

## New York Employment Buzz (US)

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Summer is here, and while school may be out, New York employment laws are in full swing! A reminder to New York employers of new laws that have gone into effect in 2024.

### **Personal Social Media Account Privacy Law**

Effective March 12, 2024, New York joined a growing number of states which prohibit employers from soliciting or requiring employees or job applicants to share certain details of their personal social media accounts including usernames, passwords, or other login credentials. Under this new privacy law, employers may not request that employees or job applicants provide content from their social media accounts including photos or videos, or require them to access their personal social media accounts in the presence of their employer (or prospective employer). This law applies to all personal social media accounts or profiles that are accessible on a phone, computer, tablet, or other device where users can access or share personal social media content.

The new law prohibits employers from retaliating against job applicants or employees who exercise their rights under this law. Nor can employers refuse to hire applicants or discipline, discharge, or otherwise punish employees for refusing to share this information.

Importantly, the law does not interfere with an employer's obligations to screen employees or monitor communications as required by federal law or self-regulatory organizations, as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 U.S.C. 13 §78c(a)(26). Other exceptions from this law include that employers are permitted to:

- request or require an employee to disclose access information to an account provided by the employer where such account is used for business purposes and the employee was provided prior notice of the employer's right to request or require such access information;
- request or require an employee to disclose access information to an account known to an employer to be used for business purposes;
- impose restrictions on employee internet access while using the employer's resources; and
- comply with court orders regarding employee accounts.

Employers are not prohibited or restricted from viewing, accessing, or utilizing information about an employee or applicant that can be obtained without any required access information (such as public profiles), that is available in the public domain, or for the purposes of obtaining reports of misconduct

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or investigating misconduct, photographs, video, messages, or other information that is voluntarily shared. The law also does not apply to any law enforcement agency, fire department, or a department of corrections and community supervision.

### **Increase to Salary Threshold for Wage Payment Provisions Under Article 6 of the New York Labor Law**

Effective March 13, 2024, the weekly amount employers must pay employees in New York state to be exempt from the requirements of Article 6 of the New York Labor Law has been increased from \$900 per week to at least \$1,300 per week (\$67,600 annual). (See below for the requirements under Article 6 if an employee earns less than this amount.) This exemption differs from the overtime exemption that applies for executive and administrative employees, which is \$1,200 per week (\$62,400 annual) in New York City, Westchester, Nassau and Suffolk counties, and \$1,124.20 per week (\$58,458.40 annual) in New York state.

Under Article 6, there are specific requirements for employers, including:

- clerical and non-manual workers must be paid no less than semi-monthly. As a reminder, manual workers must be paid weekly.
- Employers must obtain the employee's advance written consent before paying wages by direct deposit.
- Employers must provide benefits or wage supplements within 30 days after they are due.

### **New York State Freelance Isn't Free Act**

On May 20, 2024, the New York State *Freelance Isn't Free Act* went into effect. New York City implemented a similar law, New York City's *Freelance Isn't Free Act*, on May 15, 2017. The Act defines a freelance worker broadly, but with a few limited exemptions, as any individual or organization contracted as an independent contractor for services valued at \$800 or more. This \$800 threshold can be met with a single contract or as a cumulative amount of all contracts for services performed by the freelance worker for the same party over a 120 consecutive day period. Notably, the Act includes the following requirements.

- A written agreement is required between an employer and a freelance worker where either (1) the value of the project is more than \$800; or (2) the worker provides services on multiple projects in a 120-day period where the value of those projects exceed \$800 in the aggregate.
- Copies of contracts with freelance workers must be maintained for a minimum of six years and made available to the commissioner upon request.
- A hiring party who fails to pay a freelance worker appropriately may be liable for damages equal to double the amount owed, along with attorneys' fees.
- A hiring party cannot harass, discipline, discriminate against, deny a work opportunity to, or otherwise penalize, threaten, or intimidate any freelance worker or act in a way that reasonably deters the worker from exercising any right guaranteed under the Act.

Finally, effective July 1, 2024, employers in New York City must post and distribute a *Worker's Bill of Rights* notice, informing employees of their rights under federal, state, and local workplace laws. The notice contains a QR code which refers employees to the Workers' Bill of Rights webpage available on the Department of Consumer and Worker Protections' website, which includes information on a number of important employment laws. These laws include, but are not limited, to Paid Safe and Sick Leave, Minimum Wages, Job Applicant Rights, Pay Transparency and rights with respect to

automated employment decision tools. Employers also must provide this notice to new employees on or before the employee's first day of work. A copy of this notice may be found the New York City Department of Consumer and Worker Protection's website [here](#).

Employers must provide this notice in English and any other language that is spoken as a primary language by at least five percent of their employees. Failing to meet notice and posting requirements can result in civil penalties.

Summer is a good time to ensure all policies are up to date, including any that were implemented at the end of 2023 or beginning of this year. If you have any questions regarding compliance with these laws, or for more information please reach out to us.

Please also refer to our mid-year state roundup for other important updates in New York and other states available [here](#).

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