

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

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### Doing Business in New York Part 1: Being A New York Employer - Key Differences in Law That Incoming Businesses Need to Know

For existing businesses expanding operations into New York State for the first time, there are a myriad of legal idiosyncrasies to navigate. Businesses must proactively identify areas where a different approach is required to be successful (and compliant) in New York. This article is the first of a series intended for businesses trying to understand what sets New York apart from a legal and regulatory perspective.

When it comes to employment law, there is no question that New York is a leader in workplace rights and regulations, making it confusing for businesses accustomed to operating in other states. Every year, it seems, there is a new state mandate employers must implement—whether it be a new policy to maintain, a new type of leave to offer, or a standard practice that it must avoid. A comprehensive list of differences would fill a book (in fact, *The Essential Guide to New York Employment Law*, written by Bond lawyers, is nearly 500 pages), but here is a primer outlining 11 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. In 2019, New York implemented a much lower standard to prove workplace harassment. Any conduct directed toward an employee 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 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 interactive sexual harassment training to all new hires upon hire, and all other employees, including part-time employees and interns, on an annual basis. The state also requires employers 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 state’s model is likely more comprehensive than what most employers maintain in other states.
3. **New York State Human Rights Law Procedure.** In most other states, employees have only 300 days or one year 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, 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 not allowed to include marijuana in pre-employment or random drug screens. Much to the surprise of many employers, there is no exception for safety-sensitive jobs or industries.
5. **Mandatory Paid Sick (and Prenatal Care) Leave Benefits:** Private employers of all sizes are required by New York state law to provide its employees with sick leave. The amount of leave required depends on the size of the employer. Small employers (0-4 employees and net income of \$1 million or less) must offer 40 hours of unpaid leave. If that same employer has over \$1 million in net income, those 40 hours must be paid. Employers with 5 – 99 employees must also provide 40 hours of paid sick leave. Employers with 100 or more must provide 56 hours of paid sick leave per year. Employers must also allow employees who are victims of domestic violence to use this leave for certain enumerated reasons related to obtaining services. Additionally, the Paid Sick Leave Law was recently amended to require employers to provide an additional 20 hours of time off for pregnant employees to obtain prenatal care.
6. **Paid Family Leave (PFL) Benefits:** Speaking of leave, private employers must also provide employees with up to 12 weeks paid time to care for family members (including grandparents and siblings!) with a serious health condition or to bond with a new child. New York PFL operates as an insured benefit, similar to short-term disability benefits (which is also legally required in New York), where the employer makes a payroll deduction and the paid time is run through an insurer. New York's PFL benefit can run concurrently with protected time off under the federal Family Medical Leave Act (FMLA).
7. **Other Unexpected Time Off Requirements.** New York leads the nation in providing employees with time off for other various reasons, all of which should be added to your employee handbook. This includes time to donate blood, donate organs or bone marrow, vote, spend time with a military spouse on leave, serve as a witness after being a victim of a crime (or a close family member) and serve as a volunteer emergency responder during a state of emergency.
8. **Greater Rights for Nursing Mothers.** New York has greater protections than other states for pregnant and nursing women in the workplace. Under federal law, and until recently in New York, employers must provide unpaid time and space for nursing mothers to express breast milk. However, as of June 2024, New York law requires employers to provide 30-minute paid breaks to express breast milk each time the mother reasonably needs time to do so. Additionally, employers must maintain and distribute a policy on this subject that follows a model state policy.

**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 the

hiring process. Essentially, individuals with certain convictions will have their conviction sealed, which will permit them to answer “no” to the question of whether they have been convicted of a crime. But perhaps more importantly for employers, the background check process in New York will now have a required extra step. Under the Clean Slate Act, employers that obtain a criminal history from a background check will be required to send a copy of the report to the individual and notify them of the right to correct any incorrect information.

**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.

**Higher Minimum Wage and Exempt Salary Thresholds.** Finally, New York’s minimum wage is far above the federal requirement, and making matters more complicated, varies based on what region of the state where you have employees. It also increases annually (at least until 2026). Currently, the minimum wage is \$16/hour in downstate New York (New York City and Westchester, Nassau and Suffolk counties), and \$15/hour in all other counties. Those amounts will increase by \$0.50 on Jan. 1, 2025 and another \$0.50 on Jan. 1, 2026. Additionally, the minimum salary levels required for an employee to qualify as an exempt, salaried worker are \$1,200.00 downstate and \$1,124.20 upstate, and will increase again in 2025 and 2026.

These are just a few areas where New York stands apart from other jurisdictions. To stay fully 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 Kristen Smith or any 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.

