

RECENT DEVELOPMENTS IN NEW YORK EMPLOYMENT LAW

New York employers should take note of several new laws and ordinances. Additionally, a recent federal decision held that sexual orientation is a protected class under federal anti-discrimination law.

1. The New York Paid Family Leave Law

- The New York Paid Family Leave Law ("PFL") took effect on January 1, 2018.
- Employers must post a notice about the PFL on their premises.
- Employers must also update their employee handbooks and similar materials to include a section on Paid Family Leave.
- For further information on the PFL, please see our Client Alert, "New York Paid Family Leave Law" on our website, [here](#).

2. New York Minimum Wage

- The New York minimum wage increased on January 1, 2018.
- The 2018 minimum wage rate is tied to location as well as, in New York City, the number of employees, and is currently:

Location	Number of Employees	2018 Minimum Wage
New York City	11 or more	\$13.00
	10 or fewer	\$12.00
Nassau, Suffolk and Westchester Counties	Any number	\$11.00
All other counties	Any number	\$10.40

3. New York Salary Threshold for Exempt Status

- The minimum salary that must be paid to an employee who is exempt from overtime also increased as of January 1, 2018 as follows:

Location	Number of Employees	2018 Minimum Weekly Salary	2018 Minimum Annual Salary
New York City	11 or more	\$975	\$50,700
	10 or fewer	\$900	\$46,800
Nassau, Suffolk and Westchester Counties	Any number	\$825	\$42,900
All other counties	Any number	\$780	\$40,560

- In other words, even employees whose duties satisfy the duty requirements for exemption from overtime will not be exempt unless they earn a guaranteed weekly salary of at least the amount shown above.
- The salary thresholds are significantly higher than those under the federal law, the Fair Labor Standards Act.¹

4. Salary History Inquiries

- Since October 31, 2017, the New York City Human Rights Law has prohibited employers from making any inquiry into an applicant's salary history or taking an applicant's salary history into consideration when making a hiring decision.
 - Employers may not have an agent, such as a recruiting firm, seek out an applicant's salary history information for them, nor may they search to find an applicant's salary history information, even if readily available online or in public records (as it is for many public employees and employees of publicly traded companies).
 - Rather than requesting an employee's current or past salary, prospective employers are permitted to ask applicants for an expected salary range.
- If they have not done so already, employers in New York City should make sure that they have purged all application and recruiting materials of any questions about salary history.
- New York City employers should also ensure that all individuals involved in the hiring process—not just human resources people, but managers, supervisors, etc.—be made aware that they can no longer ask an applicant about salary history.

¹ The federal Department of Labor's regulation raising the salary threshold for exemption was barred by a federal court in Texas in December 2016. Employers await the new regulations, which most anticipate will raise the salary threshold but not by as much as had been proposed under the Obama administration.

5. Employee Scheduling

- New York state law already provides that employees in most jobs who report for work must be paid for at least four hours (or the number of hours in the regularly scheduled shift, whichever is less) at the basic minimum hourly wage.
- In November 2017, New York City employers in the fast food and retail sectors became subject to "Fair Workweek" laws that restrict how and when an employer may schedule and cancel employee shifts.
- Beginning in May 2018, New York City employers in all industries will be required to permit employees to use their "earned sick time" for "safe time," that is, for an absence resulting from the employee or a family member having been the victim of a family offense matter, sexual offense, stalking, or human trafficking.
- Beginning in July 2018, New York City employers will be required to allow most employees to make up to two temporary schedule changes per year, of up to one day each, on account of a "personal event" which includes the need to provide childcare and attend certain legal proceedings, as well as "any circumstance that would constitute a basis" for using sick time or safe time, under the Earned Sick Time Act.
- The New York State Department of Labor has released proposed regulations that will govern on-call time and other employee scheduling issues for employers in all industries throughout the state. It is likely that the regulations will not apply to exempt employees, or to non-exempt employees who earn weekly wages greater than forty times the minimum wage. More information on these regulations will be forthcoming in the event they are adopted.

6. Reasonable Accommodation

In January, the New York City Human Rights Law was amended to require that employers engage in a good faith, written or oral cooperative dialogue with persons who are or may be entitled to reasonable accommodations. These include victims of domestic violence, individuals experiencing pregnancy, childbirth and related medical conditions, individuals with religious needs, and those with disabilities. Most employers are aware that they have an obligation to engage in an interactive process with employees regarding reasonable accommodations under existing federal, state, and city law. This amendment strengthens that mandate by requiring employers to make a final written record of the process.

7. Sexual Harassment

The New York City Council is considering a package of bills addressing sexual harassment in the workplace. Many of these bills are limited to city government employees, but a few also apply to employees in the private sector:

- A proposal that the New York City Human Rights Law prohibiting sexual harassment would apply to all employers, not just those with four or more employees.
- A proposal that would require employers with 15 or more employees to provide sexual harassment prevention training annually.
- A proposal that would require employers to post a poster about anti-sexual harassment rights and responsibilities.
- A proposal to extend the limitations period for filing a sexual harassment complaint with the New York City Human Rights Commission to three years. Currently, a complainant has only one year to file a complaint with the Commission, but three years to bring an action in court.

8. Other Proposed New York City Ordinances

The New York City Council is considering other laws covering employers, among them:

- A proposal prohibiting employers from requiring low-wage workers to enter into covenants not to compete.
- A proposal requiring employers to include accrued safe and sick time on pay stubs.
- A proposal allowing employees to bring a private law suit for violations of the Earned Sick Time Act.
- A proposal to extend the protections of the New York City Human Rights Law to all domestic workers (that is, employees who work in an employer's household) regardless of the number of persons the employer employs.

9. Sexual Orientation Discrimination

In February, the Second Circuit Court of Appeals held, for the first time, that Title VII prohibits discrimination on the basis of sexual orientation. *Zarda v. Altitude Express, Inc.*, No. 15-3775, 2018 WL 1040820 (2d Cir. Feb. 26, 2018). In doing so, the court overruled earlier cases in which it held that a claim of sexual orientation could not be brought under Title VII. Sexual orientation has long been a protected category under both the New York State Human Rights Law and the New York City Human Rights Law, but now employees claiming sexual orientation discrimination will be able to proceed in federal court. The Second Circuit's decision does not address discrimination on the basis of transgender status or gender identity, but employers should be aware that gender identity is a protected classification under both the New York State and City Human Rights Laws.

**FOR QUESTIONS RELATING TO THIS
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ABOUT RANDI B. MAY

On behalf of employers, Ms. May'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. Ms. May also regularly drafts, reviews and negotiates employment and executive compensation agreements, restrictive covenants and separation agreements.

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Hoguet Newman Regal & Kenney, LLP is a litigation boutique founded by senior trial lawyers dedicated to using their decades of experience to represent clients faced with sophisticated and demanding legal issues effectively and responsively in a small firm setting.

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