



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 is largely the New York issue, given the state’s wide-ranging end-of-year changes. There are also new federal laws for pregnant and nursing employees, laws delayed (NYC) and laws accelerated (New Jersey), and notable court and agency decisions.

Levy Employment Law, LLC helps businesses identify and resolve workplace issues. We provide “AIDD” to organizations of all sizes in four key focus areas:

- ❖ *Advising on sensitive employment issues;*
- ❖ *Investigating workplace concerns as independent, outside fact-finders;*
- ❖ *Developing policies and agreements; and*
- ❖ *Defending administrative charges at the agency level.*

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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.

NYS Shakes Up Employment Laws Again

In a post-election, pre-new year whirlwind, Governor Hochul signed into law a panoply of new employer requirements, including some with immediate effect. While the governor vetoed the Freelance Isn’t Free Act, she approved requirements related to pay transparency, lactation accommodations, employee time off, new protected classes, workplace postings, warehouse workers and human trafficking.

Pay Transparency Expands to All of New York State

Pay transparency – a requirement that all job postings include disclosure of compensation information – will be required of all New York State employers effective September 17, 2023. Job postings will need to specify the minimum and maximum annual salary or hourly range of compensation for the position that the employer in good faith believes to be accurate at the time of the posting. Pay transparency will apply to both internal and external job postings, whether for new hires, promotions, or transfer opportunities. (cont’d p. 2)

Employers Must Designate Private Space for Nursing Employees

Effective June 7, 2023, employers throughout New York State will be required to provide accommodations for nursing employees comparable to those already required under New York City law. Employers will be prohibited from discriminating or retaliating against employees who exercise their rights under the law. (cont’d p.2)

Protections Expand for Pregnant and Nursing Employees Nationwide

On a national level, effective June 27, 2023, the Pregnant Workers Fairness Act requires all employers to engage in an interactive process with employees to provide reasonable accommodations due to pregnancy, childbirth, or related medical conditions, unless doing so would impose an undue hardship. (cont’d p. 4)

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Another Spate of NYS Laws Add to Employers' Compliance Obligations

Pay Transparency Expands to All of NYS

The pay transparency law requires that all job postings include a job description and disclosure of base salary, but not overtime pay or bonuses. For commission-based jobs, employers must specifically disclose that form of pay in the job posting. The law prohibits employers from discriminating or retaliating against employees who exercise their rights under the law.

Unlike the New York City law, and as we discussed in more detail in a [blog article](#) last summer, the state law additionally imposes a record-keeping requirement on employers. Employers are required to retain the available job descriptions and history of compensation ranges for each job posted. The Department of Labor is directed to conduct a public awareness outreach campaign with regard to the law's requirements, and employers face civil penalties for noncompliance.

Private Space Required for Lactation

New York State's Nursing Mothers in the Workplace Act requires employers to provide a designated room or other private location for employees to express breast milk in the workplace, unless doing so presents an undue hardship. The space cannot be a restroom or toilet stall and needs to:

- be in close proximity to the work area, well lit, shielded from view and free from intrusion;
- include a chair, working surface, and electrical outlet (if available); and
- have nearby access to clean running water and, if available, access to refrigeration for the storage of expressed milk.

Employers are required to have a written policy that:

- informs employees of their rights regarding expressing breast milk in the workplace;
- specifies how they can request access to the designated space; and

- requires the employer to respond to an employee's request within no more than five business days.

The Department of Labor is to develop a model policy, and employers are required to provide the policy to employees (i) upon hire, (ii) annually, and (iii) when an employee returns to work following the birth of a child.

Enhanced Protection of Employee Time Off

New York State has adopted an additional enforcement mechanism to protect employees who take time off that is legally protected under federal, state or local law. Supplementing the retaliation prohibitions under those laws, the New York State Labor Law will now provide that employees cannot be retaliated against for using any "legally protected absence." Effective February 19, 2023, employers with "no fault" attendance policies or similar absence point systems need to ensure that those systems are not applied to absences taken for a legally protected reason. That is because the new law defines it as "retaliation" for employers to assign points or demerits against employees for being absent from work, where those points can then result in disciplinary action, delay or denial of a promotion, or loss of pay.

NYS Adds Protection for Citizenship and Immigration Status

Effective immediately upon being signed by the Governor on December 23, 2022, New York State amended its Human Rights Law to protect employees from harassment and discrimination based on their citizenship or the immigration status of non-U.S. citizens. This change does not, however, excuse or preclude employers from their federal law obligation to ensure employees are legally authorized to work in the United States.

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Workplace Posters Need to Be Electronic

With immediate effect as of December 16, 2022, New York State added a requirement that all workplace posters required by federal or state law must additionally be made available to applicants and employees electronically. Electronic access can either be through a website or by email distribution.

Warehouse Workers Specially Protected

The Warehouse Worker Protection Act adds a new section to the New York Labor Law to protect warehouse workers from being held to unreasonable quotas. The new law, which takes effect February 19, 2023, applies to employers with 100 or more employees at a single warehouse distribution center, or 500 or more employees across multiple centers in the state. Contracted workers working at the warehouse who are subject to quotas are covered by the law and included in the workforce headcount of "employees."

