
Hughes Hubbard & Reed

New York Employment Law Updates for the New Year (2024)

Client Advisories

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January 11, 2024 – A series of recent employment-related statutes and regulations in New York will impact employers in 2024. This alert provides an overview of some of the recent key developments, focusing on those that may require revisions to employer policies and agreements. We also provide practical guidance for implementing and complying with these changes.

1. Social Media Protections for Employees & Applicants (NYS)

Effective Date: March 12, 2024

New York State is expanding the protections afforded to employees and applicants for employment related to their personal social media accounts.

Starting March 12, 2024, employers are prohibited from asking employees or applicants to: (1) provide login details for “personal accounts,”¹ (2) access those accounts in the employer’s presence, or (3) reproduce information from those accounts.

Certain exceptions and limitations apply, most notably:

- Employers may require an employee to disclose access information for nonpersonal accounts that provide access to the employer’s internal computer or information systems.
- Employers may require employees to disclose access information for an account provided by the employer that is used for business purposes (“Employer Accounts”), or an account known to an employer to be used for business purposes.
- Employers may access electronic communications devices paid for in whole or in part by the employer (“Employer Devices”) (but not any personal accounts on such devices). Electronic communications devices include computers, laptops, phones, *etc.*
- Employers may take action necessary to comply with a court order; screen employees or applicants prior to hiring and monitor or retain employee-communications so as to comply with federal law or requirements of a self-regulatory body such as FINRA; and restrict employee access to certain websites on the employer network and on Employer Devices.

Some of these exceptions require prior notification to, and/or explicit agreements by, the employees. 2023 N.Y. SB S2518A; N.Y. Lab. Law § 201-l.

Employer Action

- Update your social media policies (at least insofar as they impact employees working in or assigned to New York) to comply with the above changes in the law.
- Revisit and revise, as necessary, your hiring and social media access and monitoring policies and procedures to ensure against impermissible access or prohibited requests for access.
- Check whether covered employees have been given notice of your right to request access information for Employer Accounts, and whether those employees explicitly agreed to your right to access or restrict access on Employer Devices. If not, you should provide the necessary notifications and obtain the necessary consents before March 12, 2024.

2. Workers' Bill of Rights (NYC)

Effective Date: January 2, 2024; Posting by July 1, 2024

By March 1, 2024, a group of New York City agencies is required to publish a Workers' Bill of Rights containing information about rights under federal, state and local laws that apply, regardless of immigration status, to employees, prospective employees and independent contractors in the City, as well as information regarding the rights to organize a union.

By July 1, 2024, employers must:

- provide all employees, a copy of the Workers' Bill of Rights (and thereafter to new employees on their first day of work);
- conspicuously post the bill at the workplace, and for businesses operating online or via a mobile app, also post the bill online or on their mobile apps.

N.Y.C. Local Law No. 2023/161; N.Y.C. Admin. Code §§ 32-101 to 32-102.

Employer Action

- Once the City publishes the Bill of Rights, by July 1, 2024, provide all employees who work in the City or are assigned to the City (regardless of where they are located) with a copy of the bill, and post a copy of it at a conspicuous location in the office, as well as online and on any mobile applications you use for business.
- Update your orientation materials so covered employees hired after the effective date obtain a copy of the bill when you hire them.

3. Freelance Isn't Free Act (NYS)

Effective Date: May 19, 2024

As of May 19, 2024, freelance workers in the State will obtain certain labor protections under state law similar to those already provided to NYC freelance workers under city law.

Freelance workers ²paid \$800 or more for their services are now entitled to a written contract, timely payment of compensation in full, complaint procedures, and protections against unlawful discrimination, harassment, retaliation, intimidation, discipline or denial of opportunity. The written contract must include, at a minimum, (1) the parties' names and mailing addresses; (2) itemization and value of services to be rendered; (3) the rate, method and date of

compensation (or how the date will be determined); and (4) the date by which the freelance worker must provide a list of services rendered to be compensated. [2023 N.Y. SB 5026](#); [N.Y. Lab. Law § 191-d](#).

Employer Action: If you regularly engage freelance workers in New York, prepare a template contract including the necessary provisions.

