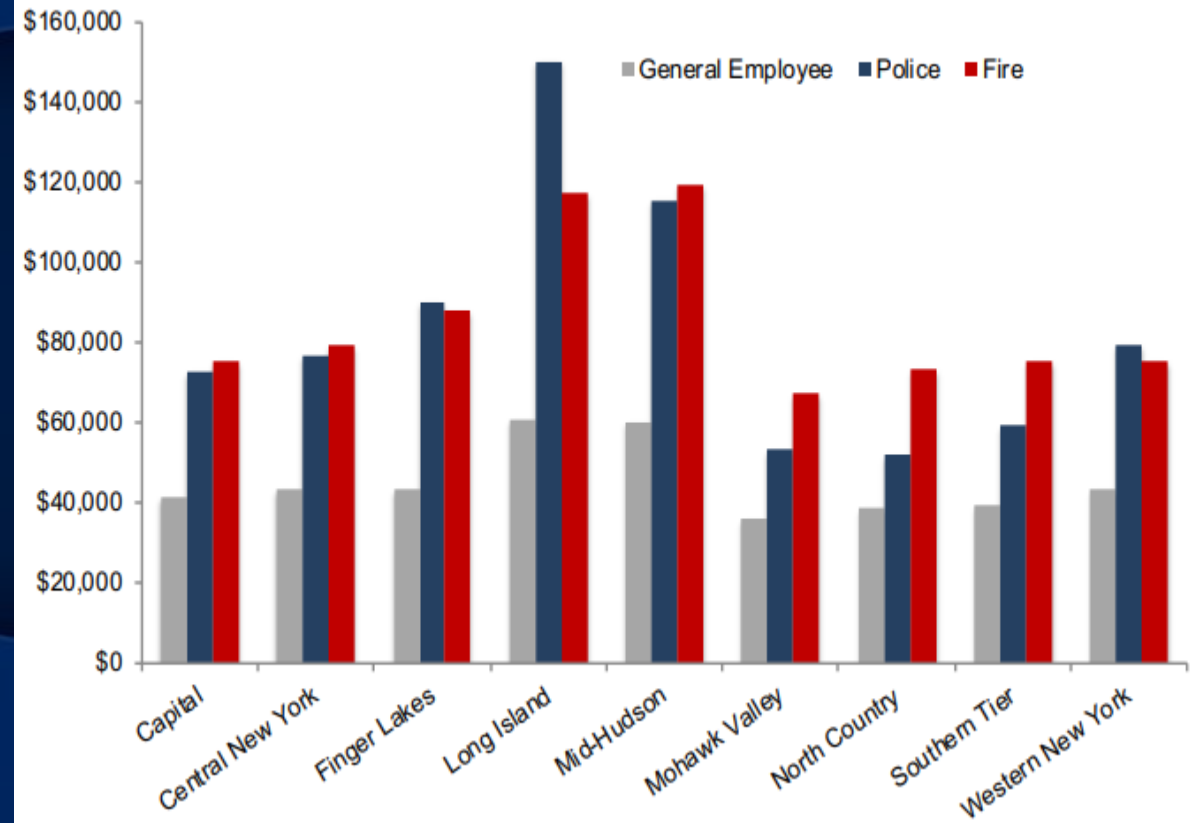


Salary Trends

Average Pay - General Employees - Counties



Average Pay - By Region



Source: Empire Center, "What They Make" Reports, 2018-2019

Salary Trends

General Employees - Counties

Capital	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Albany	2,464	\$48,989	3
Columbia	862	\$47,363	4
Greene	501	\$45,308	6
Rensselaer	2,152	\$42,526	7
Saratoga	1,141	\$51,800	1
Schenectady	1,489	\$49,380	2
Warren	887	\$45,992	5
Washington	644	\$41,766	8
Central New York	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Cayuga	815	\$42,584	4
Cortland	563	\$43,722	3
Madison	609	\$45,500	2
Onondaga	3,764	\$53,302	1
Oswego	1,083	\$40,177	5
Finger Lakes	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Genesee	755	\$42,208	6
Livingston	1,080	\$39,966	8
Monroe	4,884	\$48,182	2
Ontario	1,051	\$54,242	1
Orleans	380	\$42,374	5
Seneca	455	\$42,119	7
Wayne	1,024	\$43,034	4

