



# New York State and City Employment Law: 2023 Year in Review and What's to Come in 2024

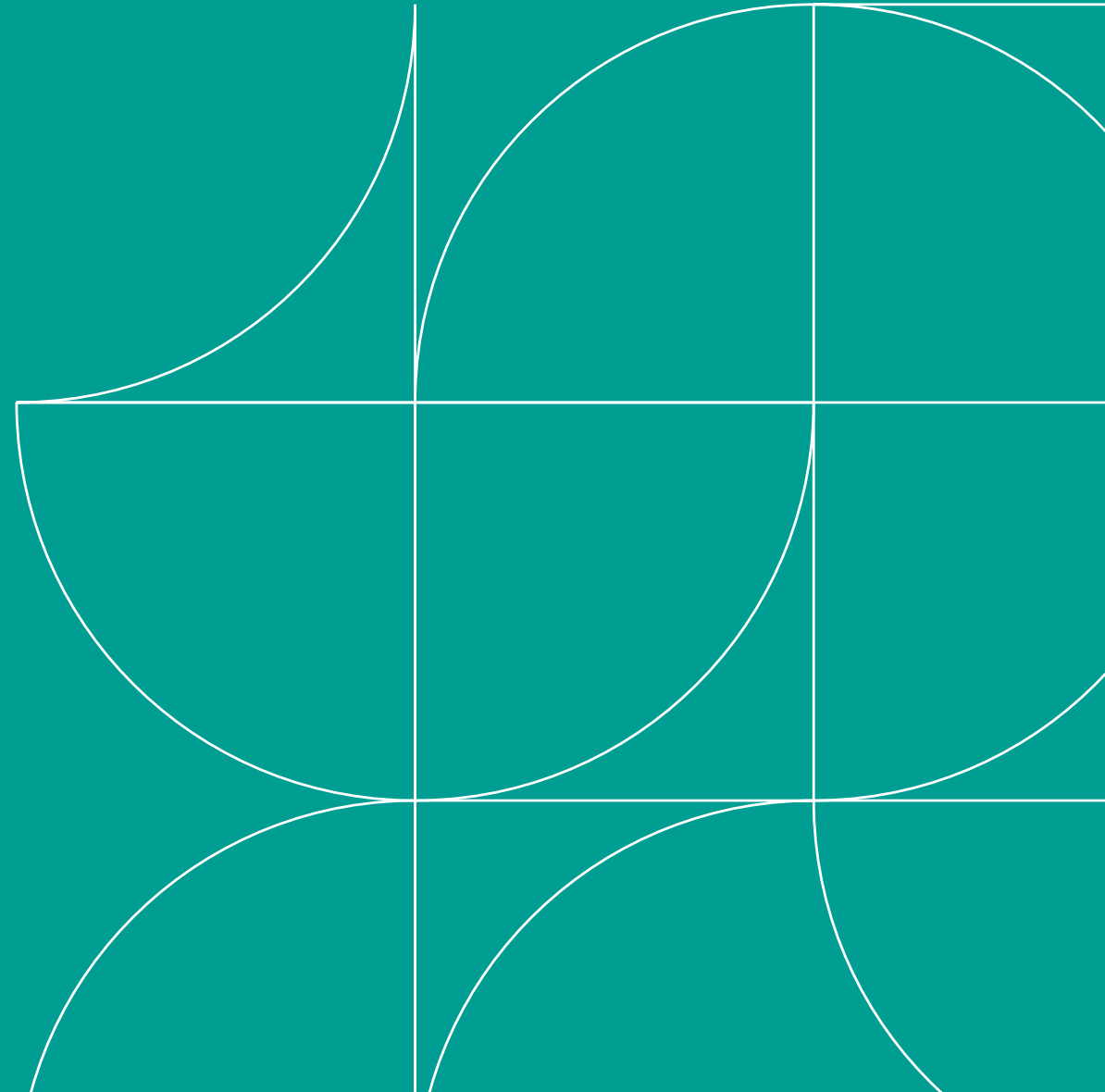
Rob Whitman  
Nick De Baun  
Maria Papasevastos  
Ashley Casey

