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Insights

KEY CHANGES TO NEW YORK EMPLOYMENT LAW IN 2024 AND WHAT TO EXPECT IN 2025

Dec 26, 2024

SUMMARY

Every new year brings changes to the employment laws applicable to New York State and New York City employers. In this article, we review the key employment laws that went into effect in 2024 and highlight some of the new and upcoming laws that may affect your business in 2025.

PAID LEAVE LAWS

PAID LACTATION BREAKS

New York State

An amendment to New York Labor Law §206-c(i) ("State Lactation Law") went into effect on June 19, 2024. Prior to the amendment, New York employers were required to allow their employees to use their existing paid break time or mealtime to express milk, and to provide reasonable unpaid break time once an employee exhausted their paid breaks. However, the June 2024 amendment now requires New York employers to provide up to thirty (30) minutes of paid break time to their employees who express milk at work ("paid lactation break"). This new paid lactation break is available to all employees expressing milk at work during the first three years of their child's birth, and is in addition to any other regularly scheduled break time or meal period (whether paid or unpaid).

While it was initially unclear whether employers had to provide thirty minutes total or thirty minutes per break for expressing milk, this question has been answered by the New York Department of Labor ("NYSDOL") in its Policy on the Rights of Employees to Express Breast Milk in the Workplace ("Guidance"). The Guidance states employers are required to "provide thirty minutes of paid break time for their employees to express milk when the employee has a reasonable need to express breastmilk." The NYSDOL's Employee Fact Sheet and the FAQs further clarify that "all employees are entitled to thirty minutes of paid break time each time they reasonably need to express breast

milk" and the "number of break times needed throughout the day will be unique to each individual employee."

Employers are mandated to inform their employees about the right to take paid lactation breaks at three distinct times: when they are hired, annually, and when the employee returns to work following the birth of a child. Employees seeking to utilize paid lactation breaks must give their employers reasonable advance notice.

Employers can use the NYSDOL's Policy on the Rights of Employees to Express Breast Milk form to inform their employees of the new paid lactation break.

For more information, New York employers can review the NYSDOL's Employer Factsheet, Information for Employers - Rights Of Nursing Employees To Pump Breast Milk At Work.

The Factsheet also reminds employers of their responsibility to provide a lactation room for employees expressing milk. Employers are required to provide a private room or location that can be used for the purpose of breast milk expression. The lactation room must meet certain requirements, including: (1) being private and in close proximity to the employee's work areas, (2) providing good lighting, a chair, and a desk, small table counter, or other flat surface, (3) having an electrical outlet, if the workplace has electricity, and (4) having clean, running water nearby. Notably, the lactation room cannot be a restroom or toilet stall. Employees who need to use a lactation room, because e.g. they do not have a private office, must submit a written request to their employer.

As always, discrimination against employees for expressing breast milk at work is prohibited and could subject the employer to liability.

New York City

After the passage of statewide paid lactation breaks, New York City adopted an Amendment to its 2018 Lactation Accommodation Law (the "City Lactation Law") to reconcile any differences between the City and the State's lactation laws. The Amendment, which goes into effect on May 11, 2025, requires employers to not only distribute its lactation room accommodation policy to employee at the commencement of employment (a requirement under the 2018 City Lactation Law) but also to make such written policy readily available to employees by, at a minimum, conspicuously posting the policy in an area accessible to employees at the employer's workplace and posting it electronically on the employer's intranet (if one exists).

And similar to the State Lactation Law, NYC employers must now provide a 30-minute paid break for employees to express milk in the workplace and allow employees the option to use existing paid break or meal periods for time in excess of 30 minutes. Previously, employers were required to provide "reasonable break time" and there was no requirement that said break be paid.

Next Steps

Employers should review their existing policies to ensure they comply with federal, New York State and New York City lactation laws. Employers should also ensure that their human resources personnel review their updated policies, and are trained and ready to advise employees on their rights to lactation breaks. Finally, it is expected that the New York City Commission on Human Rights will be releasing further guidance and possibly a model poster as the compliance deadline nears. Employers can develop their own poster or await a possible model poster from the Commission for posting at the workplace.