Finger Lakes (cont'd)	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Wyoming	974	\$39,472	9
Yates	256	\$47,899	3
Long Island	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Nassau	6,524	\$74,160	1
Suffolk	8,571	\$68,897	2
Mid-Hudson	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Dutchess	2,124	\$62,246	4
Orange	2,790	\$56,393	5
Putnam	676	\$65,804	3
Rockland	1,939	\$69,091	2
Sullivan	1,215	\$45,452	7
Ulster	1,510	\$53,528	6
Westchester	4,940	\$85,623	1
Mohawk Valley	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Fulton	554	\$39,938	4
Hamilton	135	\$41,320	2
Herkimer	681	\$29,385	6
Montgomery	433	\$40,017	3
Oneida	1,874	\$45,509	1
Schoharie	419	\$39,355	5

General Employees - Counties (cont'd)

North Country	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Clinton	990	\$41,386	5
Essex	492	\$43,993	2
Franklin	554	\$37,976	6
Jefferson	981	\$43,681	3
Lewis	933	\$43,100	4
St Lawrence	837	\$45,039	1
Southern Tier	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Broome	2,245	\$42,206	6
Chemung	1,111	\$43,079	5
Cherango	580	\$38,708	8
Delaware	594	\$39,265	7
Southern Tier (cont'd)	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Otsego	492	\$36,232	9
Schuyler	254	\$45,259	3
Steuben	853	\$47,235	2
Tioga	390	\$43,894	4
Tompkins	925	\$51,214	1
Western New York	<i>Number of Employees</i>	<i>Average Pay</i>	<i>Region Rank</i>
Allegany	545	\$43,276	4
Cattaraugus	1,132	\$44,222	3
Chautauqua	1,295	\$42,354	5
Erie	5,647	\$49,910	1
Niagara	1,705	\$46,387	2

Salary Trends

Average Pay – NYS Cities – General Employees

	2014-2015	2015-2016	% Change	2016-2017	% Change	2017-2018	% Change	2018-2019	% Change
All regions	\$46,219	\$46,794	1.24%	\$48,971	4.65%	\$48,302	-1.37%	\$49,255	1.97%
Capital	\$36,881	\$37,127	0.67%	\$37,821	1.87%	\$38,009	0.50%	\$39,195	3.12%
Central	\$40,527	\$40,218	-0.76%	\$41,137	2.29%	\$41,583	1.08%	\$42,809	2.95%
Finger Lakes	\$49,399	\$49,955	1.13%	\$52,799	5.69%	\$52,054	-1.41%	\$53,472	2.72%
Long Island	\$44,242	\$47,414	7.17%	\$47,330	-0.18%	\$47,873	1.15%	\$50,361	5.20%
Mid-Hudson	\$61,564	\$62,533	1.57%	\$66,003	5.55%	\$65,419	-0.88%	\$65,613	0.30%
Mohawk Valley	\$36,703	\$37,016	0.85%	\$37,965	2.56%	\$38,435	1.24%	\$38,839	1.05%
North County	\$36,948	\$36,410	-1.46%	\$39,080	7.33%	\$39,440	0.92%	\$39,157	-0.72%
Southern Tier	\$39,023	\$39,119	0.25%	\$39,189	0.18%	\$38,567	-1.59%	\$39,329	1.98%
Western New York	\$43,686	\$43,943	0.59%	\$47,454	7.99%	\$44,690	-5.82%	\$45,534	1.89%

Average Pay – NYS Counties – General Employees (including corrections and deputy sheriffs)