Joe Vele  
Nick Lussier  
Daniel Small

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**Seyfarth Shaw LLP**

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# Today's Presenters

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Rob Whitman  
Partner



Nick De Baun  
Partner



Maria Papasevastos  
Partner



Ashley Casey  
Associate



Joe Vele  
Associate



Nick Lussier  
Associate



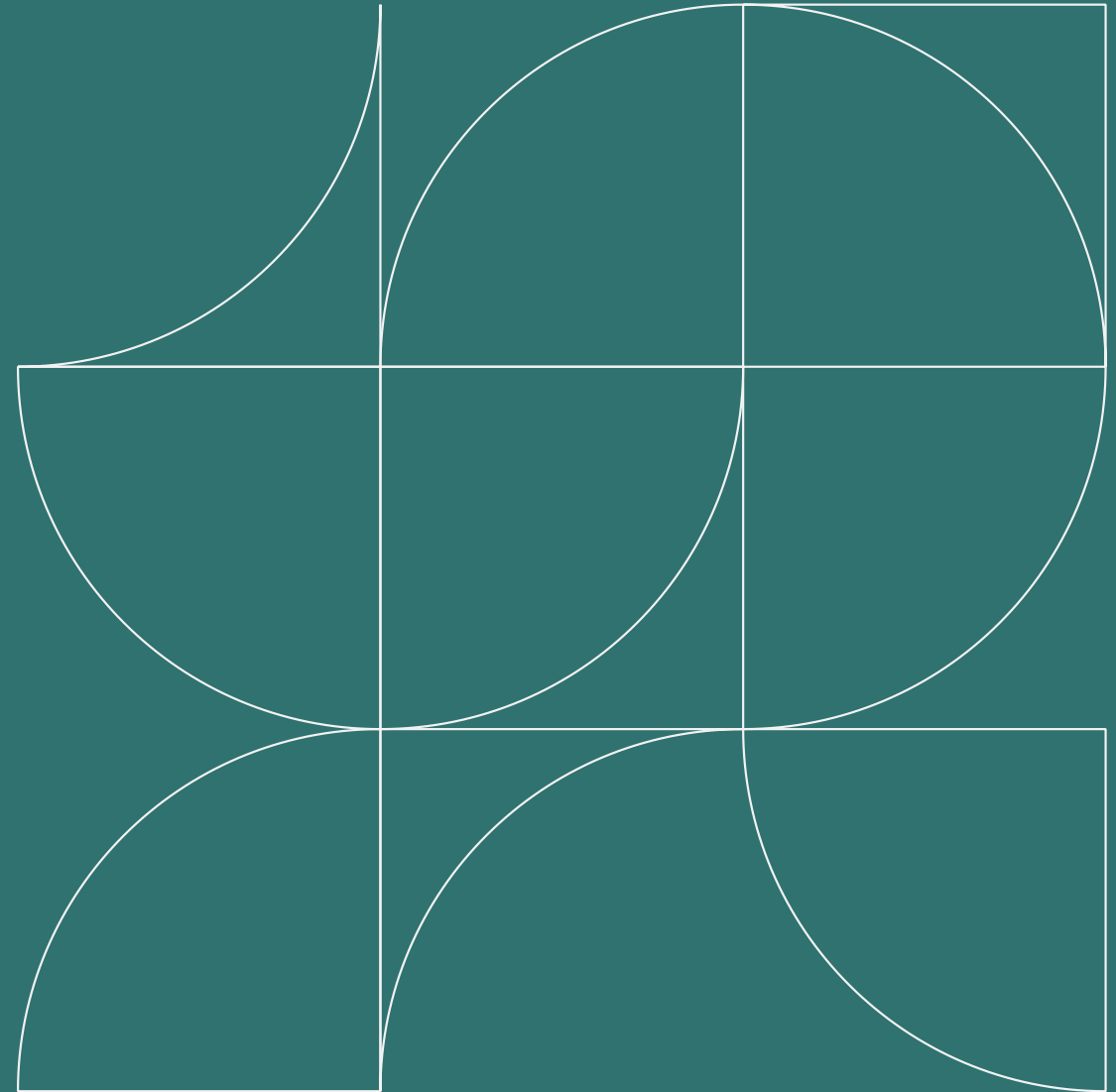
Daniel Small  
Associate



# Agenda

- 1 | Wage & Hour Developments
- 2 | Artificial Intelligence & Utilization in the Workplace
- 3 | Pay Equity
- 4 | Paid Leave
- 5 | Lightning Round

# Wage & Hour Developments



# Minimum Wage

<b>Effective Date</b>	<b>New York City, Long Island, and Westchester</b>	<b>Remainder of New York State</b>
January 1, 2024	\$16.00	\$15.00
January 1, 2025	\$16.50	\$15.50
January 1, 2026	\$17.00	\$16.00

