



Contracts, Discrimination, and Pay, Oh My! A Slew of Employment Protection Bills Head to New York Governor's Desk

Insights

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New York state lawmakers passed a flurry of employment-related bills in the final weeks of the legislative session. The bills – which now head to Governor Hochul's desk for consideration – aim to provide workers in the state with new workplace protections and impose new possible obligations on New York employers. Here's what you need to know about these potential new laws and their impact on six key areas.

1. Expanded Protections Against Discrimination

No Liquidated Damages in NDAs

Due to sweeping amendments to the state's anti-discrimination laws in 2018 and 2019, New York law currently permits nondisclosure provisions in settlements of discrimination claims only if confidentiality is the employee's (or other complainant's) preference and a robust process is followed, which includes a mandatory 21-day consideration period and seven-day opportunity to revoke. If enacted, amendments to this law will further restrict the use of nondisclosure provisions.

For example, a release of a claim will be unenforceable if the employee is required to pay liquidated damages or forfeit all or part of the consideration for the agreement for violating the nondisclosure provision. The release will also be deemed unenforceable if it requires the employee to state that they were not in fact subject to unlawful discrimination. The law will also prohibit liquidated damages with respect to violations of a non-disparagement clause. Violations will have steep consequences – they will render the release of claims unenforceable, effectively voiding the settlement agreement.

Notably, the statute includes a silver lining for employers and employees alike. Currently, much to the dismay of all parties, employees must take the full 21-day period to consider an NDA, meaning the employee cannot choose to sign before the 21-day period is up. The amendment passed by New York lawmakers revises the statutory language, giving employees *up to* 21 days to review the NDA, which will allow employees to sign the agreement on an earlier date if they so choose.

This law will take effect immediately upon Governor Hochul's signature, if she chooses to sign it, and will apply to agreements entered on or after the effective date. **[Editor's Note: Governor Hochul signed this into law on November 17.]**

Statute of Limitations

Currently, employees or other covered individuals alleging unlawful discriminatory employment practices in violation of the New York State Human Rights Law (NYSHRL) have one year to file a complaint with the New York State Division of Human Rights (DHR), the state agency that investigates and enforces the NYSHRL. Claims of sexual harassment in the workplace, however, can be filed within three years.

New York lawmakers passed a bill that would make the time to file a complaint with DHR three years for all claims of unlawful discriminatory practices, not just sexual harassment. If enacted, this law will take effect 90 days thereafter and will apply to all claims that arise on or after the effective date. **[Editor's Note: Governor Hochul signed this into law on November 17, and it takes effect on February 15, 2024.]**

Clean Slate Act

The Clean Slate Act will create a process to automatically seal most criminal convictions after a person is released from incarceration and completes a waiting period. If enacted, convictions for misdemeanor charges and driving while impaired will be automatically sealed three years after incarceration; felony convictions will be sealed after eight years.

In order to be eligible for sealing, the individual cannot have any subsequent criminal charges or convictions, and the law would not apply to the most serious crimes. Sex crimes and most Class A felonies (murder, first-degree kidnapping, and arson) are not eligible for automatic sealing.

Most employers would not be permitted to inquire about or have access to the sealed criminal records of any employee or applicant. Exceptions apply for certain facilities that hire people to care for children, people with disabilities, the elderly, or other vulnerable populations. If signed into law by Governor Hochul, the law will take effect one year thereafter. The courts will have three years to identify prior convictions eligible for automatic sealing under the law. **[Editor's Note: Governor Hochul signed this into law on November 16, and it will take effect November 16, 2024.]**

Employee Demographic Reporting

New York lawmakers passed a bill which, if enacted, will require certain employers to report to the state information about the gender, race, and ethnicity of their employees. Specifically, employers who are required to file an EEO-1 report with the EEOC (employers with at least 100 employees and federal contractors with at least 50 employees) will be required to file a copy of their EEO-1 report with the New York Secretary of State. The Secretary of State will then publish the data on the gender, race, and ethnicity of each company's employees on its website. If enacted, this requirement will take effect two years after it becomes a law. **[Editor's Note: Governor Hochul vetoed this proposed law on December 22, 2023.]**