PRENATAL CARE LEAVE

Effective January 1, 2025, under New York Labor Law 196-b(4-a), every New York employer will be required to provide an additional (separate) allotment of 20 hours of paid prenatal leave during any 52-week period ("prenatal leave") to eligible New York employees. Employees can use prenatal leave, in hourly increments, for receiving healthcare services during pregnancy or relating to such pregnancy including for physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy. As drafted, prenatal leave appears to apply only to the employee's own pregnancy and not the pregnancy of the employee's spouse, domestic partner or any other person.

This prenatal leave is in addition to both the 12 weeks of New York State Paid Family Leave ("NYPFL") (for qualifying absences such as bonding with a newborn, adopted, or fostered child, or caring for a family member with a serious health condition) and the 40 or 56 hours of paid sick leave that employers are required to provide under New York State's Paid Sick Leave law ("PSLL"). Employers are required to have a separate bank of paid prenatal leave for employees and such leave must be immediately available to all employees at the commencement of their employment; thus, there is no accrual or probationary period. The employer is not required to pay out employees for unused portions of prenatal leave upon the employee's termination, resignation, or other separation from employment.

Unlike the NYPFL and PSLL, employers have no requirement to create a prenatal leave policy or to provide specific notice to employees of their rights to prenatal leave.

COVID-19 SICK LEAVE SUNSETS

On April 20, 2024, Governor Kathy Hochul approved a July 31, 2025 sunset date for COVID-19 sick leave (whether paid or unpaid). Until the sunset, employees can continue to utilize COVID-19 sick leave days for up to three (3) instances of COVID-19 infections. And as a reminder, an employer's obligation to provide COVID-19 sick leave is in addition to the sick leave provided under the PSLL.

EMPLOYEE PROTECTIONS

SOCIAL MEDIA PRIVACY LAW

New York's social media privacy law went into effect on March 12, 2024. Since the statute's effective date, it has been unlawful for employers to request or require employees or job applicants to disclose any username, password, or other personal account credentials. Employers are also barred from requiring employees or job applicants to open their personal social media accounts in the employer's presence. The law does not prohibit employers from requesting access information for business accounts that are provided by the employer but managed by employees as part of their employment, and employers are not prohibited from viewing or utilizing information about an employee or applicant that is available in the public domain.

Federal, state and local government agencies such as law enforcement, fire departments, and the department of corrections and community supervision are exempted from this law.

WORKERS' BILL OF RIGHTS

In March 2024, the NYC Department of Consumer and Worker Protections published the Workers' Bill of Rights, a comprehensive guide informing employees of their rights under federal, state, and local workplace laws—regardless of their immigration status. Some rights included in the Bill of Rights are: Minimum Wage and Hour Rights, Paid Safe and Sick Leave, Temporary Schedule Changes, Fast Food Worker Rights, Food Delivery Worker Rights, Retail and Utility Worker Rights, Freelance Worker Rights, Paid Family Leave, the Right to Organize and the Right to a Discrimination-free Workplace.

By July 1, 2024, all NYC employers were required to: provide a copy of the Workers' Bill of Rights to each of their current employees and each of their new employees on their first day of employment; post the multilingual "Your Rights at Work" poster (the "Poster") in a location visible to employees; and distribute the Poster to all employees via the employer's intranet or mobile app if "such means are regularly used to communicate" with employees.

Employers who fail to meet the notice and posting requirements will receive a warning for the first violation and could face a civil penalty of $500 for any subsequent violations.

FREELANCE WORKER PROTECTIONS

As of August 28, 2024, individuals and companies who hire freelance workers in New York State will be subject to several new requirements provided by the Freelance Isn't Free Act ("FIFA"). FIFA mirrors the protections of a similar New York City law that went into effect in May 2017 so FIFA's requirements are not new to NYC employers.

Definitions

FIFA defines "freelance workers" as (i) any person or organization of no more than one person, (ii) that is hired or retained as an independent contractor by a hiring party, and (iii) to provide services in exchange for compensation of $800 or more. The $800 threshold is an aggregate of all contracts

with the same hiring party and freelancer within a 120-day period. Freelance workers do not include sales representatives, practicing attorneys, licensed medical professionals, or construction contractors.

