

More New York Legislative Enactments

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New York State Governor Kathy Hochul continues to sign legislation emanating from a busy legislative session, including legislation rendering contractual assignment-of-inventions provisions unenforceable, prohibiting employers from accessing employee social media account log-in information, requiring written notice of unemployment insurance benefits, and modifying the New York Labor Law definition of “clerical and other worker.”

These enactments are summarized below. Further information regarding other enacted legislation and legislation that is pending the governor’s review can be found at [New York Enacts Laws on Captive Audience Meetings, Wage Theft, Gender Identity](#) and [2023 New York State Legislature Concludes with Flurry of Activity Pertinent to New York Employers](#).

Assignment of Inventions

Governor Hochul signed a [bill](#) amending the Labor Law to add Section 203-f governing the assignment of inventions. The law (S5640/A5295) went into effect immediately upon signing.

The new law provides that employment provisions that require an employee to assign certain inventions that are made on the employee’s own time and that do not use the employer’s equipment, supplies, facilities, or trade secret information are unenforceable.

The new law creates two exemptions for inventions that: (a) relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or (b) result from any work performed by the employee for the employer.

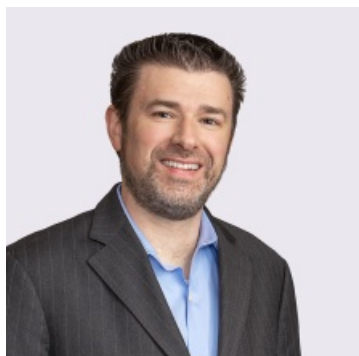
For more information on this legislation, see [New York Enacts Law Limiting Employee Assignment of Inventions](#).

Social Media Accounts

Governor Hochul also signed a [bill](#) (S2518/A836) that adds Section 201-i to the Labor Law and prohibits employers from requesting or requiring username, login information, and passwords, or personal accounts as a condition of hiring, a condition of employment, or for use in a disciplinary action. This legislation mirrors enactments in many other jurisdictions.

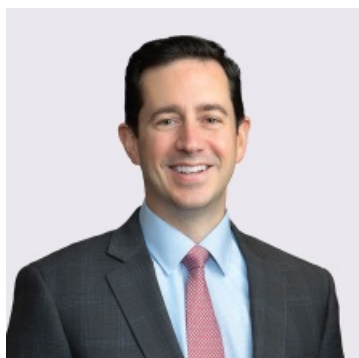
The new law prohibits employers from requesting, requiring, or coercing employees and job applicants to: (i) disclose their username, password, or other log-in information used to access their personal account through an electronic communications device; (ii) access their personal account in the employer’s presence; or (iii) reproduce photos, videos, or other information contained in their personal account through means prohibited under the law.

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Wage and Hour

A carve-out exists for employers to request or require employees to disclose log-in information for accounts that were provided by the employer and that are used for business purposes, so long as the employee was provided notice of the employer's right to request such information. There is an exemption for employers who request or require an employee to disclose log-in information for an account known to the employer to be used for business purposes.

The new law also permits employers to access an "electronic communications device" paid for, in whole or in part, by the employer and when payment for the device was conditioned on the employer retaining the right to access the device, and the employee was given prior notice to such conditions. However, this exception does not permit an employer to access personal accounts on any such device.

The law will take effect on March 12, 2024, 180 days after Governor Hochul's signature on September 14, 2023.

Notice of Eligibility for Unemployment

Governor Hochul signed a [bill](#) (S4878/A398) mandating that employers provide separated employees, among others, written notice of eligibility for unemployment benefits. The law, which amends Section 590 of the Labor Law and formalizes existing Department of Labor guidance, requires employers to provide written notice of the right to file for unemployment benefits to any employee whose employment has been terminated or whose scheduled working hours have been reduced. The notice must be provided no more than five working days after the termination date or reduction of their working hours. In the same five-working-day period, Section 195(6) of the Labor Law still requires an employer to "notify any employee terminated from employment, in writing, of the exact date of such termination as well as the exact date of cancellation of employee benefits connected with such termination."

The law will take effect on November 13, 2023, 60 days after Governor Hochul's signature.

Modification to the Definition of Clerical Worker

Governor Hochul signed a [bill](#) (S5572/A6796) amending the Labor Law's definition of "clerical and other worker." This legislation modifies the minimum weekly earnings that a bona fide executive, administrative, or professional employee must receive to be excluded from the category of "clerical and other worker," increasing that amount from \$900 to \$1,300 per week. Only employees who meet the revised exclusion can be subject to mandatory direct deposit. Additionally, those who meet the revised exclusion threshold are excluded from the provisions of the Labor Law providing the right to seek recovery of "benefits or wage supplements" (which include, but are not limited to, reimbursement for expenses; health, welfare, and retirement benefits; and vacation, separation, or holiday pay). The Department of Labor's current wage claim form also excludes employees who meet this definition from seeking recovery for any wage claims through the state.

The law will take effect on March 13, 2024, 180 days after Governor Hochul's signature on September 15, 2023.

If you have any questions or need advice regarding any of these legislative developments or any other workplace law issues, please do not hesitate to contact a Jackson Lewis attorney.

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