

New York Implements State and City Laws Further Expanding Employee Protections

Insights for Employers Alert | 3 min read

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While the United State Supreme Court's recent decisions in *Epic Systems Corporation v. Lewis* and *Janus v. AFSCME* tilt on the side of employers, New York's recent employment laws further protect the rights of employees. Beginning in 2017 and continuing through this year, New York has adopted new laws and revised existing ones to expand employee protections and benefits. With the increasing vigilance of state and local agencies to enforce compliance, employers need to review their existing policies and procedures to avoid investigations and penalties. Summarized below is some of the key legislation that New York employers need to be aware of.

Expanded Sexual Harassment Protection and Mandatory Training

In passing this year's budget, the New York State Assembly incorporated sweeping anti-sexual harassment laws. These include:

- annual sexual harassment training and written sexual harassment policy, effective October 19, 2018;
- prohibition on arbitration clauses relating to sexual harassment claims;
- prohibition on the use of confidential clauses in settlement agreements relating to sexual harassment claims unless preferred by complainant; and
- covers employees as well as non-employees, including vendors, consultants, contractors and sub-contractors.

Similarly, New York City adopted the Stop Sexual Harassment in New York City Act which mimics the state legislation to some degree but also broadens further protections:

- mandates sexual harassment training for employers with 15 or more employees, effective April 1, 2019;
- extends the statute of limitations for filing claims with an administrative agency of gender-based harassment from 1 year to 3 years;

- subjects employers to liability relating to potential sexual harassment; and
- requires employers to post sexual harassment rights and responsibilities poster and provide new hires with information sheet on sexual harassment.

Notably, New York's anti-harassment laws cover gender-based claims which extend protections to LGBTQ employees who experience harassment in connection with their sexual identity or gender expression. Employers need to be mindful that their anti-harassment policies and training incorporate concerns specific to LGBTQ employee protections. To help employers respond to this challenge, Hinshaw offers a turn-key, highly customizable, LGBTQ Corporate Equality & Harassment Prevention Training Program. For more information about strengthening your inclusive workplace, contact lead program faculty member Aimee Delaney at 312-704-3258 or adelaney@hinshawlaw.com.

New York City Earned Safe and Sick Time Act

Effective May 5, 2018, New York City employers must allow the use of paid leave for employees if they or a family member have been the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking. The definition of "family member" is expanded to include any individual whose close association with the employee is the equivalent of family. The new law requires employers with five or more employees to provide paid leave of up to 40 hours per calendar year for safe time or sick leave. The law also contains various compliance provisions regarding an employer's ability to require medical documentation from the employee, distribution of Notice of Employee Rights containing the new amendments, and recordkeeping requirements.

Amended New York City Fair Workweek Law

Effective July 18, 2018, New York City employees may request a temporary change to their schedule, up to two times per year, for a "personal event" defined as the need to provide care to a minor child or care recipient; the need to attend a legal proceeding or hearing for subsistence benefits; or any circumstances that would be a basis for permissible use of safe time or sick time as defined by the NYC Earned Safe and Sick Time Act. The new law amends New York City's Fair Workweek Law, which was enacted in November 2017, to require employers to grant a request for a temporary change in work schedule. The new law allows employees to alter their hours, times or locations for a limited period, including the use of sick time, working remotely, swapping or shifting work hours, or using short-term unpaid leave. An employee need not use accrued leave before requesting a temporary work schedule change.

Required Cooperative Dialogue Regarding Reasonable Accommodations

Effective October 15, 2018, New York City employers are required to engage in a cooperative dialogue regarding requests for reasonable accommodations for victims of domestic violence, individuals with pregnancy and related conditions, religious needs, and disabilities. The law requires employers “to engage in or seek to engage in a cooperative dialogue with individuals who may be entitled to such accommodation, in order to identify what reasonable accommodations are available to assist them.” Int. No. 804-A. Failure by employers to engage in this dialogue amounts to unlawful discriminatory practice in violation of the New York City Human Rights Law.

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