	2014-2015	2015-2016	% Change	2016-2017	% Change	2017-2018	% Change	2018-2019	% Change
All Regions	\$49,757	\$50,723	1.94%	\$51,997	2.51%	\$52,383	0.74%	\$54,135	3.34%
Capital	\$43,015	\$44,366	3.14%	\$44,699	0.75%	\$46,095	3.12%	\$46,950	1.85%
Central	\$44,890	\$45,168	0.62%	\$47,825	5.88%	\$47,769	-0.12%	\$48,460	1.45%
Finger Lakes	\$43,073	\$43,867	1.84%	\$44,822	2.18%	\$45,115	0.65%	\$45,806	1.53%
Long Island	\$64,891	\$66,697	2.78%	\$68,675	2.97%	\$69,562	1.29%	\$71,172	2.31%
Mid-Hudson	\$61,564	\$62,445	1.43%	\$63,679	1.98%	\$63,654	-0.04%	\$67,594	6.19%
Mohawk Valley	\$37,606	\$37,717	0.30%	\$38,631	2.42%	\$39,045	1.07%	\$40,726	4.31%
North County	\$40,140	\$40,380	0.60%	\$41,505	2.79%	\$41,787	0.68%	\$42,702	2.19%
Southern Tier	\$40,243	\$41,524	3.18%	\$43,068	3.72%	\$42,645	-0.98%	\$43,322	1.59%
Western New York	\$42,451	\$42,834	0.90%	\$44,063	2.87%	\$44,804	1.68%	\$47,407	5.81%

Source: Empire Center, "What They Make" Reports, 2014-2015; 2015-2016, 2016-2017, 2017-2018, 2018-2019

Salary Trends

Average Pay – NYS Towns – General Employees

	2014-2015	2015-2016	% Change	2016-2017	% Change	2017-2018	% Change	2018-2019	% Change
All Regions	\$39,435	\$39,038	-1.01%	\$40,517	3.79%	\$40,109	-1.01%	\$40,275	0.41%
Capital	\$31,057	\$30,346	-2.29%	\$31,039	2.28%	\$31,400	1.16%	\$28,530	-9.14%
Central	\$28,971	\$28,391	-2.00%	\$29,646	4.42%	\$29,667	0.07%	\$28,940	-2.45%
Finger Lakes	\$31,874	\$30,826	-3.29%	\$32,337	4.90%	\$32,463	0.39%	\$37,617	15.88%
Long Island	\$51,268	\$51,897	1.23%	\$53,319	2.74%	\$52,420	-1.69%	\$45,797	-12.63%
Mid-Hudson	\$45,567	\$44,725	-1.85%	\$47,185	5.50%	\$47,015	-0.36%	\$49,745	5.81%
Mohawk Valley	\$24,827	\$24,412	-1.67%	\$25,624	4.96%	\$25,794	0.66%	\$25,120	-2.61%
North County	\$32,750	\$31,739	-3.09%	\$32,775	3.26%	\$32,681	-0.29%	\$31,975	-2.16%
Southern Tier	\$28,897	\$28,278	-2.14%	\$30,109	6.47%	\$29,963	-0.48%	\$30,478	1.72%
Western New York	\$34,811	\$33,793	-2.92%	\$35,554	5.21%	\$34,457	-3.09%	\$31,335	-9.06%

Average Pay – NYS Villages– General Employees

	2014-2015	2015-2016	% Change	2016-2017	% Change	2017-2018	% Change
All Regions	\$39,813	\$39,433	-0.95%	\$39,831	1.01%	\$40,162	0.83%
Capital	\$25,548	\$26,239	2.70%	\$27,942	6.49%	\$28,285	1.23%
Central	\$28,554	\$28,779	0.79%	\$29,895	3.88%	\$29,499	-1.32%
Finger Lakes	\$34,942	\$35,228	0.82%	\$37,275	5.81%	\$37,212	-0.17%
Long Island	\$44,714	\$45,080	0.82%	\$44,988	-0.20%	\$45,702	1.59%
Mid-Hudson	\$50,472	\$49,170	-2.58%	\$48,806	-0.74%	\$49,301	1.01%
Mohawk Valley	\$24,513	\$25,558	4.26%	\$26,011	1.77%	\$25,218	-3.05%
North County	\$31,648	\$31,487	-0.51%	\$32,149	2.10%	\$31,979	-0.53%
Southern Tier	\$29,674	\$28,869	-2.71%	\$29,987	3.87%	\$29,894	-0.31%
Western New York	\$30,842	\$30,641	-0.65%	\$31,496	2.79%	\$32,032	1.70%

Source: Empire Center, "What They Make" Reports, 2014-2015; 2015-2016, 2016-2017, 2017-2018, 2018-2019

