

Alert

End-of-Year Employment Law Developments

December 22, 2022

Federal Same Sex Marriage Act Becomes Law

On Dec. 13, 2022, President Joe Biden signed into law the [Respect for Marriage Act](#), which mandates federal recognition of same-sex marriages. The law also prohibits states from refusing to recognize out-of-state marriages on the basis of sex, race, ethnicity or national origin. In addition, the statute officially voids the Defense of Marriage Act, which defined marriage as only between a man and a woman.

Biden Signs “Speak Out Act”

On Dec. 7, 2022, the [Speak Out Act](#) (“SOA”) was signed into law by President Biden to address agreements entered into by employers. With respect to a sexual assault or sexual harassment dispute, the SOA provides that no non-disclosure clause or non-disparagement clause agreed to before the dispute arises shall be judicially enforceable. A non-disclosure clause requires a party to a contract not to discuss the conduct, the existence of a settlement involving conduct, or information about the terms and conditions of the contract or agreement. A non-disparagement clause prohibits a party to a contract from making negative statements about another party.

This new legislation follows the enactment of the [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act](#), which went into effect in March 2022, to permit individuals with sexual harassment or assault claims who entered into pre-dispute arbitration agreements or pre-dispute joint-action waivers to reject those agreements.

NLRB Decision Expands Damages for Unfair Labor Practices

The National Labor Relations Board (“NLRB”) issued a [decision](#) on Dec. 13, 2022, that broadens the scope of make-whole remedies available against an employer for violations of the National Labor Relations Act. Such make-whole remedies now include “compensating [charging parties] for direct or foreseeable pecuniary harms resulting from [the employer’s] unfair labor practice.” Examples of these remedies cited by the NLRB include, among others:

- Compensation for health care expenses that an employee incurs as a result of an unlawful termination of health insurance;
- Compensation for credit card late fees incurred;
- Compensation for loss of a home or a car that an employee suffered as a result of an unlawful discharge; and
- Employer sponsorship of work authorizations for the firing of undocumented workers.

New York Governor Signs Law Forbidding Retaliation for Lawful Absences

A New York State attendance [law](#) will take effect on Feb. 19, 2023. This law prohibits employers from retaliating against workers for taking legally protected leave. It will bar employers from penalizing workers under increasingly common ‘no-fault’ attendance policies that assign points to employees for absences, regardless of the reason for the absence. Employers will be prohibited from using these points-based attendance policies, or to otherwise discriminate or retaliate against employees taking any protected leave under federal, state or local law.

New York State Expands Workplace Protections for Nursing Employees

An amendment to the [NYS Labor Law](#), effective June 7, 2023, will expand the rights of nursing mothers to express breast milk in the workplace. The legislation is similar to a New York City lactation accommodation law adopted in 2019, discussed [here](#). The new amendment requires employers to provide break time for nursing employees for three years following the birth of a child. Additionally, employers are required to designate a room, with certain minimum requirements specified in the law, to allow employees to pump breastmilk in the workplace. Employers must also develop, implement and distribute written policies regarding the rights of nursing mothers in the workplace.

New York Governor Signs State Salary Transparency Legislation

[New York Senate Bill S9427A](#) requiring employers with four or more employees to disclose compensation or a range of compensation, and a job description, when advertising for a new job opportunity, promotion or transfer has been signed by Governor Kathy Hochul. The legislation is similar to New York City’s salary transparency [law](#) that went into effect in November 2022. The new law will take effect on Sept. 17, 2023.

New York State Updates to Paid Family Leave

The New York State Workers’ Compensation Board has updated the request [forms](#) for Paid Family Leave (PFL) to remove unnecessary pronouns and include a “Gender X” option. Additionally, the forms have been updated to include siblings as permitted family members, to reflect an expansion in the New York Paid Family Leave Law, previously discussed [here](#), taking effect in 2023 that will allow covered employees eligibility to use PFL to care for siblings with serious health conditions. Additionally, the new PFL policies will raise the maximum weekly benefit for 2023 and lower the annual contribution for employees.

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