



TAKEAWAYS

LEGAL EMPLOYMENT INFORMATION YOU CAN APPLY TO YOUR BUSINESS

TAKEAWAYS provides highlights of the most significant New York, New Jersey and Connecticut legal developments from the past quarter, together with action items for your business. This issue covers NYS's sexual harassment prevention policy and training requirements; new federal and NYC government postings, notices and forms; and court decisions on gig economy workers, damage waiver clauses, and medical marijuana usage.

Levy Employment Law, LLC helps businesses identify and resolve workplace issues before they result in litigation by:

- ❖ *designing and building Human Resources policies with supporting systems,*
- ❖ *training HR staff, line managers and employees,*
- ❖ *troubleshooting workplace concerns, and*
- ❖ *defending charges filed with the EEOC and state and local administrative agencies.*

Table of Contents

Legislative Developments	1-3
Administrative Agencies	2-3
Court Watch.....	3

This newsletter is provided for informational purposes only to highlight recent legal developments. It does not comprehensively discuss the subjects referenced, and it is not intended and should not be construed as legal advice or rendering a legal opinion. TAKEAWAYS may be considered attorney advertising in some jurisdictions.

SEXUAL HARASSMENT PREVENTION MANDATE IMPACTS EVERY NYS EMPLOYER

October 9, 2018 was the deadline for employers in New York State to have adopted sexual harassment prevention policies. This obligation even applies to employers with only one employee in New York State. The State Department of Labor and Division of Human Rights jointly issued final guidelines and materials on October 1, 2018 that include an eight-page model policy, and minimally require employers that adopt their own policy to include:

- A prohibition on sexual harassment consistent with the State's issued guidance;
- Examples of prohibited conduct that would constitute unlawful sexual harassment;
- Information on federal and state laws concerning sexual harassment and the remedies available, as well as reference to potentially applicable local laws;
- A procedure for timely and confidential investigation of complaints that ensures due process for all parties;
- Information on employees' rights of redress and all available administrative and judicial forums for adjudicating sexual harassment complaints;
- A clear statement that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisors and managers who knowingly allow such behavior to continue;
- A clear statement that it is unlawful to retaliate against those who complain, or who testify or assist in an investigation or proceeding involving sexual harassment; and
- A copy of or reference to an internal Complaint Form for raising concerns of sexual harassment. (*Cont'd p. 2*)

LEVY EMPLOYMENT LAW, LLC

Legal and Employee Relations Consulting Services

411 Theodore Fremd Avenue, Suite 206 South, Rye, NY 10580

Tel: 914-338-8023 ❖ Fax: 914-637-1909

www.levyemploymentlaw.com; info@levyemploymentlaw.com

NYS Sexual Harassment Prevention Mandate *(Cont'd from p. 1)*

October 9, 2018 also marked the start of the clock for New York State employers to conduct annual, interactive sexual harassment prevention training. We summarized the required content of that training in the Spring 2018 issue of [Takeaways](#). Earlier this month, the state agencies released materials comprising their model training program, including powerpoint slides, case studies and a trainer's guide, which are available on a dedicated [webpage](#) that employers may use to meet the annual training requirement.

Employers should be mindful of the following key points in planning when and how best to meet the new state training requirements.

Every employee who works in NYS must be trained.

Technically this includes an individual who works just one day for the employer in New York State.

October 9, 2019 is the deadline for initial training.

Employers have the next 12 months to meet the initial training requirement. Thereafter, training must be conducted on an annual basis, which can align with a calendar year, anniversary start date, or other measure. The timing of future training cycles therefore should be considered when scheduling this year's initial training.

NYC employers will soon have a separate city-mandated training requirement.

Employers in New York City should additionally be mindful that the city's sexual harassment prevention training requirement takes effect April 1, 2019, and requires the inclusion of slightly different content than the state law.

State contractors may need to proceed on an accelerated timetable.

As of January 1, 2019, all bidders for state government contracts need to certify in their bid that they conduct

annual sexual harassment prevention training for all their employees that minimally meets the requirements of the state law.

New hires need training too.

The state's FAQs provide that new hires should be given a copy of the employer's policy prior to starting work, and should be trained as soon as possible.

Prior training need only be supplemented.

Employers that already conducted harassment prevention training this year but that may not have covered every one of the minimum requirements under the state's mandate can meet the initial year's training requirement if they provide a supplemental training on just the missing elements.