## Exempt Status Thresholds

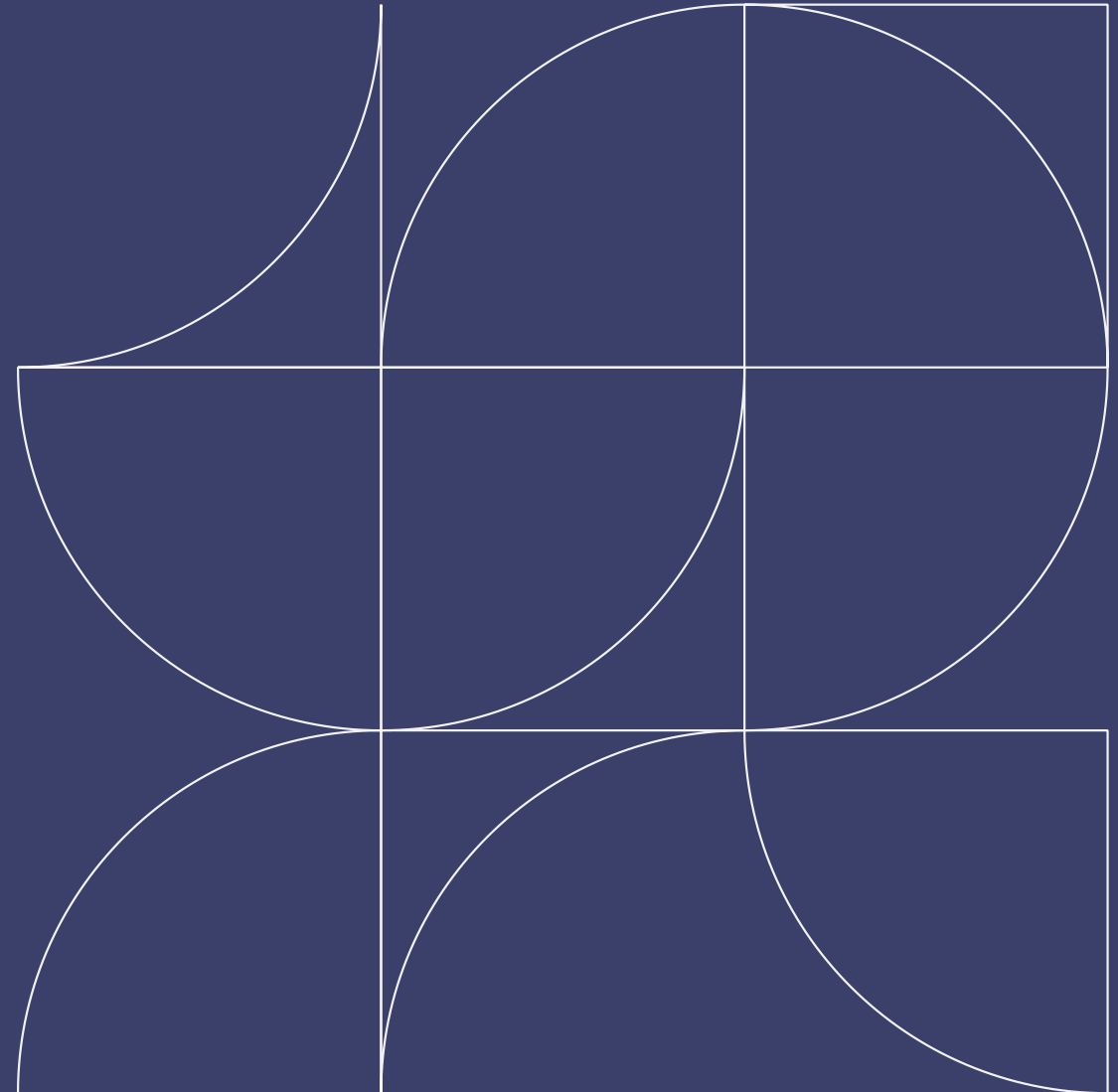
<b>Effective Date</b>	<b>New York City, Long Island, and Westchester</b>	<b>Remainder of New York State</b>
January 1, 2024	\$1,200.00/week (\$62,400.00/year)	\$1,124.20/week (\$58,458.40/year)
January 1, 2025	\$1,237.50/week (\$64,350.00/year)	\$1,161.65/week (\$60,405.80/year)
January 1, 2026	\$1,275.00/week (\$66,300.00/year)	\$1,199.10/week (\$62,353.20/year)

## Weekly Pay for “Manual Workers”

- *Vega v. CM & Associates Construction Management, LLC* (1st Dept. 2019)
  - private right of action permitted
  - liquidated damages available
- Floodgates of litigation open
- *Grant v. Global Aircraft Dispatch Inc.* (2d Dept. 2024)
  - disagrees with *Vega*
  - no private right of action
- Governor Hochul 2025 Budget Proposal
  - Proposed amendment to Labor Law Section 198
  - “[L]iquidated damages shall not be applicable ... where the employee was paid in accordance with the agreed terms of employment, but not less frequently than semi-monthly.”