Within thirty days of hire and thereafter whenever standards are revised, covered employers are required to provide warehouse employees with a written description of any quota the employee will be held to and the potential consequences of not meeting the quota. The law prohibits employers from imposing quotas that preclude break time for meals, rest periods or to use the bathroom and provides that those break times should not be considered in determining the employee's productive time spent on meeting quotas.

Employers are additionally required to keep records related to employees' respective work speeds, which they are required to share with employees in certain circumstances.

NYS Enlists Certain Employers to Help Prevent Human Trafficking

Recognizing that victims of human trafficking are most likely to pass through the hospitality and transportation industries, Governor Hochul signed eight pieces of

legislation, specifically applicable to employers in those industries, that are intended to collectively provide support and resources for victims. The new legislation, which takes effect July 20, 2023, includes requiring:

- the NYS Liquor Authority to include a human trafficking training component in its certified Alcohol Awareness Training Programs;
- employer-provided training within 60 days of hire to every employee of an inn, motel or motor court who is likely to meet with guests on how to recognize human trafficking victims;
- all truck stops, bus terminals and airports to post in restrooms informational signs and cards for victim support services; and
- establishments selling alcoholic beverages or adult entertainment to display information about human tracking and resources for victims.

The Division of Criminal Justice Services and the Office of Temporary and Disability Assistance are charged with developing a curriculum for the training for guest-facing employees in the hospitality industry. The initial training of current employees needs to be completed by November 20, 2023.

NYC Delays Enforcement of Bias Audit Requirement for Automated Hiring Decisions

As we reported fully one year ago, in the Winter 2021/22 issue of [Takeaways](#), employers who use tools that rely on artificial intelligence to screen job applicants are required, as of January 1, 2023, to have a bias audit conducted to ensure fair evaluation of applicants and to minimize the disparate impact of AI screening tools. In Fall 2022 we [wrote](#) about the city's proposed regulations to implement this new law, the first of its kind in the country. The city has since held several public hearings, including one this past week, and has currently delayed its enforcement of the law until April 15, 2023 as it works to finalize its regulations.

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Protections Expand Nationwide for Pregnant/Nursing Employees

The federal Pregnant Workers' Fairness Act prohibits employers with 15 or more employees from denying employment opportunities to qualified employees based on the employee's need for a reasonable accommodation, or from requiring employees to take leave if another reasonable accommodation can be provided. Employers also cannot discriminate or retaliate against qualified employees for requesting or using a reasonable accommodation. The law requires the Equal Employment Opportunity Commission (EEOC) to develop regulations that include examples of reasonable accommodations relevant to pregnancy and childbirth.

In addition, the federal "PUMP Act" requires employers to provide employees with reasonable break time (which need not be paid) and space in which to express breastmilk for the first year after the child's birth. The space provided to employees must be shielded from view, free from intrusion, and cannot be a bathroom.

Employers with fewer than 50 employees are exempt from the PUMP Act if they can demonstrate that compliance would impose an undue hardship. However, employers throughout the tri-state area have separate obligations to provide accommodations in this context under state and some local laws, and the federal law does not supersede those requirements.

Minimum Wage Increased

New York: \$15 NYC & immediate suburbs
\$14.20 rest of state

New Jersey: \$14.13

NJ Mandate of Severance Pay by Private Employers Takes Effect This Spring

Ending a three-year holding period occasioned by the pandemic, new legislation signed by Governor Murphy will force the implementation of substantial amendments to the New Jersey Worker Adjustment Retraining and Notification Act (NJ WARN) effective

April 10, 2023. As we previously reported in [Takeaways](#) in early 2020, the new law mandates severance pay for terminated employees in the context of large-scale reductions-in-force (RIFs), as well as at least 90 days' advance notice of mass RIFs or four additional weeks of pay in lieu of the full notice.

Federal Law Requires Recognizing Marriages

Employers administering benefit plans, bereavement leave, and similar policies that relate to employees' spouses should note that the Respect for Marriage Act, which took effect, requires that marriages between two people must be recognized as valid if the marriage was legal in the state where it was performed.

COURT WATCH

NJ Appellate Court Addresses Arbitration

The New Jersey Appellate Division held in *Zuluaga v. Altice USA* (Nov. 29, 2022), that the federal law invalidating pre-dispute agreements to arbitrate sexual assault and sexual harassment claims does not apply retroactively. Because that law took effect on March 3, 2022, the court held that a sexual harassment claim that occurred in 2021 was subject to arbitration.

NLRB Expands Remedies to Make Employees "Whole"

In *Thryv Inc.* (Dec. 13, 2022), the National Labor Relations Board expanded how it defines its authority to provide "make whole" remedies to employees whose employers are found to have engaged in an unfair labor practice. The Board held that it will consider awarding not just lost wages but also compensation for all direct or foreseeable pecuniary harms suffered as a result of the unfair labor practice. Examples of such additional compensation include transportation expenses, interest and late fees on credit cards, expenses searching for alternative employment, penalties on early withdrawals from retirement accounts, loss of a car or home due to missed loan payments, and other costs incurred to make ends meet.

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