

BUSINESS IN

2025

WEEKLY WEBINAR SERIES



Your Host



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Member

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TODAY'S AGENDA

Kristen Smith – (12 p.m. - 12:05 p.m.)

- Welcome / Agenda

Kristen Smith – (12:05 p.m. - 12:10 p.m.)

- Handbook Policy Requirement for Reproductive Rights Discrimination Restored by Court

Nick Jacobson – (12:10 p.m. - 12:20 p.m.)

- January 2025 Litigation Update: New Year New Standard for What Constitutes an Adverse Action?

Adam Mastroleo – (12:20 p.m. - 12:30 p.m.)

- Paid Family Leave Retaliation Claims: Understanding the Law and Process

Kristen Smith – (12:30 p.m.)

- Questions / Wrap Up

Handbook Policy Requirement for Reproductive Rights Discrimination Restored by Court



Kristen E. Smith

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NY Labor Law 203-e ~ No Discrimination Based on Employee's Reproductive Health Decisions

- Implemented in 2019
- Prohibits employers from:
 - Discriminating or retaliating against employee because of an employee's (or their dependent's) reproductive health decision making, including decision to use a particular drug, device or medical service
 - Accessing employee's personal information regarding their (or their dependent's) reproductive decision-making
 - Retaliating against an employee for making a complaint that their rights under this law were violated, or participating in an investigation or proceeding related to such a complaint

NY Labor Law 203-e ~ No Discrimination Based on Employee's Reproductive Health Decisions

- Affirmatively requires employer to include a notice of “rights and remedies” under this law in an employee handbook, if they have a handbook

CompassCase v. Cuomo, NDNY, 2022

- Plaintiff (Christian pregnancy center and others) challenged NY Labor Law 203-e
 - First amendment free speech – law compels religious organization to make statements with which is disagrees in their handbook
 - Court **permanently enjoined** NYS from enforcing the notice provision in the law
 - Result: Not required to put a “reproductive rights discrimination” policy in employee handbook

Slattery v. Hochul, 2nd Circuit 2023

- Crisis pregnancy center challenged Labor Law 203-e
 - First amendment freedom of association – prevents is from disassociating itself from employees who seek abortions & undermines its anti-abortion message as a crisis center
 - State moved to dismiss, lower court dismissed the case
 - On appeal, court held that lower court applied the wrong test, and the plaintiff stated a plausible claim of an unconstitutional burden on its right to expressive association – sent the case back to lower court on this issue
 - Employer may have a claims if the law “forces [the employer] to employ individuals who act or have acted against the very mission of its organization

CompassCare v. Hochul, 2nd Circuit, Jan. 2, 2025

- Based on Slattery decision, revived CompassCare's freedom of association claim, sent back to lower court
- Vacated the permanent injunction on the handbook provision of the law
- **Bottom Line**: Employers with handbooks must now include a policy notifying employees of their "rights and remedies" under the law

January 2025 Litigation Update: New Year New Standard for What Constitutes an Adverse Action?



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Adverse Actions: Pre-2019

- Standards were essentially the same under New York State and Federal Law (NYCHRL applied a different standard)
- Terminations, demotions, unpaid suspensions constituted adverse actions
- Things like transfers, denials of training, and unfavorable assignments *could* constitute adverse actions; ex:
 - Transfer that constituted a “significant change” and created a “material disadvantage”
 - Denial of training that resulted in “material harm” – significant disadvantage with respect to opportunities for professional growth and career advancement

Changes to Federal Law Adverse Action Standard

- *Muldrow v. City of St. Louis* (April 2024)
 - Police officer transferred from position as investigator to uniformed position
 - Lost take-home car, no longer worked investigations, worked irregular schedule including weekends
 - Supreme Court: nothing in Title VII required the officer to show “significant” changes to her employment
 - **New Standard:** Transferee must show “some harm” to an “identifiable” term or condition of employment

Effect of *Muldrow*

- Although *Muldrow* concerned a transfer, its reasoning could be applied to all Title VII discrimination cases
 - *McCarthy v. Motorola Sols. Inc.* (E.D.N.Y. Aug. 2024) – new, reduced standard “likely does apply outside the involuntary transfer context”
 - *Anderson v. Amazon.com, Inc.* (S.D.N.Y. May 2024) – applying *Muldrow* and finding that PIP and “diminished role” were sufficient to constitute adverse actions

2019 Amendments to New York Human Rights Law

- Amendment provided that NYHRL was to be “construed liberally for the accomplishment of the remedial purpose thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed.”
- Amendment contained clear change to hostile work environment, but left open question of whether adverse action standard had changed

Courts' Interpretation of 2019 Amendments

- “While New York courts have not yet produced any substantive analysis of how this amendment changes standards of liability under the NYSHRL, some courts in this Circuit have interpreted the amendment as rendering the standard for claims closer to the standard of the NYCHRL.” – *Cooper v. Franklin Templeton Invs.*, (2d. Cir. June, 2023)

Where do these changes leave us?