4. Certain Settlement Provisions Prohibited (NYS)

Effective Date: November 17, 2023

Effective as of November 17, 2023, New York expanded the restrictions on confidentiality provisions included in agreements resolving claims of unlawful “discrimination, harassment or retaliation.” Such agreements can no longer include a confidentiality provision that would “prevent the disclosure of the underlying facts and circumstances” of the claim unless confidentiality is at the complainant’s preference, and (1) the term is provided in writing to all parties in plain English (and, if applicable, the complainant’s primary language); (2) the complainant has up to 21 days to consider the term or condition; (3) the “complainant’s preference” is memorialized in a signed agreement; and (4) the complainant has 7 days to revoke the agreement. [2023 N.Y. SB 4516](#); [N.Y. Gen. Ob. Law § 5-336](#).

The amendments change restrictions on confidentiality in the following significant ways:

- The restrictions now also apply to claims of unlawful harassment and retaliation, not just discrimination. The restrictions also extend to independent contractors.
- The complainant can now agree to confidentiality in less than 21 days.
- No release of any claim which involves allegations of unlawful discrimination, harassment or retaliation, is enforceable if as part of resolving the claim, the complainant is required to (1) pay liquidated damages, or forfeit any portion of the consideration, for violating a non-disclosure or non-disparagement clause, or (2) disclaim the alleged discrimination, harassment or retaliation.

Employer Action

- Ensure that settlement agreements subject to New York law, involving claims or allegations of unlawful discrimination, harassment or retaliation, comply with these legislative changes.
- Update any relevant template settlement agreements to account for them. ³

5. No Height and Weight Discrimination (NYC)

Effective Date: November 22, 2023

New York City Human Rights Law now bans discrimination on the basis of (actual or perceived) height and weight, except in limited circumstances where such differential treatment is otherwise required by law or might be necessary given the nature of the job. This restriction applies to employers with four or more employees. [N.Y.C. Local Law No. 2023/061](#); [N.Y.C. Admin. Code § 8-107](#).

Employer Action

- Ensure that you are not impermissibly considering height or weight in any employment-related decisions.
- Review and refresh your anti-discrimination and anti-retaliation policies to add height and weight as protected characteristics under New York City law.

6. Notice of Unemployment Benefits at Separation (NYS)

Effective Date: November 13, 2023

New York State Labor Law now requires employers to inform each employee, in writing, of their right to file an application for unemployment benefits with the New York State Department of Labor, at the time of their separation from employment. The separation from employment includes permanent, temporary or indefinite separations from employment, reductions in hours, and any other interruption of employment resulting in total or partial unemployment. [2023 N.Y. SB S4878A](#); [N.Y. Lab. Law § 590\(2\)](#).

Employer Action: Update your separation, furlough and reduction-in-hour procedures to include the necessary, written notification to employees (who might be covered by NY employment benefits) regarding the right to file an application for such benefits.

Before signing off, a note regarding overtime thresholds...

We remind employers that the annual changes to New York's weekly earnings thresholds for overtime exemptions for executive, administrative and professional employees have gone into effect. As of January 1, 2024, those thresholds increased from \$1,125 to \$1,200 for New York City and Westchester, Nassau and Suffolk Counties, and from \$1,064.25 to \$1,124.20 for the rest of New York State. [2023 N.Y. SB S4006C](#); [12 NYCRR § 142-2.14\(c\)\(4\)](#).

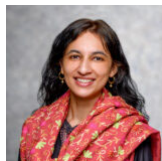
Employer Action: Check and confirm that your overtime exemptions, insofar as New York law applies, comply with these increased salary thresholds.

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1. The new legislation defines a "personal account" as "an account or profile on an electronic medium where users may create, share, and view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, instant messages, or internet website profiles or locations that is used by an employee or an applicant exclusively for personal purposes." N.Y. Lab. Law § 201-l(d). ↵
 2. "Freelance worker" is defined as "any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days." N.Y. Lab. Law § 191-d(c). The definition excludes construction contractors, licensed medical professionals, sales representatives under [Labor Law § 191-a](#), or attorneys or any person engaged in the practice of law. Id. ↵
 3. CPLR 5003-b, which applies to settlements of court cases to which New York state law applies, covers only claims of discrimination and continues to require a 21-day mandatory waiting period before a confidentiality-preference agreement may be signed. Unless the legislature resolves this gap between CPLR 5003-b and Gen. Ob. Law § 5-336, we suggest that in settling court cases to which both laws might apply, employers comply with the more conservative or employer-restrictive provisions of each law. ↵

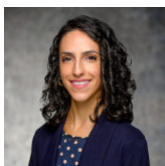
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