

Alert

Recent Employment Law Updates

June 7, 2023

New York State Updates Its Model Sexual Harassment Policy

The New York State Department of Labor (“NYDOL”) updated New York State’s [Sexual Harassment Model Policy](#). The template document is provided by New York State to help employers comply with existing New York State legislation, previously discussed [here](#), which requires employers to provide all employees with a sexual harassment and workplace discrimination prevention policy, annual sexual harassment and discrimination prevention training, and a copy of the policy on paper or by email at the time of hiring and annually during training. Employers are not required to adopt the model policy, but those that do not must ensure that their policy meets the [minimum standards](#) previously set forth by the NYDOL and should consider revising their policy to incorporate the updates to the model.

The updated policy now includes an explanation of gender diversity and emphasizes that gender discrimination, including gender role stereotyping and treating employees differently because of their gender identity, is sexual harassment. The updated policy also provides additional examples of sexual harassment (e.g., intentional misuse of preferred pronouns, dress codes that place emphasis on women’s attire), and illustrates issues that may emerge in the context of remote work (e.g., remarks made via virtual platforms/messaging apps). Other notable revisions include an explanation that under New York law, sexual harassment does not need to be “severe or pervasive” to be illegal, that intent is not a defense under the law, an added section regarding bystander intervention, a more comprehensive discussion of retaliation in the harassment context, a statement that the policy “should be considered applicable to all protected classes,” and the contact information for New York’s [sexual harassment hotline](#) that was implemented last summer.

New York State also updated its “Combating Sexual Harassment” [resource page](#) to include new toolkits for employers and workers, updated [Frequently Asked Questions](#), as well as a new training [slide deck](#) and [accompanying script](#), and other materials employers can utilize for employee training purposes.

Updates Regarding the Use of Artificial Intelligence in Hiring

On April 6, 2023, the New York City Department of Consumer and Worker Protection announced that enforcement of its new Artificial Intelligence (“AI”) bias law will be delayed until July 5, 2023. The law, previously discussed [here](#), regulates employers’ use of automated employment decision tools as part of their hiring practices. The proposed rules discussed [here](#) were also adopted with minor adjustments.

On May 18, 2023, the Equal Employment Opportunity Commission released a [technical assistance document](#) discussing the application of Title VII of the Civil Rights Act to an employer’s use of automated systems in employment selection procedures, including those that use AI. Among other developments, the document notes that in many cases an employer can be responsible under Title VII for its use of AI in employment selection procedures that discriminate against a protected classification, even if the tool was designed or administered by another entity, such as a software vendor.

U.S. Department of Labor Publishes New FLSA and FMLA Posters

The U.S. Department of Labor has issued an updated Fair Labor Standards Act (“FLSA”) [poster](#) and an updated Family and Medical Leave Act (“FMLA”) [poster](#). The posters must be displayed by employers in a conspicuous place where they can be readily viewed. New York State employers must also make the posters available electronically, as discussed [here](#).

Updated Summary of Rights Under the Fair Credit Reporting Act Published

On March 17, 2023, the Consumer Financial Protection Bureau published a revised version of “[A Summary of Your Rights Under the Fair Credit Reporting Act](#)” (“Summary”). As discussed [here](#), to comply with the Fair Credit Reporting Act, the Summary must be provided to applicants and employees when conducting background checks and when taking an adverse employment action in response to a background check. Though the revisions to the Summary are non-substantive, including formatting changes and corrections to contact information for several federal agencies, employers and consumer reporting agencies must update their forms by March 20, 2024.

Forms I-9 Completed Remotely During Pandemic Must Be Updated in Person

The temporary flexibility allowing completion of the Form I-9 remotely when employees were working remotely ends on July 31, 2023. U.S. Immigration and Customs Enforcement (“ICE”) recently announced that employers must complete, by Aug. 30, 2023, in-person physical document inspections for employees whose documents were inspected remotely. Additional guidance on updating the Form I-9 is provided [here](#).

New York City Adds Height and Weight as Protected Characteristics

The New York City Human Rights Law was [amended](#) to add height and weight to the list of covered protected characteristics. Covered employers will be prohibited from discriminating, harassing or retaliating against any individual because of their height or weight, except if height or weight is a bona fide occupational qualification. The law will go into effect on Nov. 22, 2023.

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