- Makes it more difficult to resolve employment litigation cases on motions to dismiss and motions for summary judgment
- More employer actions could be the basis of discrimination claims
 - Shift assignments;
 - Unfavorable tasks;
 - Training and educational opportunities;
 - Temporary transfers
- Consider whether additional HR oversight or training for supervisors is warranted

Paid Family Leave Retaliation Claims: Understanding the Law and Process



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New York Paid Family Leave

- Started in 2018
- Provides employees up to 12 weeks of job protected, paid, time off to:
 - Bond with a new child
 - Care for a family member with a serious health condition
 - Assist loved ones when a family member is deployed abroad on active military service

New York Paid Family Leave - Procedure

- Employee provides 30 days' notice to employer, if foreseeable
- Employee completes request forms, which are submitted to employer's insurance carrier
- Carrier pays or denies benefits within 18 days of the first day of leave or receipt of the completed request, whichever is later

New York Paid Family Leave - Protections


- Job protection
 - Employees are entitled to return to the same job, or a comparable one, after returning from PFL
 - Comparable job is one with comparable benefits, pay and other terms or conditions of employment
- Continued health insurance

New York Paid Family Leave - Protections

- No discrimination or retaliation
 - Not returning employee to the same or comparable job;
 - Terminating employment;
 - Reducing pay or benefits;
 - Disciplining the employee in any way
- Remedies can include reinstatement, back pay, attorney's fees, and up to \$500 in penalties

Discrimination/Retaliation Claim Procedure

- Multi-step process
 - Step 1
 - Employee must submit a “Formal Request for Reinstatement with their employer (Form PFL-DC-119)
 - Employer has 30 days to respond

 Paid Family Leave

FORMAL REQUEST FOR REINSTATEMENT REGARDING PAID FAMILY LEAVE

Paid Family Leave • PO Box 9030, Endicott, NY 13761-9030

You are entitled to return to the same or comparable position when you return to work after taking Paid Family Leave.

Employee Instructions

Use this form if, after you request or take Paid Family Leave, your employer:

- Refuses to reinstate you to your original or comparable position,
- Terminates your employment,
- Reduces your pay and/or benefits, and/or
- Disciplines you in any way.

If you believe any of these have happened, you **must first** formally request reinstatement using this form.

1. Fill out Sections A, B, and C of this form.
2. Make a copy of all pages and deliver the copy to your employer.
3. Once you have delivered the copy, immediately fill out Section D of this form. DO NOT wait for your employer to complete Section E.
4. Make a copy of all pages to save for your records.
5. Send a copy of the form (with Sections A, B, C, and D completed) to the **Workers' Compensation Board: Paid Family Leave at PO Box 9030, Endicott, NY 13761-9030** or email to PaidFamilyLeave@wcb.ny.gov.

What Happens Next?

Your employer has 30 days from the filing date* of this request to:

1. Take corrective action, which may include reinstating you to the same or a comparable position; or
2. Complete Section E of this form, explaining to you why they believe no corrective action is required.

If you are reinstated by your employer, no further action is necessary.

If you are NOT reinstated, you are not satisfied with your employer's response, or your employer does not respond to this request within 30 days:

- You can then file a *Paid Family Leave Discrimination/Retaliation Complaint (PFL-DC-120)* available at www.ny.gov/PaidFamilyLeave.
- You and your employer will be required to appear at a hearing before a Workers' Compensation Law Judge who will decide if the law was violated. If it was, your employer may be ordered to reinstate you, pay back wages, and/or attorney fees.

* The 30 days begins the day that you certified delivery of this form to your employer noted in the "Certification of Delivery" on page 2.


Employer Instructions

Employers, this a Formal Request for Reinstatement from an employee who believes they have been discriminated or retaliated against for requesting or taking Paid Family Leave.

Please see page 3 for your instructions.

Discrimination/Retaliation Claim Procedure

- If employee is not reinstated or not satisfied with employer's response, employee can request a hearing with the Workers' Compensation Board
- Step 2
 - Complete the PFL Discrimination Complaint Form and send to the Workers' Compensation Board (PFL-DC-120)

 **Paid Family Leave**

**PAID FAMILY LEAVE
DISCRIMINATION / RETALIATION COMPLAINT**

Paid Family Leave • PO Box 9030, Endicott, NY 13761-9030

Complete this form only if:

- You have submitted the Formal Request for Reinstatement Regarding Paid Family Leave (Form PFL-DC-119) to your employer AND the Workers' Compensation Board, and
- Your employer has not responded within 30 days OR you were not satisfied with their explanation as to why your employment conditions were changed.

A hearing will be scheduled after your employer receives this form and has an opportunity to respond.

