



A GUIDE FOR THE PERPLEXED:

Update on New York State and New York City Employment Laws

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Outline

- *COVID 19 Leaves*
 - *HERO Act*
- NYC Salary Information Law
- NYC Artificial Intelligence
- NYC Fair Chance Act Amendments
- NYS Whistleblower Law Amendments
- NYS Employee Monitoring Amendments
- Cannabis Workplace Guidance
- NYS Paid Family Leave Amendment
- NYS and NYC Retirement Savings



Disclaimer

Today's presentation is informational only and is not intended to constitute legal advice.

Legal mandates regarding vaccinations, face coverings, and other COVID-19-related practices and policies are currently changing frequently. New orders and legal decisions released after the presentation date may make the information in the webinar no longer fully accurate.

Please consult with counsel for legal advice pertinent to your organization.



NYS COVID-19 Leave Law

- Covers all Employers
- Only for
 - EE under quarantine order, not lockdown
 - EE voluntarily traveling to COVID hotspot ineligible
 - EE not subject to quarantine order but ER mandates EE to not report to work due to COVID-19 exposure
 - Up to 3 COVID-19 orders
- Length of leave - duration of quarantine



NYS COVID-19 Leave Law (Continued)

- Sick Pay for EE's own quarantine
 - 5 days unpaid if employer has 10 or fewer EEs and under \$1 million revenue
 - 5 days at regular rate if 1-10 EEs & ER net income greater than \$1M
 - 5 days paid at regular rate if 11-99 EEs
 - Thereafter Paid Family Leave and NYS Disability benefits
 - Capped at \$1,068.36 and \$170/week, respectively
 - 14 days paid at regular rate if 100 or more EEs
- ERs less than 100 EEs – after 5 days of paid sick leave, EE eligible for Paid Family Leave & disability.
- Pay for child care
 - Paid Family Leave Benefits



NYS COVID-19 Vaccine Paid Leave

- Effective 3/12/21 through 12/31/2022
- All ERs required to provide each EE sufficient paid leave of absence, not to exceed 4 hours, for each COVID-19 vaccine, unless otherwise provided under a CBA or authorized by the ER.
- All EEs are eligible for qualifying reason
- Qualifying reason:
 - EE receiving a COVID-19 injection, **including booster**, on or after 3/12/21
 - Not eligible for illness resulting from vaccine



NYS COVID-19 Vaccine Paid Leave (Continued)

- Leave time in addition to any other leave time
- ER must pay at EE's regular rate of pay for any hours of vaccination leave for a max of 4 hours/injection.
- ER may require notice before EE takes COVID-19 vaccine paid leave (no info. on amount of notice)
- ER may require proof of vaccination to claim vaccine leave, subject to confidentiality requirements (latter not spelled out)



NYC Child Vaccine Paid Leave

- Effective 12/24/21 through 12/31/22
 - But must give pay retroactive to 11/2/21
- ER must provide up to 4 hours paid leave *per child*
 - “Child”: under 18 years or incapable of self-care
 - For each injection
 - For recovery from side effects
- Leave time in addition to any other leave time
- EE must be paid at regular rate
- Must have written policy



NYS Hero Act

- Covers all New York State employers
- Airborne Infectious Disease Exposure Prevention Plan adopted 8/5/21
 - Can use NYS model plan
 - Must consult employees if create own plan
- DOH declaration that COVID is a highly contagious communicable disease that presents a serious risk of harm to the public health triggers implementation of plan
 - most recent designation expired 3/17/22
- Employers are still obligated to:
 - maintain a plan
 - Post plan onsite or online
 - Distribute and review it with employees
- Employers with at least 10 employees must permit formation of employee safety committee (not limited to COVID)
 - NYS Department of Labor to finalize regulations



NYC Salary Information

- Effective 9/1/22 (changed from 5/15/22)
- Covered Employers: 4 or more employees
 - *Independent contractors must also be counted*
- Job postings must include minimum and maximum salary or wage
 - New hires, promotions, and transfers
 - Exempt and non-exempt positions
 - work can or will be done in NYC
- Enforced by NYC Human Rights Commission
- HRC guidance or regulations anticipated



NYC A.I. in Hiring

- Requires audit and notice to applicants if using automated employment decision tools
 - machine learning, statistical modeling, data analytics and artificial intelligence
- **Effective January 2, 2023**
- Audit: Technology must be audited one year prior to use
 - independent auditor measures for adverse impact on race, gender, and ethnicity
 - results must be posted on website
- Notice: 10 days prior to use of AI tool
 - applicants and employees may request alternative
- NYC Human Rights Commission to provide guidance



