

— Phillips Lytle Labor and Employment Client Alert for BNHRA Members —

# New York State and City Labor and Employment Roundup (December 2023)

December 19, 2023

## Changes to Labor and Employment Laws That Employers Need to Know

Over the past several months, New York State and New York City have implemented changes to their labor and employment laws that will fundamentally change employers' legal obligations and responsibilities. This client alert provides an overview of those changes so that employers can take necessary steps to comply with them.

### EMPLOYEE CAPTIVE AUDIENCE MEETINGS BANNED

On September 6, 2023, New York State Governor Kathy Hochul signed into law a bill amending § 201-d of the New York Labor Law (NYLL) banning employers from requiring employees to attend employer-sponsored meetings or listen to speech or communications, the "primary purpose" of which is to "communicate the employer's opinion concerning religious or political matters." "Political matters" are defined broadly and include not only matters relating to elections and political parties, but also any "civic, community, fraternal or labor organization." As a result, New York State employers are now barred from requiring employees to attend what are known as "captive audience meetings" for purposes of sharing an employer's views about unions and other outside organizations. The law, though, states that non-mandatory "casual conversations" between employees or between an employee and an agent or representative of the employer are not prohibited. The law also requires employers to post a notice advising employees of their rights under the law. The law took effect immediately upon signing.

### EMPLOYERS PROHIBITED FROM REQUIRING DISCLOSURE OF SOCIAL MEDIA ACCOUNT INFORMATION

On September 14, 2023, Governor Hochul signed into law a bill adding a new § 201-i of the NYLL prohibiting employers from requiring employees or applicants to: (1) disclose any user name, password or other authentication information for accessing a personal social media account; (2) access such accounts in the employer's presence; or (3) reproduce any photographs, video or other information contained in a personal social media account by means prohibited by the law. A "personal account" is one that is used "exclusively for personal purposes." Employers may not discharge, discipline or otherwise penalize an employee who refuses to disclose protected information or refuse to hire an applicant who refuses to disclose such information. The law takes effect on March 12, 2024.

The law does not apply to: (1) non-personal accounts that provide access to an employer's internal computer or information systems; (2) social media accounts used for business purposes, if the employee was given prior notice of the employer's right to request or require access to the information; (3) social media accounts known to an employer to be used for business purposes; (4) an electronic device paid for in whole or in part by the employer where the provision of, or payment for the device was conditioned on, the employer's right to access the device and the employee was provided with prior notice and "explicitly agreed to such conditions," but only to the extent of accessing non-personal accounts; or (5) complying with a court order. Nor does the law prohibit an employer from: (1) restricting or prohibiting an employee's access to certain websites while using an employer's network, or a device paid for in whole or in part by the employer where the provision of or payment for the device was conditioned on the employer's right to restrict such access, and the employee was provided prior notice and explicitly agreed to such conditions; or (2) complying with a duty established under federal law or by certain regulatory bodies to screen employees or applicants prior to hire or to monitor or retain employee communications.

Employers remain free to view an employee's or applicant's social media accounts or other information that is publicly available, or to access or utilize information voluntarily shared with the employer.

## EMPLOYERS REQUIRED TO NOTIFY EMPLOYEES OF RIGHT TO FILE FOR UNEMPLOYMENT BENEFITS

Effective November 11, 2023, under an amendment to § 590 of the NYLL, New York employers must notify their eligible employees of their right to file for unemployment benefits any time the following circumstances result in total or partial unemployment:

- A permanent or indefinite separation from employment
- Hours are reduced
- Temporary suspension
- Interruption in employment

The law requires the notice to be in writing and on a specific NYS Department of Labor (DOL) form ([Record of Unemployment](#)) that includes:

- The employer's name and registration number
- The employer's address to direct a request for remuneration and employment information about the employee
- Other information required by the commissioner of labor

## LIMITATIONS ON EMPLOYEE ASSIGNMENT OF INVENTIONS

As of September 15, 2023, a new § 203-f was added to the NYLL governing the assignment of inventions by employees to employers. The new law prohibits provisions in employment agreements which provide that an employee shall assign to his or her employer any of the employee's rights to an invention that the employee developed entirely on the employee's own time without using the employer's equipment, supplies, facilities or trade secret information. An exception exists for inventions that either: (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. The new law also invalidates any provision in any existing employment agreement which purports to require an employee to assign an invention that the law otherwise excludes from being assigned to an employer.

