

ALERTS

New Regulations for New York Employers Effective in the New Year

December 23, 2019

As 2020 approaches, New York employers should be aware of the following changes to ensure continuing compliance with federal, state and local laws and regulations.

Protections Against Wage Discrimination

New York State enacted two new laws to provide employees with additional protections against wage discrimination.

Effective Oct. 8, 2019, the New York Equal Pay Law was amended to prohibit an employer from paying any employee who is a member of any “protected class status” a lower wage rate than the rate at which an employee outside the same protected class in the same establishment is paid for equal work. Protected class status under New York State Human Rights Law includes: age, race, creed, color, national origin, sexual orientation, gender expression or identity, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, and domestic violence victim status. Equal work is defined as work which requires an equal level of skill, effort and responsibility and which is performed in similar working conditions. Certain exceptions to this law still apply and an employer is permitted to pay a different wage if that wage is based on factors such as seniority, quantity or quality of production, a merit system, or a bona fide factor such as education, training or experience.

Effective Jan. 6, 2020, the Salary Inquiry Ban prohibits employers from making certain inquiries, whether oral or written, formally or informally, about salary history information. Employers are further prohibited from relying on that information in deciding whether to hire an individual or determining the wages or salary of such individual. Nothing in this law prevents an applicant or current employee from voluntarily disclosing their salary history information. New York State law follows the existing New York City law. For more information on New York City's Salary Inquiry Ban, see this prior *SRZ Alert*.^[1]

Protections Against Discrimination on the Basis of Reproductive Health Decision Making

New York State now prohibits employers from discriminating on the basis of reproductive health decision making. Governor Cuomo signed the new law on Nov. 8, 2019, only a few months after New York City added “sexual and other reproductive health decisions” to the protected categories under the New York City Human Rights Law. As a reminder, New York City's amended Human Rights Law provides that protected sexual and reproductive health decisions include, but are not limited to, fertility-related medical procedures; sexually transmitted disease prevention, testing and treatment; and family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing and abortion.^[2]

The State law broadly defines “reproductive health decision making” as “including, but not limited to, the decision to use or access a particular drug, device or service.” Under the new law, employers are prohibited from accessing employee's or employee's dependent's personal information regarding reproductive health decisions unless the employee has provided consent in writing. The law also prohibits employers from discriminating or retaliating against an employee because of the employee's or the employee's dependent's reproductive health decisions or requiring an employee to sign a waiver that infringes upon the employee's right to make reproductive health decisions.

Effective Jan. 7, 2020, employers must include a notice of the employee's rights and remedies under this law in employee handbooks. Please see [here](#) for a form policy.^[3]

Minimum Wage Increase

Effective Dec. 31, 2019, the minimum wage for all employees who work in New York City for a New York City employer will be \$15.00 per hour. On Long Island and in Westchester County, the minimum wage will increase to \$13.00 per hour for workers. In the remainder of New York State, the minimum wage will be \$11.80.

New Threshold for Salaries to be Exempt From Overtime

Typically, to be considered an employee exempt from the overtime pay requirements, an employee must satisfy the duties test as well as the salary test. The threshold for salaries for the salary test for exempt executive and administrative employees will change, effective Dec. 31, 2019. New York City exempt employees must be paid at least \$1,125.00 per week (\$58,500.00 per year). Nassau, Suffolk and Westchester County exempt employees must be paid at least \$975 per week (\$50,700.00 per year). Exempt employees in the rest of New York State must be paid at least \$885 per week (\$46,020.00 per year).

Effective Jan. 1, 2020, the U.S. Department of Labor increased the salary threshold to \$107,432 to be considered an exempt "Highly Compensated Employee." The Department of Labor also increased the "Standard Salary Level" to \$35,568 but that increase is irrelevant in states such as New York that have higher salary levels for the exemption. In addition, in recognition of evolving pay practices, the new rule allows employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10% of the standard salary level.

New York Shield Act

On July 25, 2019, Governor Cuomo signed into law The Stop Hacks and Improve Electronic Data Security Act ("Shield Act") amending existing breach notification laws to, among other things, expand the scope of persons and businesses, and private information, covered by existing law. It also imposes new data security requirements. The Shield Act took effect on Oct. 23, 2019, except for the new data security requirements, which will take effect on March 21, 2020.

The Shield Act imposes additional requirements on employers to implement and maintain administrative, technical and physical

safeguards to protect the security, confidentiality and integrity of private information and its disposal. The new definition of private information in the Shield Act includes, but is not limited to, biometric information such as fingerprints or facial patterns, email addresses and corresponding passwords or security questions and answers, and financial account number without a required security code if an unauthorized person could access the account. The existing law covered such private information as Social Security numbers.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] “New York City to Ban Employer Inquiries and Reliance on Salary History,” *SRZ Alert*, April 7, 2017, available [here](#).

[2] “New Developments for Employers Regarding Employee Reproductive Health Decisions, Marijuana Drug Testing and Wage Reporting Requirements,” *SRZ Alert*, June 6, 2019, available [here](#).

[3] “Prohibition Against Discrimination on the Basis of Reproductive Health Decision Making,” available [here](#).

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