# Artificial Intelligence & Utilization in the Workplace



## AI in HR is already here

25%

of HR departments are using AI today.

26%

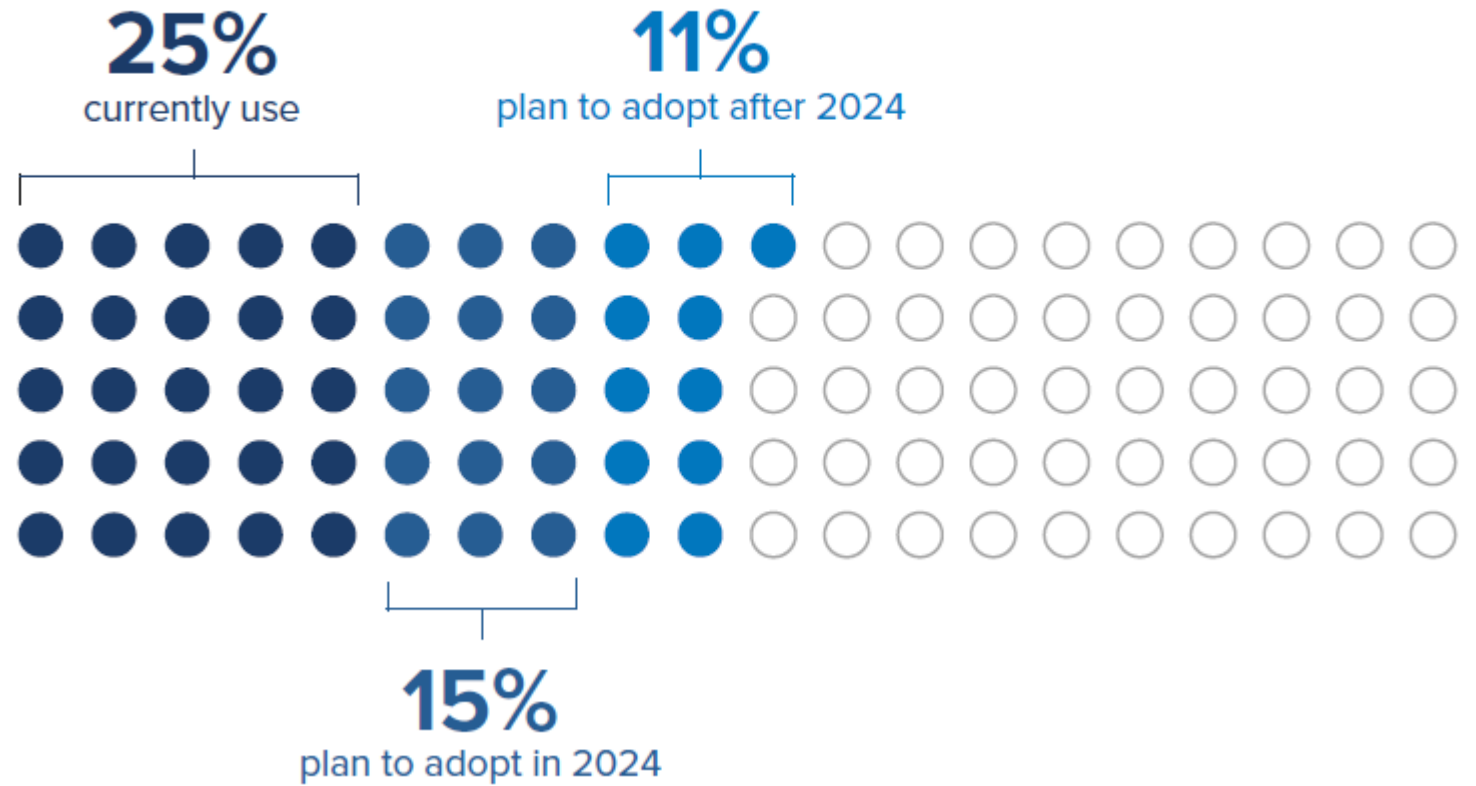
of HR departments plan to adopt AI in 2024 or thereafter.

By 2025, half of HR departments could be using AI.

Source: SHRM “State of the Workplace” research survey conducted in November 2023.

# AI in HR is already here

By 2025, half of HR departments could be using AI:



Source: SHRM “State of the Workplace” research survey conducted in November 2023.

