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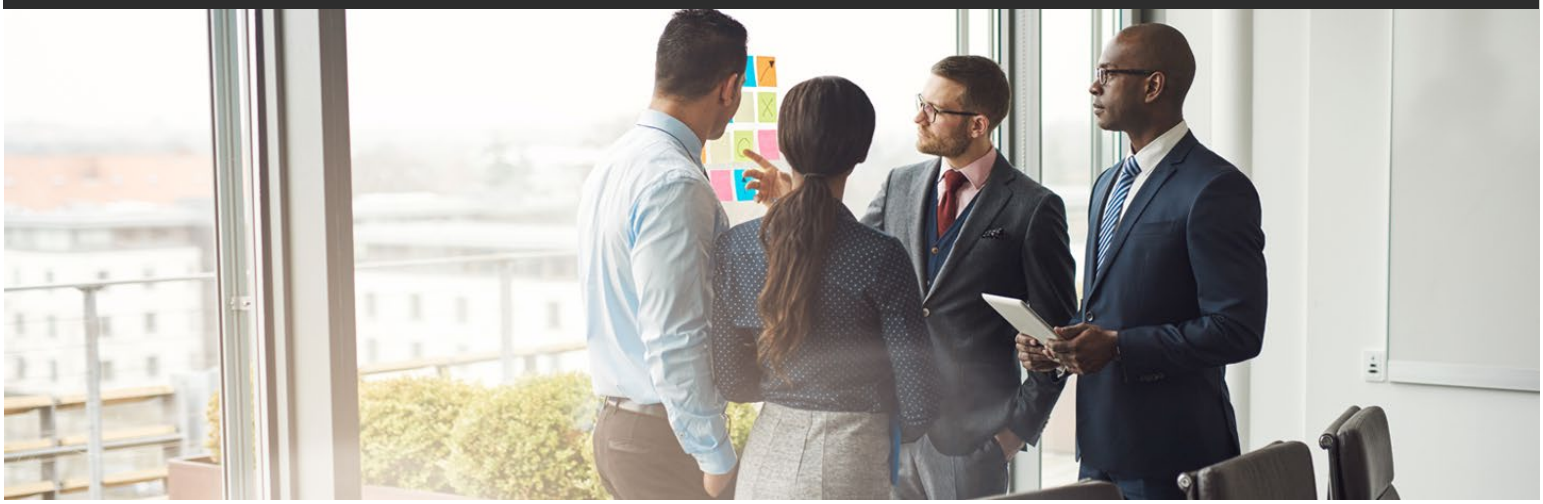
Alert | Labor & Employment



June 2024

New Requirements for New York Employers Effective this Summer

With summer starting next week, New York employers should be aware of upcoming requirements under several laws.

Paid Lactation Breaks

New York Labor Law § 206-c has been amended such that, effective June 19, 2024, employers must provide 30 minutes of paid break time to allow employees with a reasonable need to express breast milk to do so. This 30-minute paid break must be provided each time an employee has a need to express breast milk for up to three years following childbirth. Employers must also permit an employee to use existing paid break time or meal time in excess of the 30 minutes, if necessary. Previously, this time was unpaid.

New York City Workers' Bill of Rights

No later than July 1, 2024, New York City will require employers to distribute to each current employee and thereafter each new employee, on or before such employee's first day of work, a copy of the New York City Workers' Bill of Rights. The New York Department of Consumer and Worker Protection (DCWP) published the new Workers' Bill of Rights March 1, 2024. It provides employees, prospective employees, and independent contractors in New York City with an extensive summary of workers' rights and protections under city, state, and federal laws. It specifies the rights that apply to workers regardless of their immigration status and discusses the right to organize a union, as well as information on rights

enforced by the DCWP such as Paid Safe and Sick Leave, the Temporary Schedule Change Law, the Fair Workweek Law, and delivery worker laws.

To comply with the new regulation, employers will need to provide each employee with a copy of the Bill of Rights and conspicuously post it in an area accessible and visible to employees. If an employer regularly uses an online platform or mobile application to communicate with employees, the employer must also make the Bill of Rights available through those means. The distribution of all notices given to employees must be in English as well as in any language spoken as a primary language by at least five percent of employees, as long as the Commissioner has made the Workers' Bill of Rights available in that language.