Voting Leave

1. A registered voter may, without loss of pay for up to three hours, take off so much working time as will enable him or her to vote at any election.
 - **Without Loss of Pay** – a case interpreting similar language in the cancer screening leave statute held this means without requiring the employee to charge leave accruals.
 - **Election** – Election Law covers elections for “any federal, state, county, city, town or village office,” or deciding ballot questions submitted to voters in those jurisdictions.
2. The employee shall be allowed time off for voting only at the beginning or end of his or her working shift, as the employer may designate, unless otherwise mutually agreed.
 - **Deleted** that the employee must not have sufficient time off outside of work (four hours before or after their shift) in which to vote in order to be entitled to such leave.
 - The law also requires:
 - The employee must provide two days notice that they require such leave; and
 - The employer must post a notice stating the provisions of this section not less than 10 days prior to any election and keep it posted until the close of polls on election day

The law is silent as to proof requirements, or the effect of the new early voting laws.

Cancer Screening Leave

2018 amendments to the provisions of the Civil Service Law regarding cancer screening leave:

Civil Service Law 159-b:
Up to 4 hours paid leave/year
for breast cancer screening

Civil Service Law 159-c:
Up to 4 hours paid leave/year
for prostate cancer screening

Civil Service Law 159-b:
Up to 4 hours paid leave/year
for cancer screening – not
specific to any cancer type

The employee cannot be required to charge other accrued leave.
Moran v. City of Saratoga Springs, 862 N.Y.S.2d 286 (N.Y. Sup. Ct. 2008)

Paid Family Leave

New York's Paid Family Leave Act provides employee-funded paid leave, much like short-term disability, for care of a family member with a serious health condition, birth/placement of a child, or qualifying military exigencies.

Public employees must be "opted in" by the employer (non-union employees) or the union

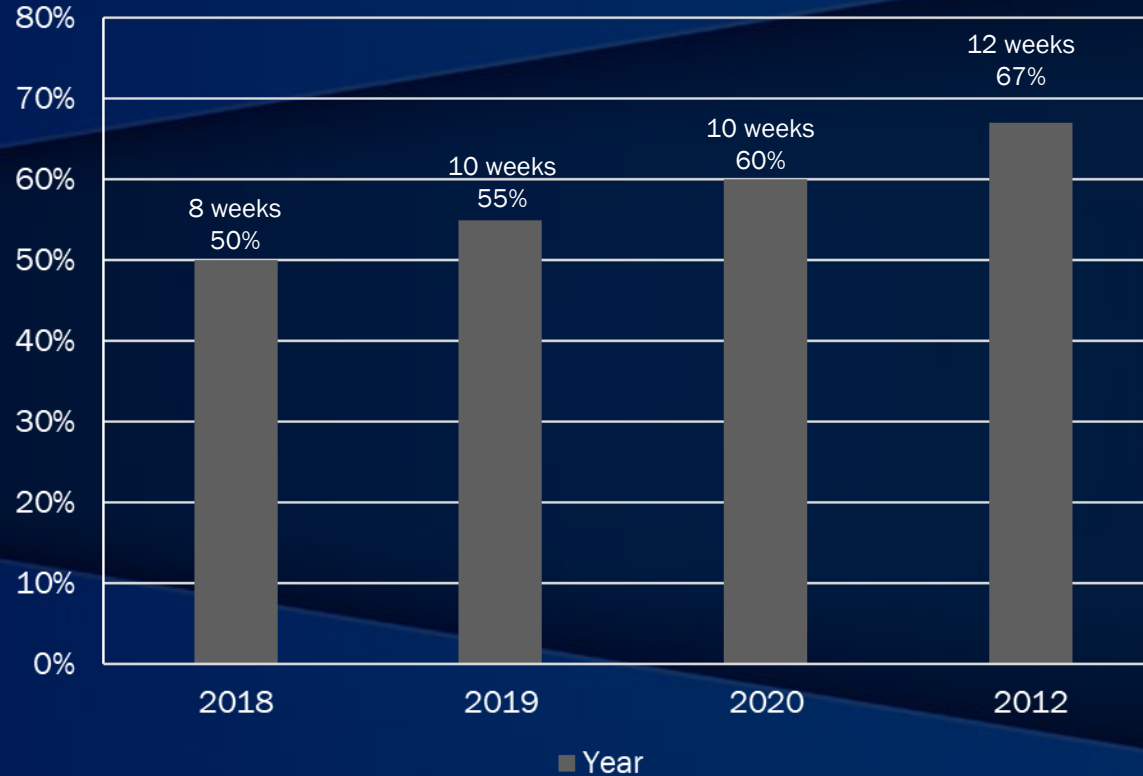
Negotiable Aspects of Paid Family Leave	
Issues	Can this be negotiated in a collective bargaining agreement (CBA)?
Eligibility acquired through union membership or some other measure rather than employment with a single employer	Yes
Employees who are eligible under the statute may waive coverage if the employee will not use the benefit	No
Coverage agreed to through the collective bargaining process provides fewer weeks or less weekly/daily benefits than the statute	No
Coverage agreed to through the collective bargaining process provides more weeks or greater weekly/daily benefits than the statute	Yes
Collective Bargaining Agreement may provide that employees do not have to pay a weekly contribution	Yes
Collective Bargaining Agreement may require that employees pay more than maximum weekly contribution	Only if approved by the Workers' Compensation Board