## How are Advanced Technologies Being Used in Employment?



Many employers are already using AI or automated decision tools to support various HR functions. Key areas include:

- Sourcing (passive searches, skills/jobs matching)
- Evaluating resumes
- Interviewing candidates
- Assessments, including gamification tools
- Communications via chatbots
- Communicating with applicants
- Assessing skills gaps
- Performance management techniques
- Predicting drivers of turnover
- Predicting absences and workflow issues



## New York City Local Law 144

- NYC employers are prohibited from using tools which substantially assist or replace discretionary decision-making processes unless the tool
  - (1) underwent a “**bias audit**” within one year before its use, and
  - (2) provides **notice** to employees or candidates
- Bias Audit Minimum Requirements:
  - Gender & Race/Ethnicity & Intersectional;
  - Independent auditor;
  - Test for disparate impact before use;
  - Publish the results on website;
  - Conduct tests annually
- Notice must be provided 10 days before the AEDT is used, along with instructions for requesting an alternative process or accommodation

**Federal contractors  
should be mindful of  
OFCCP's ongoing  
emphasis of AI issues**

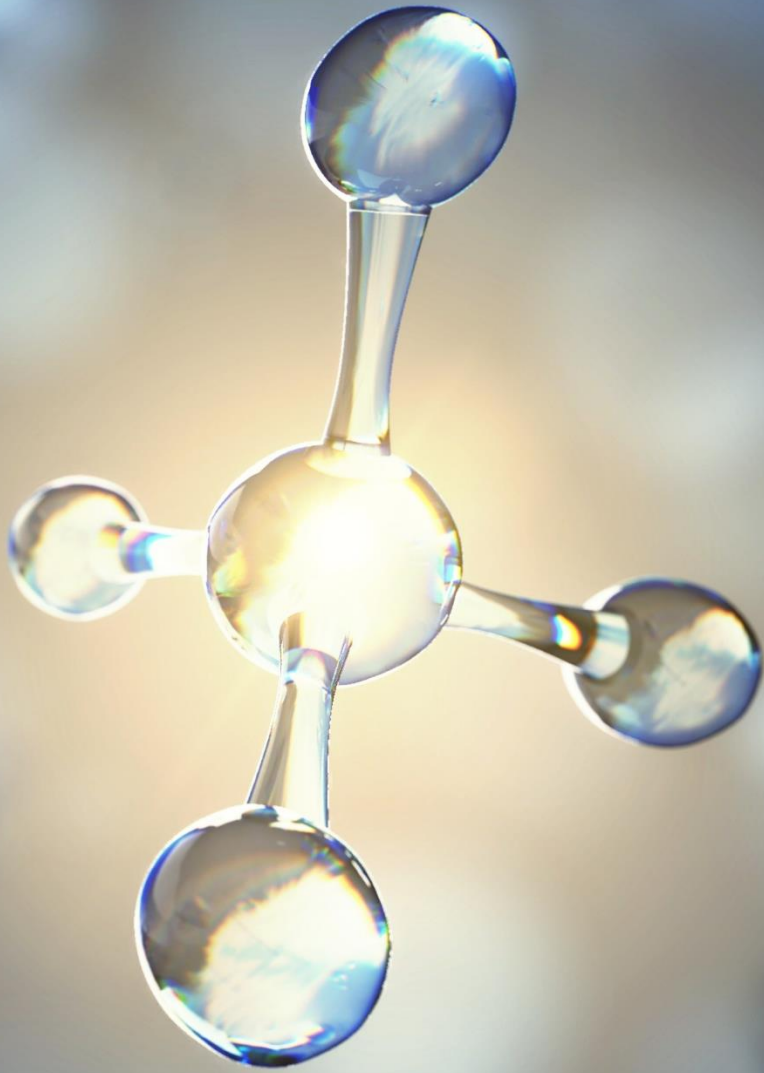
OFCCP's FAQs address AI-based technologies used to make any employment decision.

- “Irrespective of the level of technical sophistication involved, OFCCP analyzes all selection devices for adverse impact. If OFCCP discovers that a contractor’s use of an AI-based selection procedure is having an adverse impact at a contractor’s establishment, the contractor will be required to validate the selection procedure using an appropriate validation strategy...”

In August 2023, OFCCP released its expanded supply and service audit scheduling letter, that includes a request for “information and documentation of policies, practices, or systems used to recruit, screen, and hire, including the use of artificial intelligence, algorithms, automated systems or other technology-based selection procedures.”

## **The AI regulatory environment will continue to be very complex**

- Between, federal, state, local, and international regulators, in addition to private industry groups publishing their own governance frameworks, the AI regulatory environment in 2024 will continue to be active and complex.
  - Many other state legislatures are expected to take up legislation attempting to regulate AI risks.
- Employers looking to harness the potential of AI should continue to be mindful that the AI regulatory environment and consensus on how to best manage AI risk is developing and is likely to shift just as rapidly as the underlying technology.