## INCREASED RESTRICTIONS ON NON-DISCLOSURE AND RELEASE AGREEMENTS

Effective November 17, 2023, amendments to § 5-336 of the New York General Obligations Law imposed new restrictions on the contents of non-disclosure and release agreements involving claims of employment discrimination. In addition to requiring a separate non-disclosure agreement to maintain the confidentiality of any claim involving discrimination as part of the settlement of such a claim, the amendments extend the requirement for such a separate non-disclosure agreement to claims involving discriminatory harassment and retaliation. The amendments also now invalidate any release of claims for discrimination, discriminatory harassment or retaliation that were entered into on or after November 17, 2023, if the release agreement contains any of the following provisions:

- A requirement that the employee pay liquidated damages for violation of a non-disclosure clause or non-disparagement clause.
- A requirement that the employee forfeit all or part of the consideration for the agreement, for violation of a non-disclosure clause or non-disparagement clause.
- Any affirmative statement, assertion or disclaimer by the employee that the employee was not in fact subject to unlawful discrimination, including discriminatory harassment or retaliation.

## FAILURE TO PAY WAGES NOW CONSTITUTES CRIMINAL LARCENY

Effective September 6, 2023, § 155 of the New York Penal Law was amended to include "compensation for labor or services" within the definition of "property" and to add a provision defining "wage theft" as the failure to pay a person hired to perform services at the minimum wage rate or the wage rate otherwise promised, if greater than the minimum wage rate. As a result, any persons who fail to pay employees the minimum wage, or the wage rate otherwise agreed between the parties, is now subject to criminal prosecution for larceny, which can be a misdemeanor or felony depending on the amount at issue.

## NEW YORK CITY SAFE AND SICK TIME CHANGES

The New York City Department of Consumer and Worker Protection announced changes to the New York City Safe and Sick Time regulations on October 15, 2023. The more significant changes include the following:

- Employer size is based on the employer's total number of employees nationwide.
- Employee's pay statements must include the amount of sick/safe time accrued and used during a relevant pay period and the total balance available for use (this information may also be provided through an electronic system used to issue pay statements).
- Creating a "reasonable inference" that an employer has violated the law if the employer fails to maintain or distribute a written safe/sick time policy and fails to maintain adequate records of employees' use of safe/sick time.
- A requirement that an employer's written policy include a statement that the employer will not ask employees to provide details about the medical condition or personal situation causing them to use safe/sick time, and that information obtained about an employee's use of such time will be kept confidential and not disclosed to anyone without the employee's written permission or as required by law.

## NEW YORK CITY OUTLAWS WEIGHT AND HEIGHT DISCRIMINATION

Effective November 22, 2023, the New York City Human Rights Law was amended to outlaw discrimination in employment, housing and public accommodations based on an individual's actual or perceived height or weight. Consideration of height or weight is allowed if: (1) required by federal, state, or local law or regulation; or (2) is permitted by regulations adopted by the New York City Commission on Human Rights where it is determined that height or weight may prevent a person from performing essential job functions, or a certain height or weight is reasonably necessary for the normal operation of the business. In situations where no regulatory exemption exists, employers can defend against claims by showing that height or weight is necessary to perform the essential functions of a position.

### Additional Assistance

*Our attorneys remain ready to provide advice and guidance on complying with these new laws or any other workplace issues. For further assistance, please contact any of the attorneys on our [Labor and Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship.*