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# 10 Actionable Compliance Steps for New York City Employers

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New York City employers face the constant challenge of managing their workforces while also complying with ever-evolving legal requirements. Below we have listed 10 actionable steps that New York City private-sector employers should take to promote compliance and avoid common pitfalls.

## 1. Ensure pay transparency in job postings

Several jurisdictions, including New York State and New York City (as discussed in this April 2022 client alert on New York City's pay transparency law), require certain information in internal and external job postings to comply with pay transparency laws. Employers should review their job postings – including those on third-party websites – to confirm their postings, among other things, contain a good faith pay range for the position.

## 2. Ensure Fair Chance Act compliance

Under New York City's Fair Chance Act and its implementing guidance, employers requiring a background check must ensure that the background check is the very last step of the pre-onboarding hiring process. Indeed, a "conditional offer of employment" should precede the background check. Additionally, New York employers should ensure that their job postings and websites do not reference background check requirements at all (unless mandated by law).

## 3. Audit employee onboarding documentation practices

There are numerous notices covering a range of topics that must be provided to new hires based in New York City. For example, all New York employees must receive a wage notice describing, among other things, their pay rate and the employer's payroll practices. In addition, all New York employers must provide new hires with a copy of their anti-harassment policy, and employers that engage in electronic monitoring must give notice to all new hires (as discussed in this November 2021 client alert on employee monitoring in New York). Employers should audit their onboarding practices to determine whether new hires are receiving all required notices and information.

## 4. Review practices regarding separation and settlement agreements

As discussed in this February 2023 client alert, all employers should be mindful of the recent National Labor Relations Board ruling regarding certain provisions in separation agreements, including nondisparagement and confidentiality provisions. Given preexisting limitations under the state's anti-harassment laws and regulations, this decision can further complicate the process for New York employers to include a confidentiality provision in a settlement agreement with an employee who has raised a claim of discrimination or harassment. In order to mitigate any future issues, employers should ensure that the separation agreements they proffer to departing employees are legally compliant and enforceable.

## 5. Review parental leave policies

All New York employers must promulgate a policy addressing rights and processes under the New York State

Paid Family Leave Act. For employers offering additional parental leave, it is important to review parental leave policies and confirm that, if desired, all statutory and company-offered leaves are taken concurrently.

# 6. Conduct annual anti-harassment training

All New York City employers are required to conduct annual anti-harassment training for employees and certain independent contractors. Employers should ensure all employees take a legally compliant training.

# 7. Update anti-harassment policy

New York State recently revised its model anti-harassment policy. Employers should review their written anti-harassment policies and procedures to confirm they meet all legal requirements and reflect the employer's actual practices.

# 8. Prepare for Automated Employment Decision Tools (AEDT) law compliance

Enforcement of New York City's AEDT law is set to begin on July 5, 2023, following the city's publication of its final implementation rule. Employers who use artificial intelligence- and algorithm-based technologies for recruiting, hiring or promotion should begin preparing for compliance – including by undergoing a compliant bias audit and providing certain notices to job candidates or employees.

# 9. Ensure compliance with sick leave laws

New York State and New York City each require most employers to provide paid time off for sick leave. Employers also are required to document each employee's use and accrual of sick leave. Even employers using a "flexible" or "nonaccrual" paid time off model should determine whether they have adequate tracking procedures in place.

# 10. Review incentive-based compensation plans

Employers that offer bonuses, commissions or other forms of incentive-based compensation should review their plans to ensure they clearly define the scope of the eligible incentive compensation and specifically how it is earned. Employers should avoid conflating a description of when incentive compensation is **paid** with when it is **earned**.

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

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