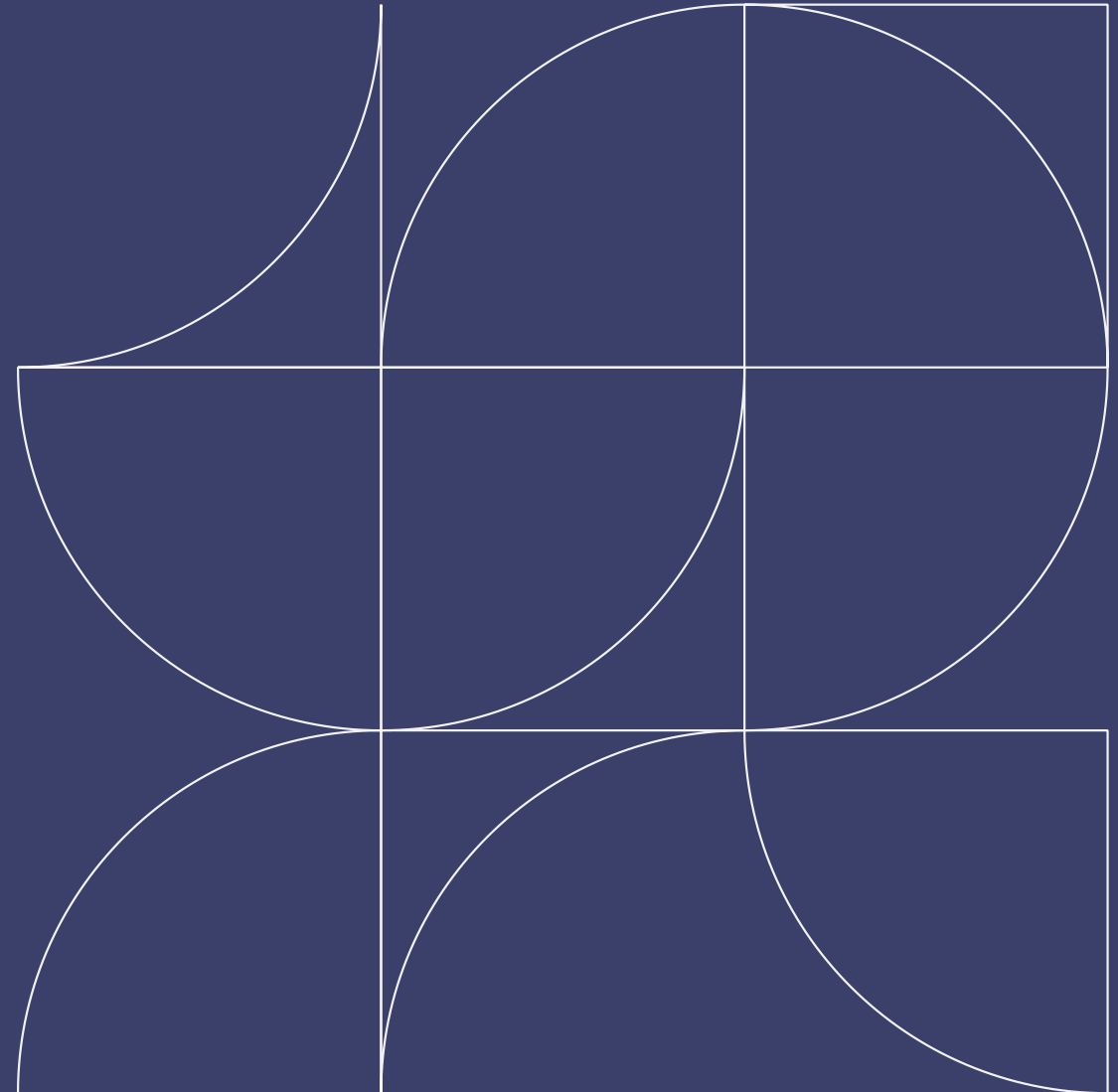


## Questions To Keep In Mind Before Implementing AI

1. Does the tool work?
2. How has the vendor/employer demonstrated that the tool does what they say it does?
3. What has the vendor/employer done to analyze potential bias against protected categories?
4. What is the scope of the analysis? How does it play out in your organization?
5. Do you, as an HR or business professional, have the technical expertise to assess the vendor's representations? (If not, partner with others to help you.)
6. What structures does your organization have in place to evaluate the benefit and risks of AI? What resources and processes do you have in place to help you identify and manage these risks?