Definition of Sexual Orientation

Currently, the NYSHRL definition of “sexual orientation” remains the same as its originally 2002 addition to the law: “The term ‘sexual orientation’ means heterosexuality, homosexuality, bisexuality, or asexuality, whether actual or perceived. However, nothing contained herein shall be construed to protect conduct otherwise proscribed by law.”

The disclaimer that the definition does not permit otherwise illegal conduct is rooted in a time when states had laws on the books criminalizing certain consensual sexual acts between adults. This [legislation](#), if enacted, will remove this outdated disclaimer that conflates homosexuality with criminality. The law will take effect immediately upon Governor Hochul’s signature. **[Editor’s Note: Governor Hochul signed this into law on June 25.]**

2. Captive Audience Meeting Ban

New York lawmakers passed [legislation](#) that would ban mandatory “anti-union” meetings in the workplace. If enacted, the law would prevent employers from requiring workers to attend meetings in which the company expresses its opinion concerning religious or political matters (as newly defined in the law), including the choice to join a labor organization.

Employers would not be able to retaliate against an employee who refuses to attend such a meeting or otherwise refuses to listen to or view communications about the employer’s opinion concerning religious or political matters. Employers would also be required to post a sign informing employees of their rights under Section 201-D of the New York Labor Law. If signed by Governor Hochul, this law will take effect immediately. **[Editor’s Note: Governor Hochul signed this into law on September 6.]**

3. Restrictive Covenants and Invention Assignments

Ban on Non-Compete Agreements

New York may prohibit non-compete agreements in short order if [legislation](#) passed by lawmakers is signed by Governor Hochul. A non-compete agreement, as defined by the recently passed law, is an agreement that prohibits or restricts an employee or other worker from obtaining employment after the conclusion of their employment. Employers would not be restricted from entering into and enforcing agreements that prohibit disclosure of trade secrets or confidential and proprietary client information.

Additionally, the bill does not ban non-solicitation agreements regarding clients of the employer that the covered individual learned about during employment. The law will take effect 30 days after it becomes law and would only apply to contracts entered into or modified on or after its effective date. Read more about this bill and its potential impacts [here](#). **[Editor’s Note: Governor Hochul vetoed this proposed law on December 22, 2023.]**

Ownership of Inventions

If signed by Governor Hochul, this law will nullify any agreement requiring an employee to assign their rights to an invention that the employee developed entirely on their own time, without using company equipment, supplies, facilities, or trade secret information, except for inventions that relate to the employer's business or result from any work performed by the employee for the employer. If enacted, the law will take effect immediately and seemingly will prohibit employers from mandating overly broad invention assignment agreements going forward and render any such existing agreements unenforceable. **[Editor's Note: Governor Hochul signed this into law on September 15.]**

4. Increased Wages, Protection Against Wage Theft and Unemployment Benefits Notice

Payment of Wages to Executive, Administrative, and Professional Employees

The New York Labor Law currently excludes executive, administrative, and professional employees who earn more than \$900 a week from certain wage protections. This threshold was last increased in 2007. Particularly in light of recent high inflation, New York lawmakers passed legislation updating this 16-year-old monetary threshold to \$1,300. If enacted, the law will take effect 180 days thereafter and will prompt the following changes:

- Executive, administrative, or professional employees who earn less than \$1,300 per week will need to be paid at least semi-monthly;
- Advance notice will be required to pay an executive, administrative, or professional employee via direct deposit, unless they earn more than \$1,300 per week; and
- Failure to pay wages within 30 days of the required payday to an executive, administrative, or professional employee who earns less than \$1,300 per week will constitute a misdemeanor.

