Cooley

Five Actionable Compliance Steps for New York Employers

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2024 is already shaping up to be another year with significant new compliance obligations for New York employers. Below, we list five actionable steps New York employers should take to tackle the ever-growing challenge of meeting their obligations under applicable law.

1. Review leave and accommodations policies and watch for further guidance.

At the end of April 2024, the New York Legislature enacted its fiscal year 2025 budget. The $237 billion budget created significant new leave obligations for New York employers, which are described below. Employers should, therefore, review their leave and accommodations policies and watch for further guidance from the state regarding how to implement the prenatal personal leave and paid lactation breaks described below.

Paid prenatal personal leave

New York became the first state in the US to create a paid leave program for prenatal care, as part of the governor's broader effort to improve statewide infant and maternal mortality. Effective January 1, 2025, every employer will be required to provide employees with 20 hours of paid prenatal leave during any 52-week calendar period. This leave is separate from (and thus, in addition to) the existing 40 or 56 hours (depending on employer size) of paid sick leave under state law and can be taken in hourly increments. Prenatal leave can be taken for healthcare services during an employee's pregnancy or related to the pregnancy (which includes attending physical exams, undergoing medical procedures, monitoring and testing), as well as discussions with healthcare providers. Employees must receive compensation at the greater rate of their regular rate of pay or the applicable minimum wage. Employees are not entitled to payment for unused prenatal leave time upon separation from employment. The law also extends the anti-retaliation, anti-discrimination and confidentiality protections existing in the state's paid sick leave law to prenatal leave.

The law does not address common issues with administering various types of leave, such as documentation of the need for taking prenatal leave or how employees may give notice to employers about using the leave. Employers should monitor for guidance on these and other open issues. Employers also should update their leave policies to cover prenatal personal leave prior to the effective date.

Paid lactation breaks

Effective June 19, 2024, employers will be required to provide **paid** lactation breaks of 30 minutes to employees expressing breast milk, each time the employee has "reasonable need to express breast milk." Under existing law, employers are required only to provide at least 20 minutes of **unpaid** break time, or permit employees to pump during regular paid break time or meal times. This new paid break time should be provided for up to three years following birth. Employees also are entitled to use existing paid break time or meal time for any time in excess of 30 minutes. Employers will need to incorporate this break entitlement into their existing policies regarding lactation accommodations, as required by law.

Sunset of COVID-19 paid sick leave on July 31, 2025

While not a new leave requirement, employers should plan to rescind any existing COVID-19 paid sick leave policies on July 31, 2025. Implemented during the pandemic, the law required employers to provide employees with paid sick time off when they were subject to a mandatory quarantine or isolation order due to COVID-19.

2. Review independent contractor relationships and ensure compliance with New York State's Freelance

Isn’t Free Act.

While not new for New York City employers, effective August 28, 2024, **all** New York employers will be required to comply with the state’s Freelance Isn’t Free Act (NY FIFA). Like the New York City Freelance Isn’t Free Act (NYC FIFA), the NY FIFA requires all contracts with freelancers (i.e., independent contractors) for services valued at $800 or more (or $800 in the aggregate, if the freelancer has provided multiple services within a 120-day period) to be in writing and contain certain required items, as described below. Freelancers are broadly defined, and with certain exceptions cover “any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name.” Hiring entities are broadly defined as “any person who retains a freelance worker to provide any service.”

The required contract items and many other aspects of hiring entities’ obligations are nearly identical to those set forth in the NYC FIFA. In addition, like the city law, the NY FIFA also contains anti-discrimination and anti-retaliation protections.

The attorney general can bring a civil action against a hiring party for violations of the law and also can assess increasingly steep civil penalties. In addition, there is a private right of action for freelancers, who can recover damages and reasonable attorneys’ fees and costs, among other remedies.

Employers using freelancers should review their independent contractor agreements for compliance with the NY FIFA, including ensuring their recordkeeping systems will retain such agreements for at least six years. Multistate employers should note that a new Illinois law, the Freelance Worker Protection Act, also will require written contracts with freelancers, beginning on July 1, 2024.

3. Review poster compliance.

By July 1, 2024, New York City employers should ensure compliance with Int 0569-2022, which requires employers to:

1. Give current employees and new hires a copy of the Workers’ Bill of Rights that has recently been developed by the city’s agencies.
2. Post a new Bill of Rights poster (which contains a QR code referring back to the Workers’ Bill of Rights information page) where employees can easily see it, including posting to their intranet or mobile app if “such means are regularly used to communicate” with employees.

The Bill of Rights provides information about rights under relevant federal, state and local laws that apply to employees, prospective employees or independent contractors in the city – including information about employees’ right to organize a union. The commissioner at the Department of Consumer and Worker Protection, which will enforce the law, may assess civil penalties of $500 to employers in violation, though employers will have a chance to correct a first violation within 30 days.

4. Revisit noncompete agreements.

In the wake of an attempt by the Federal Trade Commission (FTC) to categorically ban noncompete agreements, now is an excellent time to evaluate noncompete agreements, while legal challenges to the FTC ban play out in court. This analysis should include assessing the business necessity of using such agreements with different groups of employees (e.g., sales, product and management) and reviewing available alternatives. For more information, including an on-demand webinar on the FTC’s rule, see our FTC Noncompete Ban Resources page. Employers also should keep an eye on three bills recently proposed by the New York City Council seeking to limit the use of such agreements, as discussed in our April 11 alert.

5. Revisit job ads.

Employers should promptly review their job postings – including those posted on third-party websites, like job boards – and confirm their postings comply with state and city pay transparency laws. These obligations include not only confirming that job, promotion or transfer opportunities include the required minimum and maximum

wage rate that employers believe in good faith they are willing to pay for the position, but also ensuring that the ranges provided are truly based “in good faith.” Employers should avoid posting wide salary ranges, which can violate this “good faith” requirement.

Ensuring compliance is important, given that the New York City Commission on Human Rights recently signaled its intent to actively enforce the city transparency law by filing multiple complaints against prominent employers. In addition to the employers failing to post salary ranges entirely, the complaints also allege that where such ranges were posted, the estimates were not made “in good faith.” For example, hourly ranges from $18 to $48 per hour for a vehicle operator position and $22 to $58 per hour for a technician position were alleged to not have been posted in good faith. Similarly, wide salary ranges of $31,000 to $125,000 for a reporter position and $50,000 to $145,000 for a senior data analyst position also were alleged to violate the law.

Employers can refer to our April 7, 2022, alert detailing compliance steps for the NYC law, and read our September 14, 2023, alert on the state law, for more information. Multistate employers also should take note of upcoming salary transparency obligations in other jurisdictions – including DC’s pay transparency law (effective June 30, 2024), Maryland’s pay transparency law (effective October 1, 2024) and Illinois’ pay transparency law (effective July 1, 2025).

If you have questions about addressing any of these issues, please contact the Cooley employment team.

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