

2022 New York Roundup: State, City Legislative and Related Developments

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In 2022, New York State and New York City enacted many new workplace laws, creating additional obligations for employers.

New York State Legal Updates

New York State and City COVID-19 Requirements

In 2022, several COVID-19-related laws and mandates were repealed in New York State and City, but other employer obligations remain in effect.

In New York City, the COVID-19 vaccination mandate was lifted for private-sector employees on November 1, 2022. Although the City eliminated the vaccine mandate for the private sector, Mayor Eric Adams and the City Department of Health and Hygiene commissioner encouraged employers to maintain vaccine policies in place.

The New York City Child Vaccination Leave law, which afforded employees paid time off for “COVID-19 child vaccination time” (*i.e.*, leave to vaccinate their children), also expired and was thus repealed on December 31, 2022.

The New York State Paid Vaccination Leave law is still in effect and continues to require employers to provide their employees up to four hours of paid leave per COVID-19 vaccination. In June 2022, upon approval of Governor Kathy Hochul, the law was extended through December 31, 2023.

The New York State COVID-19 Sick Leave law that requires employers to provide job-protected leave to employees who take mandatory or precautionary leave to quarantine or isolate due to COVID-19 is also still in effect. The length of leave and whether it is paid depends on the size of the employer’s workforce and the employer’s net annual income. Ambiguity remains as to the permissible number of leave occurrences because of the competing guidance published by the New York Department of Labor (NY DOL). For employees who exhaust all available leave under this law, the New York State Paid Sick Leave and the New York City Earned Safe and Sick Leave remain available for use.

New York State HERO Act

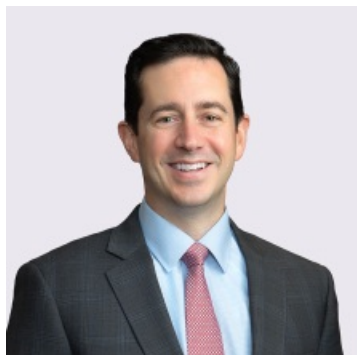
The New York State commissioner of health rescinded the designation of COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health under the HERO Act” (Health and Essential Rights Act) on March 17, 2022. While this change in designation means private-sector employers are no longer required to *implement* their workforce safety plans, based on the HERO Act statutory language and related agency guidance, employers must still comply with other obligations. Although employers are no longer required to implement an airborne Infectious Disease Exposure Prevention Plan (IDEPP) at this time, they

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Related Services

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must:

- Keep an IDEPP in place;
- Provide employees and new hires written notice of the IDEPP;
- Include a copy of the IDEPP in employee handbooks (if one exists); and
- Post a copy of the IDEPP in a visible prominent location in the worksite.

Along with IDEPP obligations, employees have the right to create a joint employer and employee Workplace Safety Committee to address health and safety issues. Effective December 28, 2022, employers must recognize an employee request to establish a Workplace Safety Committee within five business days of the request. Non-compliance penalties remain in effect, including a penalty of at least \$50 a day for failure to adopt an IDEPP. The HERO Act also permits employees to bring a civil action against an employer for non-compliance with the law's requirements.

Minimum Wage, Tip Credit, Salary Threshold Increases

On December 31, 2022, the New York State minimum wage increased from \$13.20 an hour to \$14.20 an hour for workers in Upstate New York (*i.e.*, excluding New York City, Long Island, and Westchester County). The Downstate minimum wage will remain \$15 an hour. As a result, the hourly cash wage and tip credit for Upstate New Yorkers also increased on December 31, 2022. The cash wage for tipped service employees increased from \$11.00 to \$11.85, and the tip credit from \$2.20 to \$2.35. The cash wage for tipped food service workers also increased from \$8.80 to \$9.45, and the tip credit from \$4.40 to \$4.75.

An increase of the salary basis threshold for exempt employees under the executive and administrative exemptions has been proposed, but not yet finalized for 2023. The proposal would increase the salary threshold for Upstate employees from \$990 per week to \$1064.25 per week (*i.e.*, \$55,341 annually). There is no proposed increase to the salary threshold for exempt employees under the executive and administrative exemptions in New York City, Long Island, or Westchester County, so the threshold will remain \$1,125 per week (\$58,500 annually).