NYC Fair Chance Act Amendments

- FCA applies if at least 4 employees
 - Independent contractors included in the count
- Cannot conduct criminal background check until after conditional offer has been made
 - **Now** all noncriminal information evaluated before making conditional offer (so now, need two background checks)
- **Now** applies to CURRENT employees
- EEs/applicants **now** have **5** (not 3) days to respond to notice of adverse employment action
- EEs/applicants **now** have **5** days to explain that misrepresentation was not intentional



NYS Expanded Whistleblower Law

- Amendments effective **1/26/22**
- Protects current and former employees; independent contractors
- Internal OR external disclosure or threatened disclosure
- Reasonable belief that ANY activity, policy, or practice
 - Violates ANY law, rule, or regulation or affects public safety



NYS Expanded Whistleblower Law (Continued)

- Internal notice prior to external disclosure not required if:
 - Imminent danger
 - Reasonable suspicion that evidence will be destroyed
 - Employer is already aware
- Retaliation prohibited
 - Current or future employment
 - Threatened or actual contact with immigration authorities
- Jury trial
- Poster required:

https://dol.ny.gov/system/files/documents/2022/02/ls740_1.pdf



NYS Employee Monitoring Amendments

- Amendments to NYS Civil Rights Law **effective 5/7/22**
- Employers must
 - Notify employees if monitoring employee telephone, email or internet usage;
 - Have employees sign a receipt of notice, and track and store signed notices; and
 - Post a notice that employees are subject to monitoring in a conspicuous place (and electronically for virtual/hybrid)
- Broad definition of electronic monitoring but processes to manage type or volume of ingoing/outgoing ***not*** covered if for system maintenance and protection



Cannabis in the Workplace

- Changes to Labor Law 201-D govern recreational use of cannabis, not medical
- October 2021 NYS DOL guidance
- No testing
- Can prohibit use and possession during work
- Detecting on the job use
 - “Specific articulable symptoms”
 - *e.g.* decrease or lessened job performance
 - Interference with health and safety
 - DOL guidance available at <https://dol.ny.gov/system/files/documents/2021/10/p420-cannabisfaq-10-08-21.pdf>



NYS Paid Family Leave Amendment

Family members include:

- **Effective 1/1/2023:** siblings
- Spouse
- Domestic partner (including same and different gender couples; legal registration not required)
- Child/stepchild and anyone for whom you have legal custody
- Parent/stepparent
- Parent-in-law
- Grandparent
- Grandchild



NYS Secure Choice Savings Program

- Requires certain employers to facilitate employee participation in NYS' Roth IRA fund
- **Covered Employers**
 - no retirement plan in last two years
 - may not terminate existing plan in order to participate!
 - at least 10 employees in NYS at all times in prior year
 - in operation for at least two years
- **Eligible Employees**
 - at least 18 years old
- Employer provides information and payroll deduction
- Employees automatically enrolled but may opt out
- **Operational Date**
 - Payroll deductions must be set up nine months after program established by NYS Secure Choice Savings Board



NYC Retirement Security for All

- May be rescinded due to NYS law
- **Covered Employers**
 - no retirement plan in past two years
 - at least 5 employees regularly working in NYC in prior year
 - in operation for at least two years
- **Eligible Employees**
 - at least 21 years old
 - regularly work at least 20 hours per week
- Otherwise similar to state law



Informational Resources

- <https://lawyersalliance.org/coronavirus-information>
- <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>
- [https://lawyersalliance.org/userFiles/uploads/legal_alerts/New Law Whistleblower Anti Retaliation Legal Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/New_Law_Whistleblower_Anti_Retaliation_Legal_Alert.pdf)
- [https://lawyersalliance.org/userFiles/uploads/legal_alerts/Salary Posting Legal Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/Salary_Posting_Legal_Alert.pdf)
- [https://lawyersalliance.org/userFiles/uploads/legal_alerts/NYS HERO Act What Now Legal Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/NYS_HERO_Act_What_Now_Legal_Alert.pdf)



More Informational Resources

- [https://lawyersalliance.org/userFiles/uploads/legal_alerts/Employee Monitoring Legal Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/Employee_Monitoring_Legal_Alert.pdf)
- [https://lawyersalliance.org/userFiles/uploads/legal_alerts/New York City Fair Chance Act Legal Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/New_York_City_Fair_Chance_Act_Legal_Alert.pdf)
- [https://lawyersalliance.org/userFiles/uploads/legal_alerts/Artificial Intelligence in Hiring Legal Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/Artificial_Intelligence_in_Hiring_Legal_Alert.pdf)
- [https://lawyersalliance.org/userFiles/uploads/legal_alerts/Retirement Programs Legal Alert.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/Retirement_Programs_Legal_Alert.pdf)



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QUESTIONS?

This presentation is intended to provide general information only, not legal advice.