If an employer fails to comply with the new requirements, first-time violators will be given a 30-day period to correct the violation. However, failure to correct such violation or subsequent violations will result in a $500 civil penalty.

To comply with the law, employers should provide copies of the Workers' Bill of Rights to existing employees and post it in their workplaces before July 1, 2024, and begin to develop a plan for distributing the Bill of Rights to new hires moving forward.

Freelance Isn't Free Act - Article 44-A General Business (GBS) Chapter 20

Set to take effect Aug. 28, 2024, the New York State Freelance Isn't Free Act (FIFA or the Act) will expand protections afforded to freelance workers in New York and impose new obligations on individuals and companies who seek to engage freelance workers. The Act largely mirrors New York City's Local Law 140 passed in 2016, which established labor protections for independent contractors in New York City.

FIFA defines a freelance worker as any person or organization of no more than one person that is hired or retained as an independent contractor to provide services valued at $800 or more. The $800 minimum can be calculated either by itself or when aggregated with all contracts for services between the same hiring party and freelancer during the immediately preceding 120 days. The law specifically excludes sales representatives, attorneys, licensed medical professionals, and construction contractors from the category of a freelance worker. Additionally, FIFA specifies that a hiring party includes any person who retains a freelance worker to provide any service, but excludes federal, state, local, and foreign governments.

Hiring parties who engage freelancers must comply with new contract requirements. The contract must be in writing and include the name and mailing address of the hiring party and freelance worker, an itemization of all services to be performed by the freelance worker and the value of such services, the rate and method of compensation, the date payment is due by the hiring party or the mechanism by which such date will be determined, and the date by which a freelance worker must submit a list of services rendered under such contract to the hiring party to ensure timely payment. If a hiring party includes a provision in the contract that waives any right provided to freelance workers under the Act, the provision will be deemed void as against public policy. Finally, the hiring party must retain a copy of the written contract for a minimum of six years and upon request of the attorney general, the hiring party must produce a copy of the contract.

The Act also requires hiring parties to pay freelance workers their contracted compensation either on or before the date such compensation is due under the terms of the contract, or if no date is specified, no later than 30 days after completion of the freelance worker's services. Additionally, once a freelance worker has commenced performance of their services, the hiring party may not require that a freelance worker accept less compensation than contracted for as a condition of timely payment.

FIFA also affords freelance workers several protections and remedies. One protection is that a hiring party is prohibited from retaliating against a freelance worker for exercising their rights guaranteed under the Act. Specifically, the Act restricts hiring parties from threatening, intimidating, disciplining, harassing, denying a work opportunity to, or discriminating against a freelance worker. Hiring parties may not take any other action that penalizes or is reasonably likely to deter the freelance worker from exercising or attempting to exercise their rights or obtaining any future work opportunity.

The Act also authorizes the attorney general to provide appropriate remedies and pursue an action where a hiring party has engaged in or is about to engage in unlawful conduct. Notably, the Act does not prohibit a worker from personally filing a civil action based on the same facts as a civil action commenced by the attorney general. A worker has two years to bring an action alleging that a hiring party has failed to comply with the written contract requirements of the Act and six years to bring an action based on unlawful payment practices or retaliation.

Several remedies are available to a worker who prevails on a claim brought under the Act.

- A worker who prevails on a claim alleging unlawful payment practices will be awarded, in addition to an award of reasonable attorneys' fees and costs, double damages, injunctive relief, and other remedies deemed appropriate.
- A worker who prevails on a claim alleging that a hiring party has failed to meet the written contract requirements will be awarded a statutory damage of $250.
- A worker who prevails on a claim alleging retaliation by a hiring party is entitled to statutory damages equal to the value of the underlying contract for each violation arising under such section.
- Applicable to any of the provisions, a worker who prevails on a claim alleging a violation of one or more claims under the Act will be awarded statutory damages equal to the value of the underlying contract for the violation.
- For any civil action commenced under the Act, the civil penalty imposed may not be greater than $25,000 for a finding that a hiring party has engaged in a pattern or practice of violations of the Act.

New York employers, especially those outside New York City, should begin to familiarize themselves with the requirements of this new law to ensure they are in compliance by the Aug. 28 effective date.

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