# New York State & New York City Pay Transparency



# Wage Range Disclosure

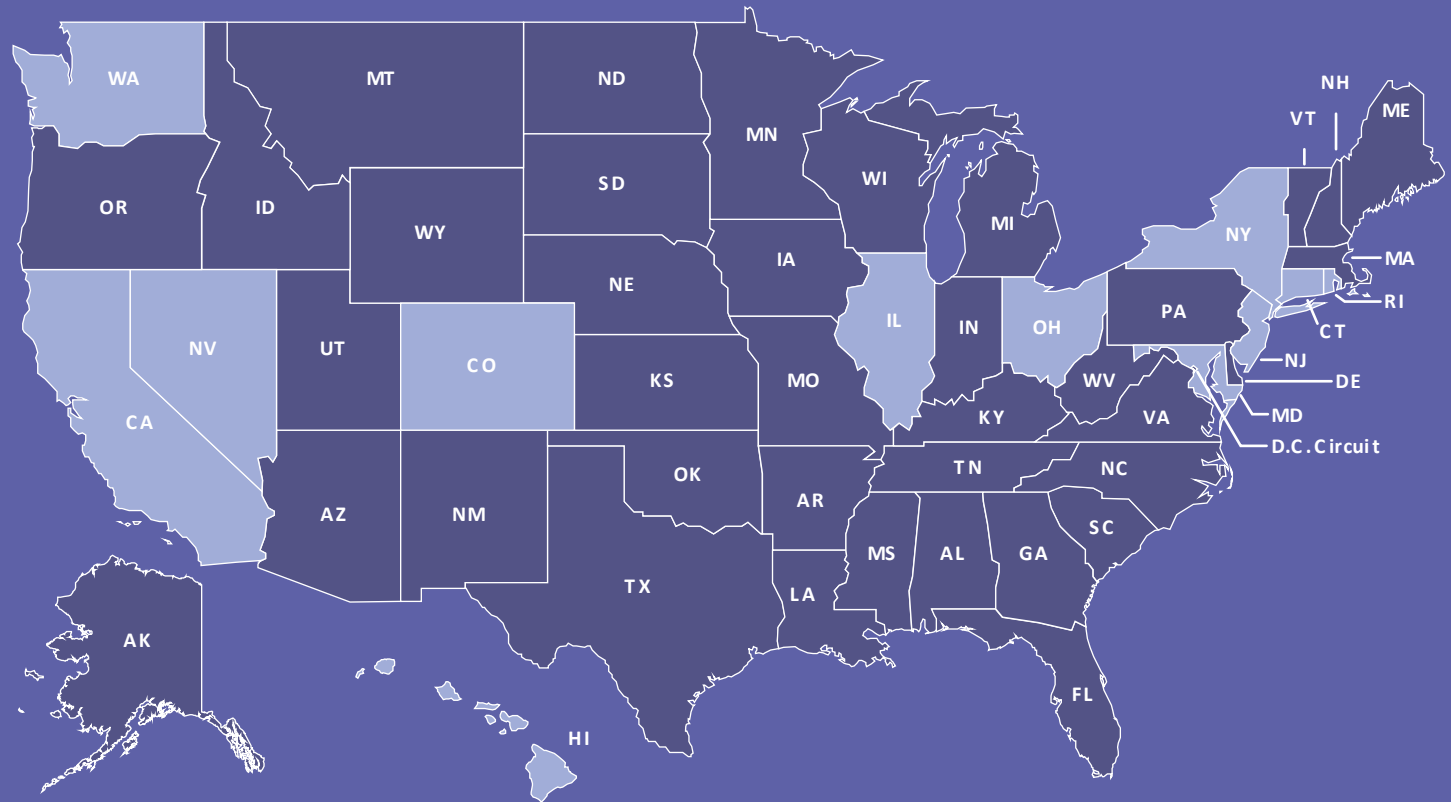
## *Jurisdictions That Have Enacted Wage Range Disclosure Laws:*

- California
- Colorado (*amendment eff. 1/1/24*)
- Connecticut
- Hawaii (*eff. 1/1/24*)
- Illinois (*eff. 1/1/25*)
- Maryland
- Nevada
- New Jersey (Jersey City)
- New York (NYS; NYC; Albany County; Ithaca)
- Ohio (Toledo and Cincinnati)
- Rhode Island
- Washington State

## *Keep An Eye On:*

- Virginia (*pending Governor action*)
- Washington D.C. (*under congressional review*)

States and localities have adopted laws that require providing applicants and/or employees the salary/wage range (or other compensation/benefits) for a role: (1) on job postings; (2) at some point in time during the application/employment relationship; or (3) upon reasonable request.