Pay Transparency Law

While pay transparency obligations are in effect for New York City employers as of November 1, 2022 (see more below), effective September 17, 2023, covered New York State employers will have pay transparency obligations in job advertisements. Employers (and employment agencies) with at least four employees must include in any advertisement for a job, promotion, or transfer opportunity the minimum and maximum annual salary or hourly range of compensation the employer in good faith believes to be accurate at the time of the posting. The state law includes an anti-retaliation provision, prohibiting employers from refusing to interview, hire, or promote an applicant or current employee for exercising their rights under the law. The state law also requires employers to maintain records to show compliance with the statute, such as the history of compensation ranges for each job, promotion, or transfer opportunity, and the job descriptions for such positions, if they exist.

Paid Family Leave

Effective January 1, 2023, the New York Paid Family Leave Policy was amended to

expand the definition of “family member” to include biological, adopted, half-, and step-siblings. Thus, employees may use Paid Family Leave (*i.e.*, up to 12 weeks leave of absence from work) to care for siblings with a serious health condition. Additionally, the maximum weekly benefit amount for 2023 (which is tied to the state average weekly wage) is \$1,131.08 (\$62.72 more than the maximum weekly benefit for 2022).

Electronic Posting Requirement

Effective December 16, 2022, employers are required to make available electronic copies of all mandatory workplace postings, including all materials that are physically posted in the workplace under applicable federal, state, and local laws. Electronic copies of the postings must be provided to employees on the employer’s website or by email. Employers also must inform employees that the mandatory physical postings are available electronically.

Increased Protections for Lawful Absences

Effective February 19, 2023, employers will be prohibited from penalizing, discriminating, or retaliating against employees for taking leave protected by federal, state, or local law. Such unlawful conduct includes “assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action ... [including] failure to receive a promotion or loss of pay.” *See* N.Y. Lab. Law § 215(1)(a) (Consol. 2023). Employees have a private right of action against their employers for non-compliance and may recover backpay, liquidated damages, and costs and attorneys’ fees. Thus, employers should review absence policies to ensure employees are not disciplined for statutorily protected absences under laws such as New York Paid Sick Leave and New York Paid Family Leave.

Deductions Extension

The New York Wage Deduction Law sets forth permissible deductions from wages for three years, until the law expires, unless the law is renewed before that date. The law was renewed in 2021 and will remain in effect until November 6, 2024. Employers should refer to Section 193 of the New York Labor Law to determine the law’s applicability to their employees.

Reproductive Rights Policy

Effective November 8, 2019, employers are prohibited from accessing an employee’s personal information about their reproductive health decision making, including their “decision to use or access a particular drug, device or medical service without the employee’s prior informed affirmative written consent.” *See* N.Y. Lab. Law § 203-e. Further, employers may not discriminate or retaliate against employees based on their reproductive health decision making or require an employee to sign a waiver or other document purporting to deny the employee the right to make their own reproductive health care decisions.

The law requires employers to include a notice of employee rights and remedies under this law in their personnel policy handbook (if one exists).

However, as of March 29, 2022, following a New York federal court's issuance of a permanent injunction prohibiting the state from enforcing the law's notice provision, employers are no longer required to include the notice in policy handbooks.

NYS DHR Hotline and Sexual Harassment Policies

Effective July 14, 2022, the New York State Division of Human Rights (NYS DHR) established a toll-free, confidential hotline to aid and counsel individuals alleging workplace sexual harassment. The NYSDHR must operate this hotline during regular business hours and distribute information about the hotline to increase public awareness, including working with the NY DOL to ensure that information about the hotline is in any mandated workplace postings and sexual harassment prevention trainings.

In January 2023, the NYSDHR released a new model sexual harassment prevention policy that incorporates the hotline information. However, the model policy is not yet in effect and is subject to a public comment period (ending on February 11, 2023).

