Engage PEO Client Alert
New York Compliance Update
Year End 2023

NEW YORK STATE PAY TRANSPARENCY

WHAT'S NEW: New York State now requires employers with four or more employees to disclose anticipated compensation ranges on job advertisements, promotion advertisements, and transfer opportunities.

WHY IT MATTERS: New York State employers with four or more employees must include the annual salary, hourly compensation, or salary range (minimum and maximum) the employer expects in good faith to pay for jobs that will be at least partially performed in New York and those that will report to a supervisor, office, or work site in New York State. New York employers also must clearly indicate whether a position is commission-based.

The new law applies to all internal and external job advertisements, including available jobs, promotions and transfer opportunities.

See our previous alert regarding the New York Salary Transparency Bill here.

WHAT EMPLOYERS SHOULD DO: Employers should review all internal and external job postings that may allow or require an employee to work in or from New York State, as well as those where the employee will be reporting to a supervisor, office, or work site located in New York State.

Please note this is very similar to the New York City Salary Transparency Law that took effect in November of 2022, see our client alert here.

WAGE THEFT IN NEW YORK NOW CONSIDERED LARCENY

WHAT'S NEW: New York employers that fail to pay employees at least minimum wage, overtime, or compensate employees at the rate of pay (or greater) promised to them for work performed, may face charges of criminal larceny. The law permits affected individuals to combine multiple instances of nonpayment and underpayment of wages to a single or multiple employees into one count of criminal larceny.

WHY IT MATTERS: Employers may now face criminal penalties for failing to pay employees the minimum wage, overtime, and/or the agreed upon rate of pay for hours worked.

WHAT EMPLOYERS SHOULD DO: Closely review timekeeping and pay practices to ensure that employees are being paid the appropriate amounts for all hours worked, including overtime.

NEW YORK STATE PROTECTS FREELANCE WORKERS

WHAT'S NEW: The Freelance Isn't Free Act protects and provides recourse to freelance workers who are not paid for their services.

WHY IT MATTERS: The Freelance Isn't Free Act adds to New York City's Freelance Isn't Free Law by providing a right to a written contract, full and timely payment for services, and protection against retaliation and discrimination. Starting May 20, 2024, the Act authorizes the New York State Attorney General to bring legal action on behalf of the State for violations and obtain remedies, including damages and civil penalties, on behalf of freelance workers who have been affected by violations of the Act. Additionally, freelance workers paid at least $800 for their services may bring a legal action on behalf of themselves for violation of the law.

WHAT EMPLOYERS SHOULD DO: The New York State Department of Labor will publish model contracts for freelancers and employers of freelance employees to use in order to comply with the Freelance Isn't Free Act. Employers intending to hire a freelance worker should download and use the State-published sample contracts.

NEW YORK STATE EXTENDS STATUTE OF LIMITATIONS ON HUMAN RIGHTS VIOLATIONS

WHAT'S NEW: The statute of limitations on unlawful discrimination claims under the New York State Human Rights Law has been expanded from one year to three years.

WHY IT MATTERS: Starting on February 15, 2024, individuals who believe they have a claim of unlawful discrimination arising under the New York State Human Rights Law may bring such claims against the accused for up to ***three years*** after the last allegedly discriminatory occurrence.

WHAT EMPLOYERS SHOULD DO: Continue to maintain thorough and detailed documentation of adverse actions taken against employees and investigations into allegations of potential wrong-doing, especially discrimination and harassment.

NEW YORK PASSES CLEAN SLATE ACT

WHAT'S NEW: Effective November 16, 2024, the Clean Slate Act will seal criminal records of individuals with certain misdemeanor and felony convictions three and eight years after being released from incarceration. Class A felonies, besides drug possession, are not eligible to be sealed under the Act.

WHY IT MATTERS: Sealed records will not appear on background checks conducted before or during employment.

WHAT EMPLOYERS SHOULD DO: Continue to lawfully consider information obtained pursuant to a background check following a conditional offer of employment. Contact your Human Resources Consultant for additional information.

NEW YORK STATE EXPANDS RULES REGARDING SETTLEMENT OF HARASSMENT, DISCRIMINATION, AND RETALIATION CLAIMS

WHAT'S NEW: Governor Hochul expanded obligations in settlements of harassment, discrimination, and retaliation claims.

WHY IT MATTERS: Generally, New York employers are prohibited from mandating nondisclosure clauses in agreements releasing claims of harassment and discrimination, unless the employee (1) prefers confidentiality and is provided at least (2) 21 days to consider the agreement and (3) seven (7) days to revoke the agreement. This action by the governor now makes the 21-day consideration period waivable for pre-litigation matters, but is still required before resolving court-filed discrimination, retaliation, and harassment claims.

Additionally, a release for discrimination, harassment or retaliation claims may not include "(1.) a liquidated damages provision for the employee's violation of a nondisclosure clause or nondisparagement clause; (2.) a forfeiture provision requiring the employee to forfeit all or part of the consideration for the agreement for violation of a nondisclosure clause or nondisparagement clause; or (3.) an affirmative statement, assertion, or disclaimer by the employee that the employee was not subject to unlawful discrimination, harassment, or retaliation."

While not explicitly determined, it is unlikely that the new regulations apply to general separation agreements covering claims that have not been asserted. However, the restrictions do apply to agreements releasing covered claims asserted by independent contractors.

