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Keeping Up With New York's New Employment Laws in the New Year

A good New Year's resolution for employers is to make sure they know their obligations under New York State's and New York City's frequently changing employment laws. The state and the city have both enacted many new requirements for employers; some relate to the COVID-19 pandemic, and some cover a wide variety of other subjects. Here's a recap of some of the most significant developments for employers to ensure compliance in 2022.

New York State Updates

COVID-19 Sick Leave

As we previously reported here, the New York COVID-19 Sick Leave Law requires employers to provide certain paid and unpaid job-protected leave to employees who are subject to mandatory or precautionary orders of quarantine or isolation issued by an authorized governmental entity. This leave is in addition to the leave required under the New York Paid Sick Leave Law. The amount of required leave depends on an employer's net income and number of employees. Guidance from the New York Department of Labor requires that employers provide eligible employees up to three leaves under the COVID-19 Sick Leave Law, though employees seeking to take leave for the second or third time must quarantine as a result of a positive COVID-19 test. More information regarding COVID-19 sick leave can be found here.

COVID-19 Vaccination Leave

Employers must provide employees with up to four hours of paid leave to receive each injection of the COVID-19 vaccine. Therefore, employees who receive a two-dose vaccine are entitled to up to eight hours of paid time off. Employers must also provide up to four hours of paid leave for employees to receive COVID-19 booster shots. This law will remain in effect until December 31, 2022. More information regarding paid COVID-19 vaccination leave is available here.

NY HERO Act

As we previously reported here, in 2021, New York enacted the Health and Essential Rights Act (HERO Act) and designated COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to the public health under the HERO Act. That designation has been extended at least through January 15, 2022. As a result, all New York employers with at least one employee are required to implement the airborne infectious disease exposure prevention plan as mandated by the HERO Act. For more information on the HERO Act, click here.

Whistleblower Law

Legislation amending and expanding New York's whistleblower protection law takes effect January 26, 2022. The amendments provide greater protection for private-sector employees who report actions of their employer that they reasonably believe to be illegal or a danger to public health or safety. The statute's definition of "employee" expands to include former employees and independent contractors, and its definition of "prohibited retaliatory action" expands to include actions or threats to take actions that would adversely impact a former employee's current or future employment, and contact with or threats to make contact with immigration authorities. The amended statute protects employees even if they are acting outside the scope of their job duties. Moreover, employers are prohibited from taking adverse action against an employee who discloses or threatens to disclose an activity, policy or practice that the employee reasonably believes is in violation of a

law, rule or regulation, even if there is no actual violation. The statute of limitations for claims under this law has been extended from one year to two years. More details on this amendment can be found here.

Minimum Wage Increase

As we previously reported here, New York minimum wage rates are set to increase on December 31 of each year until the statewide rate is $15.00 per hour. The minimum wage in New York City reached $15.00 per hour as of December 31, 2019. The minimum wage for large fast-food employees everywhere in New York State also reached $15.00 per hour as of July 1, 2021. The minimum wage on Long Island (both Nassau and Suffolk counties) and in Westchester increased to $15.00 per hour on December 31, 2021. The minimum wage for the remainder of New York State, excluding fast-food companies, currently stands at $13.20 per hour. More information on the New York minimum wage can be found here.

The No Wage Theft Loophole Act

As we previously reported here, the No Wage Theft Loophole Act makes it easier for employees to bring claims against their employers for alleged unpaid wages. This statute closes a loophole that had impaired recovery of wages by employees under the New York Labor Law designed to ensure employers pay employees all wages owed. The statute states, "There is no exception to liability under this section for the unauthorized failure to pay wages, benefits, or wage supplements." The law took effect August 19, 2021. More information regarding the law can be found here.

Extortion or Coercion Related to Immigration Status

On October 9, 2021, Governor Hochul signed into law legislation that classifies certain threats to report a person's immigration status as extortion or coercion offenses. The law allows the prosecution of efforts to blackmail an individual by threatening to cause deportation proceedings. This law took effect November 8, 2021. More information on this legislation can be found here.

Legalization of Cannabis

On March 31, 2021, the New York Marijuana Regulation and Taxation Act (MRTA) legalized the recreational use of cannabis for adults age 21 and older in New York State. The MRTA prohibits employers from taking an adverse employment action against an applicant or employee for using cannabis outside of the workplace, outside of work hours, and without use of the employer's equipment or property. The New York Department of Labor's guidance regarding the legalization of adult cannabis use and its effect on the workplace can be found here.

Under the MRTA, employers may take an employment action related to an employee's use of cannabis if (1) the employer's action is required by state or federal statute or regulation, (2) the employer would lose a federal contract or federal funding, or (3) the employee manifests articulable symptoms of impairment while working that decrease or lessen the employee's performance of duties or interfere with the employer's obligation to provide a safe and healthy workplace. The guidance issued by the New York Department of Labor provides that employers cannot test for cannabis unless one of the above-mentioned grounds for taking employment action applies. The guidance also describes articulable symptoms of impairment and explains that observable signs of use that do not indicate impairment (such as the smell of marijuana) cannot, on their own, be cited as an articulable symptom of impairment.

