

NEW YEAR AND MORE NEW LAWS FOR NEW YORK EMPLOYERS IN 2022

The past year has seen a host of new laws, orders and regulations affecting employers with New York employees. We have previously reported on the NY HERO Act,¹ changes to the New York City Fair Chance Act,² the federal COVID-19 employer vaccination mandate,³ the New York City employee vaccination mandate,⁴ and the New York state electronic monitoring notice requirement.⁵ In this alert, we discuss six additional new laws that employers should be aware of as we enter 2022.

New York State

New York State Employers Must Permit Workplace Safety Committees

In addition to requiring employers to adopt policies to prevent the spread of airborne infectious diseases, the NY HERO Act provides that New York state employers with 10 or more employees must *permit* their employees to form a workplace safety committee to address safety and health concerns.

The New York State Labor Department recently released proposed regulations in conjunction with this law. These proposed regulations provide that the employer does not have to form a committee on its own, but may wait until at least two employees request in writing that a committee be formed.

The committee should be co-chaired by a representative of the employer and non-supervisory employees, and at least two-thirds of the committee's members should be non-supervisory employees. Employers must allow safety committee members to attend a four-hour training on company time. Retaliation against committee members is prohibited.

The committee is authorized to:

- Raise health and safety concerns, hazards, complaints and violations to the employer;
- Review safety and health policies and provide feedback;
- Review any workplace policy adopted in response to any health or safety law;
- Participate in site visits by governmental entities responsible for enforcing safety and health standards;
- Review any health and safety report filed by the employer; and
- Regularly schedule a meeting during work hours at least once a quarter, that shall last no longer than two hours.

New York State Paid Leave Time for COVID-19 Booster Shots

Since March 2021, all employees in New York state have been entitled to take up to four hours of paid leave per injection to receive COVID-19 vaccinations. This paid leave is in addition to any other leave the employee is otherwise entitled to, including paid sick leave. In October 2021, the New York State Department of Labor made clear that this leave extends to booster shots.

Some New York State Employers Required to Enroll Employees in Retirement Savings Plan

Beginning no later than December 31, 2022, private employers that have 10 or more employees and do not sponsor their own retirement plans will be required to

automatically enroll their employees in New York State's Secure Choice Savings Plan. This retirement savings program is to be overseen by the New York State Department of Taxation and Finance. Employers to whom this law applies are advised to check the department's website, <https://www.tax.ny.gov>, for updates about the program, and to speak with their tax advisors.

New York City

New York City Paid Leave Time for Child Vaccination Shots

A New York City law, retroactive to November 2, 2021, requires that all private-sector employers in New York City must provide their employees with paid leave in order to accompany each of their children to their COVID-19 vaccinations and/or to care for their children who are experiencing temporary side effects from the vaccine. Employees are entitled to up to four hours per child per vaccine injection, including boosters. To be eligible for this leave, the employee's children must be either under the age of 18, or otherwise incapable of self-care by reason of mental or physical disability.

New York City Mandates Salary Ranges in Employment Advertising

As of May 2022, when advertising a job, promotion or transfer opportunity, New York City employers and their agents must include the minimum and maximum salary for the position. The listed range may extend from the lowest to the highest salary that the employer in *good faith* believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity.

This law will certainly apply to New York City-based employers hiring employees to physically work in New York City. It may also apply to New York City-based employers when they advertise for remote workers, because some of their targeted candidates may be in New York City and because the ultimate compensation for the position (and attendant discrimination, if any) would be felt in New York City. It is likely that the New York City Human Rights Commission, the agency that oversees this law, will take the position that it applies to employers outside of the city that advertise in or seek candidates from New York City. It is worth noting that a handful of other jurisdictions have similar laws and that a growing number of

employers have been voluntarily identifying compensation ranges in advertisements and postings.

New York City Limits the Use of Automated Tools in Hiring and Promotion Decisions

The New York City Council has enacted another law that affects hiring in the city, although this one does not go into effect until *January 1, 2023*. The new law places limits on an employer's use of "automated employment decision tools." These are tools that use computers to assist or replace human screening of job candidates and employees.

The law requires that employers who use such tools to screen candidates and employees:

- Have conducted a "bias audit" of these tools no more than one year prior to using them;
- Make available on their website a summary of the results of the most recent bias audit of such tool as well as the distribution date of the tool to which such audit applies;
- Notify each New York City resident who applies for a position, promotion or transfer at least 10 days before using an automated employment decision tool:
 - That such a tool will be used in connection with the assessment or evaluation of the candidate or employee, and
 - The job qualifications and characteristics that the tool will use in the assessment of such candidate or employee.
- Allow a New York City candidate or employee to request an alternative selection process or accommodation; and
- Provide the candidate or employee with information about the type of data collected, the source of such data and the employer's data retention policy within 30 days of a written request by the candidate or employee, if this information is not disclosed on the employer's website.

It is anticipated that, before this law takes effect in 2023, the city will issue regulations or guidance to assist employers with compliance.

For questions relating to this client alert, please contact:



Randi May
212.689.8808
rmay@hnrklaw.com

On behalf of employers, Randi's counseling experience includes advising a broad range of clients concerning all aspects of the employment relationship to avoid litigation. She advises employers about hiring and termination of employment, policies and practices, employee misconduct, restrictive covenants, leaves of absence and compliance with federal, New York state and New York City laws governing employment. Randi also regularly drafts, reviews and negotiates employment and executive compensation agreements, restrictive covenants and separation agreements.



Kathleen Lowden
212.689.8808
klowden@hnrklaw.com

Kathleen's practice focuses on employment matters on behalf of both employees and employers, and also includes general commercial litigation. She advises employers on compliance with federal, state, and local employment statutes. She has defended mass transit agencies, as well as other U.S. and foreign defendants, in suits by employees alleging sex, race, and disability discrimination, civil rights violations, violations of the Family and Medical Leave Act and violations of the Fair Labor Standards Act.

¹ <https://www.hnrklaw.com/newsroom-news-242>

² <https://www.hnrklaw.com/newsroom-news-241> and <https://www.hnrklaw.com/newsroom-news-277>

³ <https://www.hnrklaw.com/newsroom-news-261> and <https://www.hnrklaw.com/newsroom-news-267>

⁴ <https://www.hnrklaw.com/newsroom-news-273>

⁵ <https://www.hnrklaw.com/newsroom-news-274>

Disclaimer

The information contained in this alert is provided for informational purposes only, and is not intended to be, nor should it be, construed as legal advice on any subject matter. You should always seek appropriate legal advice based on the particular facts and circumstances at issue from an attorney licensed in your jurisdiction. This alert contains general information and may not reflect current legal developments.