Attach to this form:

1. Proof of receipt of family leave benefits, or
2. Your request for family leave benefits (if benefits were not received), and
3. Evidence, such as a letter of termination or the name of a witness, that the following occurred in relation to requesting or taking Paid Family Leave:
 - Employer's refusal to reinstate you to your original or comparable position,
 - Termination of employment,
 - Reduced pay and/or benefits, and/or
 - Disciplinary action.

When you have completed the form:

- Send it to the Workers' Compensation Board: Paid Family Leave, PO Box 9030, Endicott, NY 13761-9030.
- Send a copy to your employer.
- Keep a copy for your records.

Failure to complete this form, including the required attachments, may delay processing of your complaint.

Employee's Information

Name (LAST, FIRST, MI): _____ Date of Birth: _____

Address: _____

Phone #: _____ Social Security #/Tax Identification #: _____

Employer's Information (as it appears on your pay stub)

Business Name: _____

Address: _____

Phone #: _____ Federal Identification Number (FEIN): _____

Person who discriminated against me was: _____

Their position is (check one): Owner Supervisor Manager


Paid Family Leave Information

Check one of the following:

- Paid Family Leave was formally requested and granted Start Date: _____ End Date: _____
- Paid Family Leave was formally requested and denied
- No formal request was made for Paid Family Leave

Discrimination/Retaliation Claim Procedure

- Workers' Compensation Board notifies the employer that it received a complaint, and allows the employer 30 days from the date of the notice to serve a response
- Response Form (PFL-DC-130), as well as supporting documentation typically submitted

 **Paid Family Leave** | **EMPLOYER'S RESPONSE TO PAID FAMILY LEAVE DISCRIMINATION / RETALIATION COMPLAINT**

Paid Family Leave • PO Box 9030, Endicott, NY 13761-9030

When an employee has alleged a violation of Workers' Compensation Law Section 203-b or 120 (see reverse for the applicable law), a preliminary hearing will be scheduled before a Workers' Compensation Law Judge at the hearing point nearest the employee's home address. At that time, all parties will have an opportunity to be heard. You will receive a notice providing the date, place and time for the hearing.

WITHIN 30 DAYS OF RECEIVING A NOTICE OF PAID FAMILY LEAVE DISCRIMINATION/RETALIATION COMPLAINT (Form PFL-DC-129) FROM THE BOARD, EMPLOYERS MUST COMPLETE AND SUBMIT THIS FORM TO THE BOARD OR RISK WAIVER OF YOUR DEFENSES. MAIL THIS FORM TO PAID FAMILY LEAVE, PO BOX 9030, ENDICOTT, NY 13761-9030.

THE EMPLOYER ALONE IS LIABLE FOR ANY PENALTIES AND PAYMENTS ORDERED.

In accordance with Section 111 of the Workers' Compensation Law (quoted on the reverse), enter all information

Employee's Information (This information can be found on the Notice of Paid Family Leave Discrimination/Retaliation Complaint, Form PFL-DC-129, sent to you by the Workers' Compensation Board.)

Employee Name: _____ PFL Case Number: _____

Employer's Information

Full and Correct Legal Name: _____

Address: _____

Phone #: _____ Federal Identification Number (FEIN): _____

Is this business owned by an individual owner, partnership or corporation (check one):

Individual owner (Enter name and address of owner below)

Partnership (Enter name and address of each partner below)

Corporation (Enter name, title and address(es) below of president and/or other corporate officer(s) who should receive notice regarding this matter)

Name (LAST, FIRST, MI): _____

Title (if applicable): _____

Address: _____

Name (LAST, FIRST, MI): _____

Title (if applicable): _____

Address: _____

Name (LAST, FIRST, MI): _____


Title (if applicable): _____

Address: _____

Name (LAST, FIRST, MI): _____

Title (if applicable): _____

Address: _____

PFL-DC-130 (1-18) Page 1 of 2 If you need assistance, please call (844) 337-6303
www.ny.gov/PaidFamilyLeave 

Discrimination/Retaliation Claim Procedure

- Workers' Compensation Board then schedules a hearing, typically within 45 days of Notice to Employer
- Initial hearing date to schedule formal hearing, with deadlines for submission of evidence
- Hearing structure:
 - Workers' Compensation Board Administrative Law Judge
 - Virtual Hearing
 - Three-hour blocks
 - Witness testimony/documentary evidence

Discrimination/Retaliation Claim Procedure

- Presentation of evidence similar to a Division public hearing and/or a trial
- Defense of discrimination/retaliation claim similar as well, including but not limited to:
 - Employee not eligible for PFL
 - Employment decisions were made for legitimate, non-discriminatory, non-retaliatory reasons
- Judge will allow submission of post-hearing briefs following proof
- Judge will schedule a hearing date to read a decision

Questions?



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Sexual Harassment Prevention Training

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training [click here](#) or email bondonline@bsk.com

Thank You

The information in this presentation is intended as general background information.
It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

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