Additionally, FIFA defines the "hiring party" quite broadly to include any person or business (e.g., corporation, sole partnership, or LLC) that retains a freelancer to provide any service. There is no employer-size threshold. The only parties excluded from this law are the United States Government, State of New York, local municipalities, and foreign governments.

Requirements

The hiring party is required to memorialize the terms of the relationship with the freelancer in a written contract if the single service or the aggregate services equals or exceeds $800. The contract must include: (i) the name and mailing address of the hiring party and the freelancer; (ii) an itemization of all of the services the freelance worker will provide, including the value of such services, and rate of compensation; (iii) the payment due date or how the date will be determined; and (iv) the date the freelance worker must submit a list of services rendered under the contract in order to meet the hiring party's internal processing deadlines. The NYSDOL has developed a model contract that can be used to meet the requirements of FIFA.

Compensations Rules

Payment is due on or before the due date specified in the contract, or if not specified, within thirty days of completion of the freelance worker's services. Once the freelance worker has begun the performance of the services, the hiring party cannot require, as a condition of timely payment, that the freelance worker accept less compensation than the amount in the contract.

Enforcement and Violations of FIFA

The hiring party must provide a physical or electronic copy of the contract to the freelance worker and retain a copy of all written contracts for six years. The failure to maintain these documents creates a presumption that the terms the freelance worker presents are true and accurate and are the agreed-upon terms between the parties, and the hiring party has the burden of proving that the complaining freelancer was paid pursuant to FIFA's rules.

Hiring parties are prohibited from harassing, discriminating, threatening, intimidating, disciplining, or denying work opportunities to a freelance worker for exercising, or attempting to exercise, any rights under FIFA.

Freelance workers who believe their rights have been violated under FIFA can bring a civil action for non-payment of wage-related violations or retaliation within six (6) years of the violation or retaliatory act. A prevailing freelancer is entitled to the outstanding balance due under the contract, double damages, injunctive relief and attorney's fees. The freelancer can also file a complaint with

the NYSDOL, which has the power to investigate disputes, equitably resolve disputes, or sue the hiring parties on behalf of the freelancers. The NYSDOL can pursue penalties and fines (beginning at $250 per violation), as well as seek injunctive relief or other appropriate remedies. Also, where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violating FIFA, the New York State Attorney General may bring a civil action on behalf of the State and seek fines of up to $25,000 from the violating hiring party.

CRIMINAL BACKGROUND CHECKS

New York State's Clean Slate Act (the "Clean Slate Act") took effect on November 16, 2024. The New York State's Unified Court System has up to three years (until November 16, 2027) to set up the required processes to automatically seal certain conviction records from public access. Once that work is complete, convictions that are eligible will be sealed for certain civil background check purposes.

Under the Clean Slate Act, certain vehicle and traffic law violations will be sealed after three years. Convictions for most misdemeanors will also be sealed three years after sentencing or three years after release from incarceration, whichever is later. Felonies will be sealed eight years after sentencing or eight years after release from incarceration, whichever is later. The Clean Slate Act will not seal records related to sex crimes and Class A felonies that are not drug related (e.g., murder and kidnapping). Moreover, the individual, whose records are being sealed, must not be on parole, probation, post-release supervision, or have any pending criminal cases (whether a misdemeanor or a felony). If an individual is convicted of another misdemeanor or felony before the sealing of the prior convictions, the sealing waiting period restarts.

The Clean Slate Act does not apply to out-of-state or federal convictions. Also, employers who are required to conduct "fingerprint-based" criminal background checks (e.g., employers who work with children, the elderly, or individuals with disabilities) will continue to have access to these sealed criminal records.

The Clean Slate Act does not absolve employers from continuing to comply with the New York Corrections Law Article 23-A ("Corrections Law"). Accordingly, employers must ensure that they are not unlawfully discriminating against a person previously convicted of an offense, as proscribed in the Corrections Law. Employers that receive criminal history information also are required to provide the applicants with a copy of the criminal history in accordance with the requirements of the Corrections Law.

BCLP has a team of knowledgeable employment lawyers and other professionals. If you or your organization would like more information on this or any other employment issue, please contact any attorney in our New York City office or the Employment and Labor practice group.

RELATED PRACTICE AREAS

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