Source: paidfamilyleave.org/public-employers

Paid Family Leave

Employee leave and salary benefits

Percentages are of employee's weekly salary up to the state average weekly wage



Body Cameras

- ❑ Initial implementation: Management right (determination of equipment to be used)



- ❑ Will likely require impact bargaining regarding:
 - ❑ The use of footage for initiating and/or supporting disciplinary action
 - ❑ Rights of employee and/or union to review footage prior to completing reports, disciplinary interviews or hearings, testimony in court or administrative proceedings
 - ❑ Stipends or additional responsibilities for maintenance of equipment and/or recordings
 - ❑ Dissemination of recordings by the employer
- ❑ Courts have generally found body camera footage does not constitute a “personnel record” of police officers so as to prevent its disclosure under Section 50-a of the Civil Rights Law
 - ❑ See Prisoners’ Legal Serv. V. City of N.Y., 173 A.D.3d 8 (3rd Dept. 2019); Green v. Annucci, 59 Misc.3d 452 (Sup. Ct. N.Y. 2017)

Medical Marijuana

Certified patients = individuals with a disability under New York anti-discrimination statutes

Qualifying conditions have expanded since the Compassionate Care Act enactment

One of these serious health conditions.....

- Cancer
- HIV positive/ AIDS
- Amyotrophic lateral sclerosis
- Parkinson's disease
- Multiple sclerosis
- Epilepsy
- Inflammatory bowel disease
- Neuropathy
- Huntington's disease

- PTSD (added 2017)
- Substance abuse disorder
- Pain where use of medical marijuana in an alternative to opioids (added 2018)
- Damage to the nervous tissue of spinal cord with objective neurological indication of intractable spasticity

AND one of these associated complications

- Cachexia or wasting syndrome
- Severe or chronic pain
- Severe nausea
- Seizures
- Severe or persistent muscle spasms

Medical Marijuana

“It shall be an unlawful discrimination practice:
a) for an employer...because of an individual’s...disability...to refuse to hire or employ or bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”
Executive Law 296

“This subdivision shall not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance. This subdivision shall not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose federal funding.” Public Health Law 339(2)

Useful comparator under existing policies and practices:

Medical marijuana → Employees using prescription drugs for a disability unless they are covered by federal statutes (Ex. CDL drug testing requirements)

- Engage in the interactive process to determine a) whether it will affect performance of essential functions; and b) whether a reasonable accommodation can be provided

Legal recreational marijuana → Employee engaged in alcohol use

- On-duty use can be prohibited; off-duty use likely cannot be addressed absent effect on employment

Illegal use of marijuana → Current use of any illegal drug

Taylor Law Amendments

Following the Janus decision, amendments were made to the Taylor Law to strengthen union rights in the public sector, which include:

- ❑ Limiting the duty of fair representation – Public employee unions have the option not to provide representation for non-union members in disciplinary cases.
- ❑ New employee notice – Public employers are required to give notice to unions of new employees within 30 days of employment, and permit unions to access the employees for a “reasonable” amount of time during work hours without charging leave time.
- ❑ Membership cards – Unions are permitted to utilize electronic membership cards.

QUESTIONS?

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