Engage PEO Client

New York Updates: SHIELD Act; NYC Sexual Harassment Prevention Training; and "Ban the Box" Law – Suffolk County

The following is an overview of three recent employment law updates for New York: The NY State SHIELD Act; the NY City sexual harassment prevention training requirement; and a new "Ban the Box" Law for Suffolk County.

New York State SHIELD Act

The **New York Stop Hacks and Improve Electronic Data Security Act** (the "**SHIELD Act**") went into effect on March 21, 2020. The SHIELD Act requires employers in possession of New York residents' private information to "develop, implement, and maintain reasonable safeguards to protect the security, confidentiality and integrity of private information." The Act also expands the definition of "breach." "**Breach**" now includes **unauthorized access of private information**, rather than solely unauthorized acquisition of such information.

This will affect the human resources functions of all employers since they retain private information in personnel records in the normal course of business. Private information now includes—in addition to a **Social Security number**, a **driver's license number**, credit or debit card number, or **financial account number** with any required security code—the following:

- **Biometric information.**
- **E-mail addresses and corresponding passwords or security questions and answers.**
- **Financial account number without a required security code if an unauthorized person, nonetheless, could access the account.**

The addition of biometric information is significant for employers, as many now rely on biometric time clocks to record employee time.

In terms of the new data security requirements created by the SHIELD Act, the law requires that:

- Any person or business that owns or licenses computerized data that includes private information of a resident of New York shall develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the private information including, but not limited to, disposal of data.
- Any business other than a small business will be deemed to comply with the new law if it is a regulated entity already in compliance with a host of specific security and privacy safeguards such as HIPAA and the Health Information Technology for Economic and Clinical Health Act (HITECH), Cybersecurity Requirements for Financial Services established by New York's Department of Financial Services or other data security laws and regulations.

Small businesses—those with fewer than 50 employees or less than $3 million in gross annual revenue—need to ensure that their **data security safeguards are appropriate for the size and complexity of the small business**, the nature and scope of the small businesses' activities, and the sensitivity of the personal information the small business handles.

Engage recommends that its clients review their internal HR operations to ensure are compliant with the Act.

New York City Sexual Harassment Prevention Training

Employers in New York City are to keep in mind that all employers with 15 or more employees require annual sexual harassment training for all employees. As noted in our **previous Alerts**, the deadline by which all NYC employers must have had their initial annual training for their employees was April 1, 2020. Therefore, any employers that are still not in compliance are strongly encouraged to have their employees trained as soon as possible.

Last year, Engage made available a combined webinar which **will meet the compliance requirements for both New York City and New York State,** as well as include general discrimination and harassment information**.** This **webinar is available here. New York State offers a sexual harassment training webinar located through this link.** The **New York City Commission on Human Rights also published a webinar** that meets both NYC and NYS requirements, and it is **available here**.

All employees in New York must receive training once per calendar year.[1]

- Clients can decide how they wish to notify employees of this training requirement and on what schedule the training must be taken. The link to the webinar can be provided in any way that best suits employees/ the organization, email, simultaneous viewing, etc.
- **To prove attendance and show interaction, employees will be asked to record four codes (provided during the webinar) on a Training Acknowledgment Certificate**. A copy of this certificate, which is an included handout in the webinar, can be **downloaded here.**
- Once the employee provides the signed acknowledgment with the correct codes listed, you should **retain the signed employee acknowledgement forms**. These forms should be kept for a period of at least three (3) years and may be kept electronically.

Engage will continue to keep clients informed of employment related developments. We are here for you.

Suffolk County Enacts "Ban the Box" Law

On April 27, 2020, **Suffolk County** in New York enacted a "Ban the Box" law (the "Law"), Local Law No. 14, with the New York Secretary of State that **restricts an employer** located within Suffolk County with 15 or more employees **from making pre-employment inquiries into an applicant's criminal conviction history**. The Law is intended to improve employment opportunities for individuals with criminal convictions.

The Law prohibits an employer from asking questions regarding or pertaining to an applicant's criminal convictions during any part of the application process. Under the Law, the application process begins when the applicant inquires about the employment sought and ends when the employer has accepted the employment application. Moreover, the Law defines an applicant as "any person considered or who requests to be considered for employment by an employer," including temporary or seasonal work, contracted work, contingent work, and work through a temporary staffing agency.

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[1] All employees in the state of New York should have completed interactive harassment prevention training by October 9, 2019. New York City's training deadline was December 31, 2019. However, employers in New York City must comply with both sets of laws, so companies should have completed the training by the earlier deadline. After this initial October 9th deadline, employees must receive training once per calendar year. This may be based on the calendar year, anniversary of each employee's start date, or any other date the employer chooses.

Employers should **review and revise job applications used in Suffolk County** to remove questions concerning an applicant's prior arrests, criminal charges, or criminal convictions. Clients may also use the Engage template. Likewise, employers should also revise their hiring procedures to delay any inquiry about criminal convictions until an initial employment interview has been conducted, or if no interview is conducted, until after a conditional offer of employment has been made.

The Suffolk County "Ban the Box" law becomes **effective on August 25, 2020**.