

2023 New York State And New York City Labor and Employment Law Roundup

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In 2023, New York State and New York City amended several labor and employment laws about which employers should be aware to ensure that their policies and procedures remain compliant.

Employers May Not Require Employees to Disclose Access Information to Personal Social Media Accounts

On January 11, 2023, New York State enacted a law generally prohibiting employers from requesting, requiring, or coercing employees and applicants to turn over to the employer information that will allow access to any “personal account,” i.e., an account or profile used to create, share, and view user-generated content or a website profile used for personal purposes only. The statute also prohibits employers from penalizing or threatening to penalize employees or applicants for refusing to disclose such information.

There are several exceptions pursuant to which an employer is permitted to request or require personal account access information without violating the law, most notably: (1) to comply with federal, state, or local law or a court order; and (2) to access an employee’s electronic communications device that is paid for in whole or in part by the employer if the employee received advance notice of the employer’s right to request or require such information. The employer is still prohibited from requesting or requiring access information to any of the employee’s personal accounts that are housed on the device, such as personal social media accounts.

The law takes effect on March 12, 2024.

Limitation on Employers’ Rights to Employees’ Inventions

Effective September 15, 2023, employers in the State of New York may not require an employee to assign the employer the rights to an invention that the employee developed independently. Under the law, if an employee developed an invention “on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information,” an employment agreement may not require that the employee assign the invention rights to the employer. This prohibition does not apply if the invention relates to the employer’s business or its anticipated research or development, or the invention results from work performed by the employee for the employer. Employers should review

their standard employment agreement or any other document that contains invention assignment provisions to ensure that they are compliant with this law.

Discrimination Based on Refusal to Participate in Political and Religious Matters at Work

On February 17, 2023, Section 201-d of the New York labor law was amended to prohibit employers from discriminating against employees for refusing to attend employer-sponsored meetings, listen to speeches, or view communications that are intended to convey the employer's opinion concerning political or religious matters. The amendment also requires that every employer post a sign in its workplace informing employees of their rights under the amendment.

Notice to Employees of Eligibility for Unemployment Benefits

Effective November 13, 2023, Section 590 of New York Labor Law was amended to require employers to notify employees of their right to file an application for unemployment benefits at the time the employee is permanently or temporarily separated from work. The amendment provides that notification is required in the case of a reduction in hours (e.g., that changes an employee from full-time to part-time), temporary separation or any other interruption of continued employment.

The notice must be given in writing on a form furnished or approved by the Department of Labor, which can be found [here](#).

Amendments to Rules Related to the NYC Earned Safe and Sick Time Act

Pursuant to an amendment of the New York City Earned Safe and Sick Time Act ("ESSTA"), the New York City Department of Consumer and Worker Protection updated the ESSTA regulations effective October 15, 2023. Some of the most significant amendments are highlighted below.

- Employees who work primarily outside of New York City are nevertheless considered to be "employed for hire within the City of New York if they regularly perform, or are expected to regularly perform, work in New York City during a calendar year." While such employees are covered by the ESSTA, only hours worked within New York City count toward the accrual of safe and sick time.
- The size of the employer, which forms the basis for determining the amount of safe and sick time owed to employees under the ESSTA, is calculated based on the number of employees nationwide (not only those employed in New York City). This makes ESSTA consistent with the New York State Paid Sick Leave Law in this regard.
- Employers have the right to mandate that employees provide reasonable advance notice of the need to use safe and sick time (where that need is foreseeable) as long as that requirement is included in the employer's written policy.
- Employers have the right to require reasonable written documentation from a licensed healthcare provider if an employee uses safe or sick time for more than three consecutive work days, but may not require disclosure of details regarding the use of safe or sick time other than the dates of missed work days.
- Employees must be paid their regular rate of pay when they use safe and sick time, and the regular rate is determined at the time the safe and sick time is taken.
- If an employer sells its business or there is a transfer of ownership, the employees retain accrued safe and sick time if they continue to work within New York City for the successor employer.

The new regulations also set forth a list of evidence which can be used to demonstrate that an employer fails or refuses to provide accrued safe and sick time, including the employer's failure to

maintain or distribute a written safe and sick time policy, or failure to maintain adequate records of employees' accrued safe and sick time. Accordingly, employers are well advised to adopt such a policy and keep such records.

Employers should carefully review the **adopted changes** to the regulations governing the ESSTA to ensure compliance with the requisite safe and sick time policies and notification procedures.

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