

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

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### Manufacturing in the Upstate NY Tech Corridor Employment Laws that are Unique to New York Part 1

For manufacturers and suppliers expanding their operations into New York State for the first time, there are a myriad of legal idiosyncrasies to navigate. Businesses must proactively identify areas in which a different approach is required to be successful (and compliant) in New York. This article is the first of a series intended for businesses entering New York, particularly those manufacturers and suppliers taking advantage of the tech boom across the Upstate region, to understand what sets New York apart from a legal and regulatory perspective.

When it comes to employment law, New York aggressively regulates workplace rights and conduct, making it confusing for businesses accustomed to operating in other states. Every year, it seems, there are new State mandates that employers must implement—whether it be a new policy to maintain, a new type of leave to offer, or a standard practice that must be avoided. A comprehensive list of differences would fill a book (in fact, [The Essential Guide to New York Employment Law](#), written by Bond attorneys, is nearly 500 pages), but here is a primer outlining seven key aspects of New York employment law that should be on the radar of any business setting up shop in the Empire State.

1. **Broader Workplace Harassment Prohibitions.** Under federal law and most state laws, claims of sexual and other workplace harassment are analyzed under a standard prohibiting conduct that is so “severe or pervasive” that it alters an employee’s terms and conditions of employment. New York has implemented a much lower standard to prove workplace harassment. Any conduct directed toward an employee or independent contractor because of their membership in a protected category (i.e., their gender, race, age, disability, etc.) that rises above the level of what a reasonable victim of harassment with the same protected characteristics would consider “petty slights or trivial inconveniences” violates New York law. The line of demarcation as to what constitutes a “petty slight or trivial inconvenience” can be extremely difficult to define, so employers in New York must be extraordinarily vigilant in providing ongoing training and education on appropriate workplace conduct.

2. **Workplace Harassment Training & Policy Mandates.** Speaking of training and education, New York employers are legally required to conduct sexual harassment training through an interactive modality for all new hires upon hire, and all other employees, including part-time employees and interns, on an annual basis. Bond offers a [compliant training program](#).

The State also requires employers to maintain a policy prohibiting harassment that is consistent with a [model policy](#) published by the State. Employers hiring in New York should check their

existing policy against the New York State model policy, as the New York model policy is likely more comprehensive than the policy most employers maintain in other states.

**3. New York State Human Rights Law Procedure.** In most states, employees have a relatively short period of time (180 to 300 days) to file an administrative complaint of employment discrimination or retaliation. Not so in New York. Here, [employees have a full three years](#) to file a complaint with the New York State Division of Human Rights (NYSDHR). Moreover, the NYSDHR process is more complex and has greater damage potential than most other states. The NYSDHR has the power to hold hearings and award uncapped compensatory damages, punitive damages, as well as attorneys' fees. Finally, in contrast to federal law, New York allows for personal liability by individuals accused of violating workplace discrimination laws. It is also easier for employees to file complaints in New York, with the State offering a hotline and a mobile app for submitting complaints.

**4. Laws Prohibiting Employment Decisions Based on Off-Duty Conduct, Including Marijuana Use:** Under New York Labor Law §201-d, employers generally cannot take adverse action against an employee for certain types of lawful off-duty conduct, including political activities (e.g., running a campaign, fundraising), recreational activities (e.g., dangerous hobbies), or union activity. Recently, this law was amended to protect employees who refuse to attend employer-sponsored meetings or listen to employer speech where the primary purpose of the meeting or speech is to communicate the employer's opinion on religious or political matters.

Perhaps even more significant, particularly for employees in high tech industries, Labor Law §201-d protects employees' rights to use marijuana while off-duty. Employees can be disciplined for *on-duty* use, or for coming to work impaired from marijuana use, but the task of confirming impairment can be extremely challenging. Furthermore, since employees are permitted to use marijuana off duty, employers in New York are limited in testing for marijuana in pre-employment or random drug screens. Much to the surprise of many employers, there is no general exception for safety-sensitive jobs or industries, although compliance with federal DOT standards and federal contracts or grants are recognized exceptions to the New York statute.

**5. NY Clean Slate Act.** New York is one of just a handful of states that has enacted a law sealing many criminal convictions in order to clear the path for employment of individuals previously convicted of a crime. The [Clean Slate Act](#) takes effect in November 2024 and contains provisions that will undoubtedly impact all employers' hiring practices. Significantly, for a wide array of convictions, individuals will have their conviction sealed, which will permit them, during the employment application process, to lawfully answer "no" to the question of whether they have been convicted of a crime. The Clean Slate Act also adds state level requirement akin to those of the [federal Fair Credit and Reporting Act](#), for employers that obtain a criminal history through a background check on a job applicant.

**6. Mandatory Pay Transparency.** In 2023, New York joined a growing number of states with a pay transparency law, requiring all internal and external job postings to include a salary range. The Pay Transparency Act applies to all employers with four or more employees in New York,

and covers positions that will be physically performed, at least in part, in New York State, as well as remote-work positions that report to a supervisor in New York.

**7. Higher Minimum Wages and Exempt Salary Thresholds.** Finally, New York’s minimum wage is far above the federal requirement, and making matters more complicated, varies based on the region of the State. It also increases annually (at least until 2026). Currently, the minimum wage is \$15/hr. in the Upstate tech corridor and other Upstate counties, and \$16/hour in downstate New York (i.e., New York City and Westchester, Nassau and Suffolk counties). Those minimums will increase by \$0.50 on January 1, 2025 and another \$0.50 on January 1, 2026.

Additionally, the minimum salary levels required for an employee to qualify as an exempt, salaried executive or administrative worker are above the federal FLSA minimums at \$1,124.20/wk. Upstate and \$1,200/wk. Downstate. These thresholds are also scheduled to increase again in 2025 and 2026.

This article is the first of a series from Bond on the New York employment law principles which stand apart from the law in other jurisdictions and present compliance challenges for manufacturers moving into the State. To stay up to date on employment law in New York, subscribe and visit Bond’s [New York Labor and Employment Law Report](#), attend Bond’s complimentary [Business in 2024 Weekly Webinar Series](#) offered every Tuesday at Noon, or reach out to the authors, [Kristen Smith](#) or [Thomas Eron](#), or one of Bond’s approximately 100 labor and employment attorneys practicing from Buffalo to Long Island and every place in between on the New York State map.