Interactivity does not preclude pre-recorded training modules.

Facilitated in-person training or web-based training with periodic inputs from the employee participant both meet the interactive requirement. Alternatively, that requirement can be satisfied if employees have the option to submit questions online and receive answers in a timely manner, or if the training provides a feedback survey for employees to turn in after they have completed the training.

Minimum Wage Increasing on Federal Contracts

Federal government contractors should prepare for another increase to the minimum wage. Effective January 1, 2019, the minimum wage for covered workers will increase to \$10.60 per hour. Federal contractors are required to notify all covered workers of the wage rate increase.

LEVY EMPLOYMENT LAW, LLC

Legal and Employee Relations Consulting Services

411 Theodore Fremd Avenue, Suite 206 South, Rye, NY 10580

Tel: 914-338-8023 Fax: 914-637-1909

www.levyemploymentlaw.com; info@levyemploymentlaw.com

New Government Postings, Notices and Forms Issued for Employers

Early September brought the following new federal government forms, and new posting and notice requirements for New York City employers.

Federal Forms:

- New [Family and Medical Leave Act forms](#), which make no substantive changes but bear an "8/31/2021" expiration date in the upper right hand corner and should be used in lieu of prior versions;
- Revised [Summary of Consumer Rights](#) that must be distributed by employers conducting background checks in accordance with the Fair Credit Reporting Act.

Mandatory New York City Notices and Posters:

- New Stop Sexual Harassment law poster, which needs to be posted both in [English](#) and in [Spanish](#);
- New Stop Sexual Harassment law [information sheet](#) which should have been distributed to all current employees and needs to be provided to new hires by their first day of work;
- New poster, [You Have a Right to Temporary Changes to Your Work Schedule](#), which notifies employees of their right to two single-day shift-changes per year for various "personal events" that cannot be denied if the employee meets the law's eligibility criteria (as we summarized in the Spring 2018 issue of [Takeaways](#)).

New Jersey Entitles Striking Workers to Unemployment Benefits

A new law in New Jersey permits workers to immediately apply for unemployment benefits in the event of a strike or work stoppage resulting from a labor dispute over the employer's failure or refusal to comply with a contractual obligation. The new law also authorizes unemployment benefits for striking workers in other circumstances after a 30-day waiting period, and it waives that waiting period in the event the striking worker is permanently replaced.

COURT WATCH

NYS Appellate Court Holds Courier is Independent Contractor

In *Matter of Vega* (June 21, 2018), the NYS Third Department, Appellate Division ruled that a Postmates delivery courier was not an employee for unemployment insurance purposes, overturning a decision by the Unemployment Insurance Appeal Board. In so holding, the Court observed that the courier used a Postmates software platform to determine when, and if, he would make himself available for or accept particular delivery assignments; he determined the mode of transportation to use and absorbed that expense; he had no uniform, logo or other Postmates branding; and he was paid only for deliveries successfully completed. The Court held that Postmates' control over the fee charged the customer, the rate paid to the courier, tracking of deliveries, and the handling of customer complaints were not sufficient indicia of supervision, direction and control to create an employment relationship.

NJ Court Strikes Contractual Waiver of Right to Damages

In *Roman v. Bergen Logistics, LLC et al.* (Aug. 23, 2018), New Jersey's intermediate appellate court held that an employer cannot contractually limit the remedies available for a successful employment discrimination claim. The company's arbitration agreement had provided that employees waived their right to collect punitive damages, and the court struck that portion of the agreement as unenforceable.

Court Holds Failed Drug Test to be an Improper Basis for Termination

The U.S. District Court in Connecticut held that refusing to hire a medical marijuana user for failing a pre-employment drug test is a violation of Connecticut's Palliative Use of Marijuana Act. The Court therefore granted summary judgment for the job applicant, in *Noffsinger v. SSC Niantic Operating Co., LLC, d/b/a Bride Brook Nursing & Rehab. Ctr.*, (Sept. 5, 2018).

LEVY EMPLOYMENT LAW, LLC

Legal and Employee Relations Consulting Services

411 Theodore Fremd Avenue, Suite 206 South, Rye, NY 10580

Tel: 914-338-8023 • Fax: 914-637-1909

www.levyemploymentlaw.com; info@levyemploymentlaw.com