Retaliation Involving Personnel Files

Effective March 16, 2022, unless the disclosure of the personnel files is made during litigation or administrative proceedings, disclosing an employee's personnel files because they oppose or complain about any unlawful employment practice constitutes unlawful retaliation.

Amendments to the NYSHRL

Effective May 13, 2022, the New York State Human Rights Law (NYSHRL) was amended to prohibit employment discrimination against victims of domestic violence. Effective December 23, 2022, the NYSHRL also prohibits employment discrimination based on an individual's citizenship or immigration status, but it does not preclude employers from verifying an individual's citizenship or immigration status where it is required by law.

Labor Law Amendments Affecting Nurses

Effective February 28, 2023, nurses cannot be required to work more than their regularly scheduled work hours, subject to enumerated exceptions related to patient health and safety. If, after investigation, the NY DOL commissioner determines that an employer is non-compliant, the commissioner must issue the employer an order directing compliance with law and describing the alleged violation. The NY DOL also may impose fines on violating employers, up to \$1,000 or \$3,000 per violation, based on the number of violations. Nurses will be entitled to an additional 15 percent of all overtime payment received because of the law's violation.

Warehouse Worker Protection Act

The Warehouse Worker Protection Act (WWPA) requires employers to provide warehouse distribution center employees a written description of the work speed quotas to which they are subject. The description must include how many tasks are

to be performed or materials to be produced within the defined period and any adverse employment action that may result from failing to meet the quota. Each time the quota changes, employers must provide employees an updated description within two business days. The WWPA prohibits employers from taking adverse action against employees for failing to meet undisclosed quotas or quotas that prevent employees from taking meal breaks or rest periods.

The WWPA also contains recordkeeping and anti-retaliation provisions, under which there is a presumption of retaliation if an employer takes an adverse action against an employee within 90 days of the employee engaging in protected activity. The WWPA applies to employers with at least 100 employees at a single warehouse distribution center or at least 500 employees at one or more warehouse distribution centers in New York State.

The law goes into effect February 19, 2023.

Complying with State and Federal Accommodations for Nursing Employees

Effective June 7, 2023, all public and private employers in New York will need to provide nursing employees reasonable break time to express breastmilk at work for up to three years following childbirth. Upon request of a lactating employee, employers must designate a room or other location to express breastmilk. Such location must be close to the work area, well lit, shielded from view, and free from intrusion. Absent undue hardship on the employer due to significant difficulty or expense, the room or location must have a chair, a working surface, nearby access to clean running water, and an electrical outlet. The room or location provided by the employer must not be a restroom or toilet stall. Employers also must provide a written policy developed by the NY DOL commissioner to employees upon hire and annually thereafter, as well as to employees who return to work after childbirth.

At the federal level, the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP for Nursing Mothers Act) was adopted on December 29, 2022. The [PUMP for Nursing Mothers Act](#) expands existing employer obligations under the Fair Labor Standards Act to provide an employee with reasonable break time to express breastmilk for one year after childbirth. The federal requirements are no longer limited to non-exempt employees. The employer obligation to provide a place to express milk shielded from view and intrusion (other than a bathroom) continues. With some exceptions, the law requires employees to provide notice of an alleged violation to the employer and give the employer a 10-day cure period before suing.

Employers with fewer than 50 employees nationally can still rely on the small employer exemption, if compliance with the law would cause undue hardship because of significant difficulty or expense.

Adult Survivors Act and Employer Liability

The Adult Survivors Act went into effect May 24, 2022. Starting November 24, 2022, the law allows adult survivors (*i.e.*, 18 or older) of specific sexual offenses one year to file civil lawsuits in New York against alleged abusers, even if the claims would otherwise be barred by the applicable statute of limitations.

The law permits claims against both intentional and negligent acts, thus employers

may be held vicariously liable for the conduct of their current or former employees no matter when the alleged abuse occurred.