Note that the \$1,300 threshold is currently *higher* than the state salary threshold for executive and administrative employees to be classified as exempt (currently \$1,125 for NYC and Nassau, Suffolk and Westchester counties and \$1,064.25 for the remainder of the state). This means employers may have exempt employees to whom these wage payment laws would apply. **[Editor's Note: Governor Hochul signed this into law on September 15, and it will take effect March 13, 2024.]**

Increased Criminal Penalty for Wage Theft

The consequences for wage theft are getting weightier. If enacted, legislation passed by the state legislature would add wage theft to the definition of criminal larceny. Wage theft, as defined by the bill, occurs when a person hires an individual to perform services, the individual performs the services, but the person does not pay wages at the minimum wage rate or overtime or the promised wage for the work performed.

Employers, who are already at risk of a misdemeanor (and potential imprisonment of up to a year if convicted) for stealing employee wages for the first violation, would face greater sanction under the penal code if this law is enacted. In New York, larceny comes in two types – petit (a misdemeanor) and grand (a felony). Grand larceny kicks in at only \$1,000. If signed by Governor Hochul, the law would take effect immediately. **[Editor's Note: Governor Hochul signed this into law on September 6.]**

Protections for Freelance Workers

Following Governor Hochul's veto of a similar law last year, New York lawmakers again are trying to enact payment protections for freelance workers. The statute, if enacted, will create a statewide Freelance Isn't Free Act, which will provide freelance workers with the right to a written contract, timely/full payment, and protection from retaliation.

Specifically, it requires a hiring party retaining a freelancer for at least \$800 of services to provide a detailed written contract and timely and full payment. The law also includes anti-retaliation provisions, as well as the right to bring a claim if obligations are not met. Finally, the law will provide an administrative process for disputes between freelancers and hiring parties. The law will take effect 180 days following Governor Hochul's signature, if she chooses to sign the statute into law. **[Editor's Note: Governor Hochul signed this into law on November 22, and it will take effect May 20, 2024.]**

5. Expanded Employee Rights

Access to Personal Electronic Media Accounts

If enacted, this law will prohibit employers from requesting or requiring that an employee or applicant disclose their username or password for social media accounts, blogs, messaging sites, and other similar electronic accounts. It would also prohibit employers from requiring employees or applicants to access these personal accounts in the employer's presence or otherwise reproduce the content to the employer.

The law excludes personal accounts used for business purposes, so long as the employee was provided with advance notice of the employer's right to require access to such information. Additionally, employers will not be restricted from viewing information in the public domain that can be accessed without log-in information. If signed by Governor Hochul, the law will take effect 180 days afterwards. **[Editor's Note: Governor Hochul signed this into law on September 14, and it will take effect March 12, 2024.]**

Unemployment Benefits Notice

This bill seeks to codify current regulations that require employers to notify workers of their potential eligibility for unemployment assistance benefits when they lose their job or have their

hours reduced. The statute will require employers to provide a written notice that informs the impacted employee of their right to file an application for unemployment benefits. This requirement will take effect 60 days after enactment, if signed by Governor Hochul. **[Editor's Note: Governor Hochul signed this into law on September 14, and it will take effect November 13, 2023.]**

6. Emergency Alert System

New York lawmakers passed legislation that would create an emergency alert notification system. If enacted, employers can voluntarily choose to register for emergency alerts, including information related to the health and safety of workers. It will take effect 30 days after Governor Hochul signs it into law. **[Editor's Note: Governor Hochul signed this into law on September 15, and it will take effect October 15, 2023.]**

Conclusion

New York employers need to pay attention to these legislative developments in the coming weeks and months. Governor Hochul is generally supportive of workplace protection laws, but has vetoed certain measures in the past, like last year's Freelance Isn't Free legislation, and required substantial revision in order to sign other bills passed by the legislature.

We will continue to monitor developments on the legislation, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox. If you have any questions on how to comply with any of these potential new laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our New York City office.

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