Shared Work Program

Effective October 23, 2021, a New York statute allows employees facing potential layoff to petition their employers to apply to participate in a shared work program. A shared work program may enable employers to avoid layoffs by reducing employees' work schedules while the employees receive partial unemployment benefits. Either before a layoff or within 10 days after a layoff, a group of employees who reasonably expect to experience employment loss may submit to their employer a written request for a shared work program. Within seven days after receiving such a request, the employer must respond as to whether it will apply to participate in a shared work program and the reason for that decision. The text of the law can be found here.

Electronic Monitoring Notice

Effective May 7, 2022, any employer with a place of business in New York, before engaging in electronic monitoring of telephone, e-mail, or internet access or usage, must provide written notice to employees who are subject to the monitoring.

Employers must also post notice of the electronic monitoring in a conspicuous location that is readily accessible to employees subject to electronic monitoring. Click here for more information regarding the law.

Paid Family Leave Law Expanded to Allow Care for Siblings

An amendment to the New York Paid Family Leave Law signed by Governor Hochul in November 2021 adds siblings to the definition of "family member" for the purposes of paid family leave. Beginning on January 1, 2023, employees may take leave under the New York Paid Family Leave Law to care for a sibling, including biological, adopted, step- and half-siblings. More information on this amendment can be found here.

New York City Updates

Paid COVID-19 Child Vaccination Leave

On December 24, 2021, New York City enacted a law that amends the New York City Earned Safe and Sick Time Act by allowing employees who are parents to take paid time off to accompany their children when they receive COVID-19 vaccinations and to care for their children if they experience side effects from a COVID-19 vaccination. This law requires employers to provide employees with four hours of paid time off per vaccine injection for each child. This leave is in addition to other paid leave available under the New York City Earned Safe and Sick Time Act. The law is effective retroactively from November 2, 2021, until December 31, 2022. More information on this law can be found here.

Vaccine Mandate for Private Employers

Effective December 27, 2021, all private employers in New York City must require their workers to provide proof of COVID-19 vaccination. Workers who do not provide such proof cannot enter the workplace unless an exception due to a religious or medical accommodation applies or the worker enters the workplace for only a quick and limited purpose. If a worker provides proof of their first dose of the vaccine, the worker must provide proof of their second dose within 45 days. Employers must sign and post in a conspicuous location a one-page attestation affirming that they are complying with the order. More information on this mandate can be found here. A lawsuit challenging the constitutionality of New York City's private employer vaccine mandate is pending in federal court.

New York City Biometric Privacy Act

On July 9, 2021, New York City enacted a new ordinance that regulates how businesses may handle their customers' biometric identifier information, such as a retina or iris scan, a fingerprint or voiceprint, a scan of hand or face geometry, or any other identifying physiological or biological characteristic. Commercial establishments that use biometrics to identify their customers must post a clear and conspicuous sign notifying customers of the business's biometric collection. The law prohibits businesses from selling, leasing or profiting from biometric identifier information. Any person aggrieved by a violation of the law may pursue a private right of action. For more information on the law, click here.

New York City Fair Chance Act Amendments

Effective July 29, 2021, New York City employers are required to utilize a two-step background check process. This two-step process allows employers to consider an applicant's criminal history only after they have extended a conditional job offer to an applicant. If possible, employers utilizing background checks should have the consumer reporting agency bifurcate reports so that reports containing criminal history information are only released to the employer and considered by the employer after all noncriminal information has been reviewed and considered.

These amendments also apply to existing employees. Employers are required to consider a series of Fair Chance factors before taking any adverse action against existing employees based on an employee's pending arrest, pending criminal accusation or past criminal convictions. If an employer decides not to hire an applicant after review of the applicant's criminal history, or decides to take action against an existing employee, the employer must issue a Fair Chance Act Notice and allow the applicant or employee at least five business days to respond to the notice. Employers may place an employee on unpaid leave while conducting the Fair Chance process. However, employees may use paid leave if available. Guidance on the Fair Chance Act amendments can be found here.

Salary Ranges in Job Advertisements

Under a bill passed by the New York City Council but not yet signed into law by the mayor, New York City employers would be required to include the minimum and maximum starting salary for any advertised job, promotion or transfer opportunity. If enacted, the bill will take effect 120 days after it becomes law. More information on this bill can be found here.

Bottom Line

As these summaries show, New York's employment laws continue to evolve and change, and they will likely continue to do so in 2022. Employers are encouraged to review their policies and handbooks to make sure they are up to date and to contact employment counsel for assistance in complying with the new laws.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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