Proposed Minimum Wage Increase

On January 10, 2023, during her [State of the State address](#), Governor Hochul announced a plan to raise the state hourly minimum wage annually by indexing the minimum wage to inflation. Thus, under this plan, the state minimum wage would increase annually based on the rate of inflation “determined by the Consumer Price Index for Wage Earners for the Northeast Region.” Annual increases would be capped, however, “to ensure that no single-year increase would threaten employment.” The proposal would also provide an “‘off-ramp’ in the event of certain economic or budget conditions.”

Weapons Signage

In response to the U.S. Supreme Court’s ruling in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S.Ct. 2111, which made it simpler for New Yorkers to obtain a license to carry firearms in public, beginning September 1, 2022, individuals are prohibited from carrying firearms into private businesses, unless the business owner displays “clear and conspicuously signage” stating that the carrying of firearms, rifles, or shotguns on their property is permitted. Business owners may download a pre-designed sign to display on their property available on the [New York State Gun Safety webpage](#).

Additional New York City-Specific Updates

Pay Transparency Law

Effective November 1, 2022, covered New York City employers must comply with the New York City pay transparency law. This law requires disclosure of salary ranges in advertisements. An employer is covered if it has at least one employee who works in the City (and at least four employees in total) or, for domestic workers, just one employee in the City. The law applies to any positions that can or will be performed, in whole or in part, in New York City (including remote jobs). Unlike the parallel state law, New York City does *not* have recordkeeping or job description posting requirements.

AI Hiring Law

New York City Local Law 144 was passed in December 2021, prohibiting employers from using artificial intelligence and other defined automated employment decision tools (AEDTs) to screen applicants and employees for employment decisions, unless the employer satisfies several requirements, including subjecting the tool to a bias audit. Furthermore, a summary of the bias audit’s response must be publicly available on the employer’s website, employment candidates must be notified at least 10 business days in advance that AEDTs will be used to evaluate them, and candidates must be allowed to request an alternative selection process or accommodation. If this information is not made publicly available, it must be made available within 30 days of a candidate’s written request. Violations may result in fines up to \$500 for the first offense and up to \$1,500 for each subsequent violation.

Although the law was supposed to go into effect on January 1, 2023, enforcement is delayed until April 15, 2023, so the Department of Consumer and Worker Protection could conduct another public hearing (on January 23, 2023) to address the concerns and questions raised about the law's implementation.

Earned Safe and Sick Time Act

Under New York City's Earned Safe and Sick Time Act (ESSTA), employees may use safe and sick leave for various reasons, including to care for themselves or a family member and to take safety measures if the employee or a family member may be the victim of domestic violence, unwanted sexual contact, stalking, or human trafficking. Depending on their size and net annual income, employers must provide their employees up to 40 hours or 56 hours of paid leave each year. While the law was amended by Local Law 97 of 2020 to better align with the state law that went into effect in September 2020, the rules related to the ESSTA have yet to be updated to reflect the developments in the law.

In October 2022, the Department of Consumer and Worker Protection proposed amendments to bring the rules into alignment with the amendments made by Local Law 97 of 2020, including to account for the increased amount of paid sick leave available for certain employees, elimination of the 120-day waiting period to use sick leave, and clarifying several enforcement provisions.

Just Cause Termination Bill

The New York City Council introduced a just cause termination bill in December 2022 that, if enacted, would prohibit employers from discharging employees without reason. Under the bill, employees in New York City would be legally protected from termination unless their employer could show misconduct, unsatisfactory performance, or a bona fide economic need to eliminate the employee's position.

Additionally, the bill would prohibit the use of electronic monitoring in disciplining or discharging employees, unless there is no other practical means of assessing employee performance, the least invasive form of electronic monitoring is used, and the employer previously notified employees about the monitoring, as outlined in the bill.

Further, the City comptroller would be permitted to initiate actions on behalf of employees, even if the employees are subject to a valid, enforceable arbitration agreement.

In July 2021, New York City fast-food workers were extended the right to just cause termination. If enacted, the bill would amend and expand worker protections under this existing law.

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If you have questions about your compliance obligations under applicable federal, New York State, and New York City law, please reach out to the Jackson Lewis attorney with whom you regularly work.

(Law graduate Anahi Tapia contributed significantly to this article.)

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