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New York Employment Law Continues to Heat Up Even as the Weather Cools Down

New York continues to expand and revise its employment laws, with many recent developments of which all New York employers should be aware. Here is an overview of recent legislation, regulations, and guidance affecting employers in New York City and across New York state.

New York State Updates

Gender Identity Protection for Interns On August 23, Governor Kathy Hochul signed a new law (S7382/A7355) that amends Section 296-c of the New York Human Rights Law to expressly state that interns are protected from unlawful discrimination based on their gender identity or expression. In 2019, gender identity or expression was added as a protected category under the Human Rights Law, but the intern provision of the law was not amended at that time to reflect this change. The legislature explains that the failure to include gender identity or expression as a protected category for interns was likely due to an unintended oversight. Now, Section 296-c of the Human Rights Law makes clear that gender identity or expression is a protected category for interns. The law became effective immediately upon Governor Hochul's signing. ***New York WARN Act Regulations*** The New York State Worker Adjustment and Retraining Notification Act (NY WARN Act) generally requires covered employers to provide 90 days' advance notice to affected employees and others in the event of a mass layoff or plant closure. On June 21, the New York State Department of Labor (NY DOL) published amended NY WARN Act regulations. The amended regulations, which took effect immediately, clarify certain requirements under the act, including employer notice requirements, remote employees, and more. Some notable provisions in the amended regulations include the following:

- Individuals who work remotely (but are based at a particular employment site) are counted in determining whether an employer meets the 50-employee threshold necessary for the NY WARN Act to apply in the event of a mass layoff or plant closure at that site.
- Employers must include additional information in NY WARN Act notices, including information on severance packages or financial incentives if the employee remains and works until the effective date of the mass layoff, relocation, or employment loss; available dislocated worker assistance; and, if the planned action is expected to be temporary, the estimated duration.
- In May, the NY DOL launched a new WARN portal that employers can use to submit notice to the commissioner electronically. Separate notice must be transmitted to affected employees.
- The amended regulations clarify the procedure for requesting an exception to the 90-day notice requirement. Among other requirements, an employer must submit a statement to the commissioner of the NY DOL explaining the reason for the mass layoff or plant closing along with a description of the basis for an exception within 10 business days of the required notice being provided to the commissioner.

NY Bill Banning Noncompetes As we reported in June, the New York State Legislature passed a bill that would generally prohibit the use of noncompetes in the employment context. If enacted, the prohibition would apply to all employers and employees across the state, irrespective of an employee's compensation level. The bill is currently under consideration by Governor Hochul. If she signs the bill, it will take effect 30 days after her signing. ***NY DOL Model Lactation***

Accommodation Policy As we previously reported, effective June 7, New York employers must comply with the recent amendments to Section 206-c of the New York Labor Law, which expanded the protections provided to employees who are breastfeeding. The law requires all employers to provide lactation rooms or spaces that meet certain specifications for employees to express breast milk. The law also requires employers to adopt the model policy regarding workplace lactation rights published by the NY DOL. Employers must give employees the NY DOL's model lactation policy at the time of hire and annually thereafter. The law applies to all employers in New York state. ***NY Updates to Model Sexual Harassment Prevention Policy*** As we previously reported, the NY DOL and the New York State Division on Human Rights revised the model Sexual Harassment Prevention Policy and training materials. Key revisions to the model policy include adding language that explains that sexual harassment does not need to be severe or pervasive to be illegal, defining it as a form of "gender-based" discrimination, explaining gender diversity, adding a section on bystander intervention, and addressing harassment in the remote workplace. Notable revisions to the model training materials include instructing trainers to provide a warning that the "subject matter can be sensitive or difficult for some employees, including those that might have experienced harassment, discrimination or violence in the past" and adding a section addressing gender identity that includes defining "cisgender," "transgender," and "nonbinary." The model policy and training materials can be found here.

New York City Updates

NYC Automated Employment Decisions Tool Law Guidance Local Law 144, the Automated Employment Decisions Tool Law, went into effect on January 1 and enforcement of the law began on July 5. As we previously reported, Local Law 144 prohibits NYC employers and employment agencies from using automated employment decision tools without conducting a bias audit no more than one year prior to use of the tool that shows an absence of bias against a protected class of employees. On June 29, the NYC Department of Consumer and Worker Protection published FAQ guidance clarifying the requirements under the law, including notice requirements and complaint procedures. The guidance clarifies when the law applies, the definition of an employment decision, the definition of a bias audit, and when bias audits must be performed. The FAQ guidance can be found here. ***NYC Ban on Appearance-Based Discrimination*** As we reported in May, Mayor Eric Adams signed a law that will prohibit discrimination on the basis of a person's weight or height in employment, housing, and access to public accommodations. However, the law provides an exemption for employers that need to consider height or weight as bona fide occupational qualifications for employment decisions. The law will take effect on November 22.

Takeaways

New York state and NYC employers must be cognizant of these updates when they are laying off employees, rolling out noncompetition agreements, or implementing company-wide policies. Employers should review their policies to ensure compliance with the latest wave of legislation impacting their workforces.

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