



January 2020

2019 NYS/NYC Employment Law Roundup

2019 was another busy year for the NYS legislature and the NYC Council, passing one new piece of workplace legislation after another. Many of these new laws will require changes to workplace practices and policies. Below is a brief summary of 2019's new employment laws that apply to NYC employers.

Equal Employment Opportunity Laws

Who's Covered?

- New York State Human Rights Law protections will apply to all employers, even if they have fewer than 4 employees. (Effective 2/8/20)
- New York State also amended the NYS Human Rights Law to protect non-employees against "unlawful discrimination". Non-employees include a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract, or who is an employee of such contractor, subcontractor, vendor, consultant or other person.
- Additionally, the New York City Council passed a bill that expands the discrimination and harassment protections of the NYC Human Rights Law to freelancers and independent contractors. As drafted, the bill may also extend to other protections such as lactation room accommodation, reasonable accommodation, and/or protections against retaliation.

Expansion of Protections

- New York State expanded the definition of "race" under the NYS Human Rights Law to include "traits historically associated with race, including but not limited to, hair texture and protective hairstyles". "Protective hairstyles" is defined to include without limitation "braids, locks, and twists".
- Under guidelines issued by the NYC Commission on Human Rights in February 2019, NYC also prohibits race discrimination on the basis of hair.
- New York State amended the NYS Executive Law to prohibit employment discrimination based on "the wearing of attire, clothing or facial hair in accordance with the requirements of his or her religion."
- NYC employers with four or more employees are now prohibited from discriminating against an employee on the basis of an employee's "sexual and reproductive health decisions."



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- NYS also enacted legislation prohibiting employment discrimination based on an employee's or a dependent's "reproductive health decision making" and requiring employers to include notice of employees' rights and remedies in their employee handbooks.
- NYC City Council passed a bill prohibiting retaliation or discrimination against any person who has requested a "reasonable accommodation" under the NYC Human Rights Law.
- The NYS Human Rights Law was amended to expand protections of "victims of domestic violence" (defined to include an adult that is the victim or a parent of a minor child that is the victim) from employment discrimination, and require reasonable accommodations to employees who are known to be victims of domestic violence, including time off.
- New York State passed a law to prohibit an employer from relying on wage history in determining job offers or wages. An employer may not request salary history from the applicant/employee or from the employee's former or current employer. An employer may not refuse to hire or retaliate based on salary history. The NYS law generally conforms to NYC law with respect to salary history, but with some differences.
- New York State amended NYS Labor Law to prohibit threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member to a federal, state or local agency.
- NYC passed law prohibiting employers with four or more employees from requiring a prospective employee to submit to testing for the presence of marijuana. (Effective 5/10/20)

Harassment Updates

- All NYS employers must provide employees with interactive sexual harassment prevention training annually. Any new employee must complete this training as soon as possible after his/her start date.
- NYS employers must now provide employees with a written sexual harassment prevention policy and training, *both in English and the primary language of each employee.*
- New York State lowered the standard of review for harassment claims. Unlawful harassment may now be established regardless of whether such harassment would be considered severe or pervasive, as long as it subjects an individual to inferior



terms, conditions or privileges because of the individual's membership in a protected category.

- The NYS Human Rights Law was amended to extend the statute of limitations for filing a complaint of sexual harassment in employment with the NYS Division of Human Rights to 3 years. (Effective 8/12/20)

Wage Equality

- New York State prohibits any employee who is in any "protected class" to be paid less than an employee not in a protected class. Previously, this prohibition only applied to wage differentials based on gender.

Leave Laws

NYS Voting Leave Law

- The NYS Election Law was amended to allow employees up to three hours of paid time off to vote.

NYC Lactation Accommodation Law

- The NYC Lactation Accommodation Law requires that employers with 4+ employees provide lactation room accommodations and a lactation room policy in accordance with the new law.

Paid Family Leave

- NYS Paid Family Leave Law was amended to expand the definition of "serious health condition" to include any illness, injury, impairment or physical or mental condition "including transplantation preparation and recovery from surgery related to organ or tissue donation". PFL leave is permitted to care for a family member in the preparation for a transplant or recovery from surgery related to organ or tissue donation.

Data Security

- Effective March 21, 2020, any business that owns or licenses private information of New York residents must comply with "reasonable security requirements". A "small business" (defined as < 50 employees; or < \$3MM gross annual revenue in each of the last 3 years; or < \$5MM in total assets) may have safeguards that are "appropriate to its size and complexity".

Settlements and Releases

- NYS now forbids nondisclosure clauses in settlement agreements unless confidentiality is the individual's preference and such preference is memorialized in a



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separate agreement first. Any such nondisclosure clause must be in writing, in plain English and in the individual's primary language if applicable. The individual must have 21 days to consider and 7 days to revoke. Previously this prohibition only applied to sexual harassment settlements.

- NYS now prohibits mandatory arbitration clauses in agreements to resolve discrimination claims. Previously this prohibition applied only to agreements to resolve sexual harassment claims. Note: this provision has been challenged in court.

Confidentiality

- NYS passed a new law prohibiting any contract or agreement between an employer and employee (or potential employee), entered into on or after January 1, 2020, that prevents the disclosure of factual information related to any future claim of discrimination unless such provision notifies the employee/potential employee that it does not prohibit him or her from speaking with law enforcement, the Equal Employment Opportunity Commission, the NYS Division of Human Rights, a local commission on human rights, or an attorney retained by the employee (or potential employee).

Pending Legislation

- The NYS Privacy Act would require companies to disclose their methods of de-identifying personal information, to place special safeguards around data sharing and to allow consumers to obtain the names of all entities with whom their information is shared.
- New York State is considering a prevailing wage bill that would amend the labor law in relation to hours, wages and supplements in contracts for public works, and expand the definition of a public works project.
- Two bills introduced into the New York State Legislature would require certain employees of charitable organizations to complete a course in the law and ethics of fundraising.
- There is a bill pending with the NYC Council that would apply the protections and duties under NYC employment discrimination law to directors, officers, members, partners and unpaid volunteers.
- NYC is considering a bill that would create IRA's for workers at NYC businesses that employ 10 or more people and do not offer such programs.
- NYC is considering a bill to update the Earned Safe and Sick Time Law by adding personal time.

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm's attorneys:



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