WHAT EMPLOYERS SHOULD DO: Consult with your Human Resources Consultant and/or employment attorney to ensure that the release of discrimination, harassment, and retaliation claims in New York do not violate the above regulations.

NEW YORK PROHIBITS EMPLOYERS FROM REQUESTING PERSONAL INFORMATION TO ACCESS SOCIALS

WHAT'S NEW: Effective March 12, 2024, New York employers are prohibited from requiring employees and/or applicants to disclose username, password, or other means to access social media accounts, and retaliating against those who fail to comply.

WHY IT MATTERS: Starting in the Spring of 2024, employers can no longer require current employees or job applicants to (1.) provide their username and password, password, or any other means to access their social media, (2.) access their social media in the presence of the employer, or (3.) provide information posted to social media, including photos, videos, etc.

WHAT EMPLOYERS SHOULD DO: Employers should consider reviewing existing social media policies to ensure the policies remain compliant in the face of the changing law.

NEW YORK UPDATES UNEMPLOYMENT INSURANCE LAW

WHAT'S NEW: New York employers must inform employees of their right to unemployment insurance benefits upon permanent or temporary separation of employment, the reduction in hours, and/or any other interruption of continued employment, which constitutes partial unemployment.

WHAT EMPLOYERS SHOULD DO: Employers should issue the Record of Employment form provided by the New York Department of Labor (available here: Record of Employment (IA12.3) (ny.gov)) when necessary, pursuant to the legal changes.

NEW YORK STATE INCREASES RESTRICTIONS ON EXEMPTION FROM DIRECT DEPOSIT LAWS

WHAT'S NEW: Effective March 13, 2024, New York employees who meet the revised definition of "clerical worker" may be subject to mandatory direct deposit.

WHY IT MATTERS: In order to require employees to participate in direct deposit payments, the employee must earn at least $1,300 per week and be exempt under the executive, administrative, or professional exemption.

WHAT EMPLOYERS SHOULD DO: Employers should assess their policies surrounding mandatory direct deposit and audit those it is requiring to enroll in direct deposit to ensure each satisfies the new weekly pay requirement, as well as the existing exemption requirements.

ANTICIPATED CHANGES TO NEW YORK MINIMUM WAGE AND SALARY THRESHOLD

WHAT'S NEW: Salary threshold requirements for the administrative and executive exemptions are expected to increase in 2024 to $62,400 per year ($1,200 per week) in New York City, Westchester, and Long Island and $58,458.40 per year ($1,124.20 per week) in the rest of New York.

WHY IT MATTERS: Employees who are claiming the executive or administrative exemptions are likely to be required to earn at least the above-referenced amounts on a salary basis in 2024.

WHAT EMPLOYERS SHOULD DO: Review salaries of employees claiming executive and administrative exemptions to ensure each satisfies the anticipated higher salary basis requirements.

NEW YORK CITY AMENDS EARNED SAFE AND SICK TIME RULES

WHAT'S NEW: Effective September 15, 2023, the New York City Earned Safe and Sick Time Act (ESSTA) was expanded regarding the size of the employer required to comply, employee eligibility, documentation requirements, payment of safe and sick time, and policy requirements.

WHY IT MATTERS: Employers

- Employer Size: The amount of sick and safe time employers must provide depends on the number of employees working for the employer nationwide.
    - *Employers with less than 99 employees nationwide* are required to provide 40 hours of sick and safe time per year.
    - *Employers with 100 or more employees nationwide* are required to provide 56 hours of sick and safe time per year.
- Employee Eligibility: Employees who "regularly perform, or are expected to regularly perform, work in New York City during a calendar year" are eligible for safe and sick time, even if they primarily work in another state. However, only hours worked in New York City may be used to accrue, therefore employees working remotely outside of New York City are not eligible.
- Documentation Requirements: Documentation signed by a licensed clinical social worker or licensed mental health counselor is reasonable enough to support a request for safe and sick time. Employees are entitled to seven (7) days after they return from a period of absence to produce documentation to support their need for safe and sick time.
- Written Policy Requirements: Policies covering safe and sick leave, must now include the following elements:
    - Notice to employees that front-loaded safe and sick time may be used immediately,
    - Acceptable forms of documentation to support the need for safe and sick time, if such documentation is required by the employer,
    - Details regarding how the employer will maintain confidentiality of documentation it receives in support of sick and safe time.

WHAT EMPLOYERS SHOULD DO: New York City employers and employers with employees working from New York City should review existing policies for compliance with the recent legal changes.

NEW YORK CITY BANS HEIGHT AND WEIGHT DISCRIMINATION

WHAT'S NEW: New York City employers prohibited from engaging in weight and height discrimination.

WHY IT MATTERS: New York City employers may not engage in discrimination based on weight and height under expansion of the New York City Human Rights Law passed in November. The new law allows employees to file a private lawsuit and/or administrative agency complaint, if they have been subject to discrimination on the basis of weight and/or height.

WHAT EMPLOYERS SHOULD DO: Employers should audit their current employment practices and policies to ensure there is not an adverse impact on employees based on height and/or weight. Additionally, claims of discrimination, retaliation, and/or harassment on the basis of weight and height should be provided the same response and sensitivity as other claims of discrimination. Lastly, employers should continue to review client alerts or contact their Human Resources Consultant for more information, as guidance from the New York Department of Labor on the regulation is anticipated.

Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.