# New York State Pay Transparency Law

## Overview of NYS Obligations

- NYS employers that advertise a job, promotion, or transfer opportunity must include in the advertisement:
  - The **compensation or a range of compensation**
  - The **job description**, if such description exists
- To “advertise” means “to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity”
- Applies to advertisements for a job, promotion, or transfer opportunity that will physically be performed, at least in part, in the state of New York, including those opportunities that will physically be performed outside of New York but reporting to a supervisor, office, or other work site in New York
- Does **not** apply to job advertisements for temporary employment at a “temporary help firm”

# New York State Pay Transparency Law *Proposed* Regulations

## Key Takeaways

- Infrequent presence in NY not enough
  - Occasional meetings or merely communicating with employees in NY will not alone be deemed physically performing a job “in part” in NY
- Law applies when temporary help firm is hiring its own employees
- Advertisements are covered regardless of medium, so long as they are sent to a “pool of applicants”
  - Means more than one potential or prospective applicant
  - Employers are responsible for advertisements posted through third-parties

## New York State Pay Transparency Law *Proposed* Regulations

### Key Takeaways Continued

- Pay range solely means base rate of pay
- Pay range must be for a single opportunity and single geographic location or region
- Pay range cannot be open-ended (e.g., “\$20+ an hour)
- Employer’s use of hyperlink to provide pay range seemingly restricted
- Posting a salary range in “good faith” means the range of compensation the employer legitimately believes it is willing to pay the successful applicant or employee at the time they post an advertisement

# New York State Pay Transparency Law *Proposed* Regulations

## What Is Still Unclear

- The level of detail required for a “job description” in the advertisement
- Who constitutes a “supervisor” in NY
  - But see example in FAQs:

**Q: I am posting a remote job opportunity. The individual who directly supervises this position works remotely from their home in New York State. Our company is based outside New York with our leadership team and offices located outside New York. Do I need to include a pay range in compliance with the New York State law for this position?**

A: No, though the direct supervisor is working remotely from a location in New York, the company and the company’s leadership is in another state. In this scenario, because the company’s leadership and primary location is outside New York State, the opportunity can be performed anywhere remotely, the posting would not be required to include a range of pay under the New York State law.

## New York State Pay Transparency Law

### Potential Exposure and Penalties

- Any person can file a complaint with the NYS Department of Labor
- Subject to a civil penalty of up to \$1,000 for a first violation, \$2,000 for a second violation, and \$3,000 for a third or subsequent violation
  - Will consider size of employer's business, good faith basis of employer to believe that its conduct complied with the law, gravity of the violation, history of previous violations, and other factors

# New York City Pay Transparency Law

## Overview of NYC Obligations

- Unlawful discriminatory practice for an employer or employment agency to advertise a job posting, promotion, or transfer opportunity without including the **minimum and maximum salary** for such position in the advertisement
- Applies to employers with 4 or more employees
- Does ***not*** apply to job advertisements for temporary employment at a “temporary help firm”



## New York City Commission on Human Rights Fact Sheet

### Key Takeaways

- Employee threshold is 4 (including owners), so long as at least one employee works in NYC
- Law does not apply to temporary help firms, but employers that work with temporary help firms must disclose salary range in their postings
- “Advertisement” is a written description of an available job, promotion, or transfer that is publicized to applicants, ***regardless of format***
- No requirement to create advertisements to hire, but if an employer chooses to advertise, the advertisement must disclose the salary range
- “Salary range” means the ***lowest and highest*** salary the employer, in good faith, believes it would pay to the successful applicant ***at the time of the posting***

## New York City Commission on Human Rights Fact Sheet

### Key Takeaways

- Covers postings for ***any remote*** work that ***could*** be performed in NYC – expansive reach
  - “Covered employers should follow the new law when advertising for positions that can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee’s home.”
- “Good faith” means the salary range the employer honestly believes at the time of the posting that they are willing to pay the successful applicant

## New York City Commission on Human Rights Fact Sheet

### Key Takeaways

- The salary range cannot be open ended
  - **Not** “\$15 per hour and up” or “max \$50,000 per year”
  - If no flexibility in salary, minimum and maximum salary may be identical (e.g., “\$20 per hour”)
- Only need to disclose the base salary or wage rate
  - “Salary” or “wage rate” does not include benefits, paid or unpaid time off work, contributions to 401K, overtime, bonuses, stock, or the value of employer-provided meals or lodging
  - Employer could opt to disclose more information in the advertisement

# New York City Pay Transparency Law

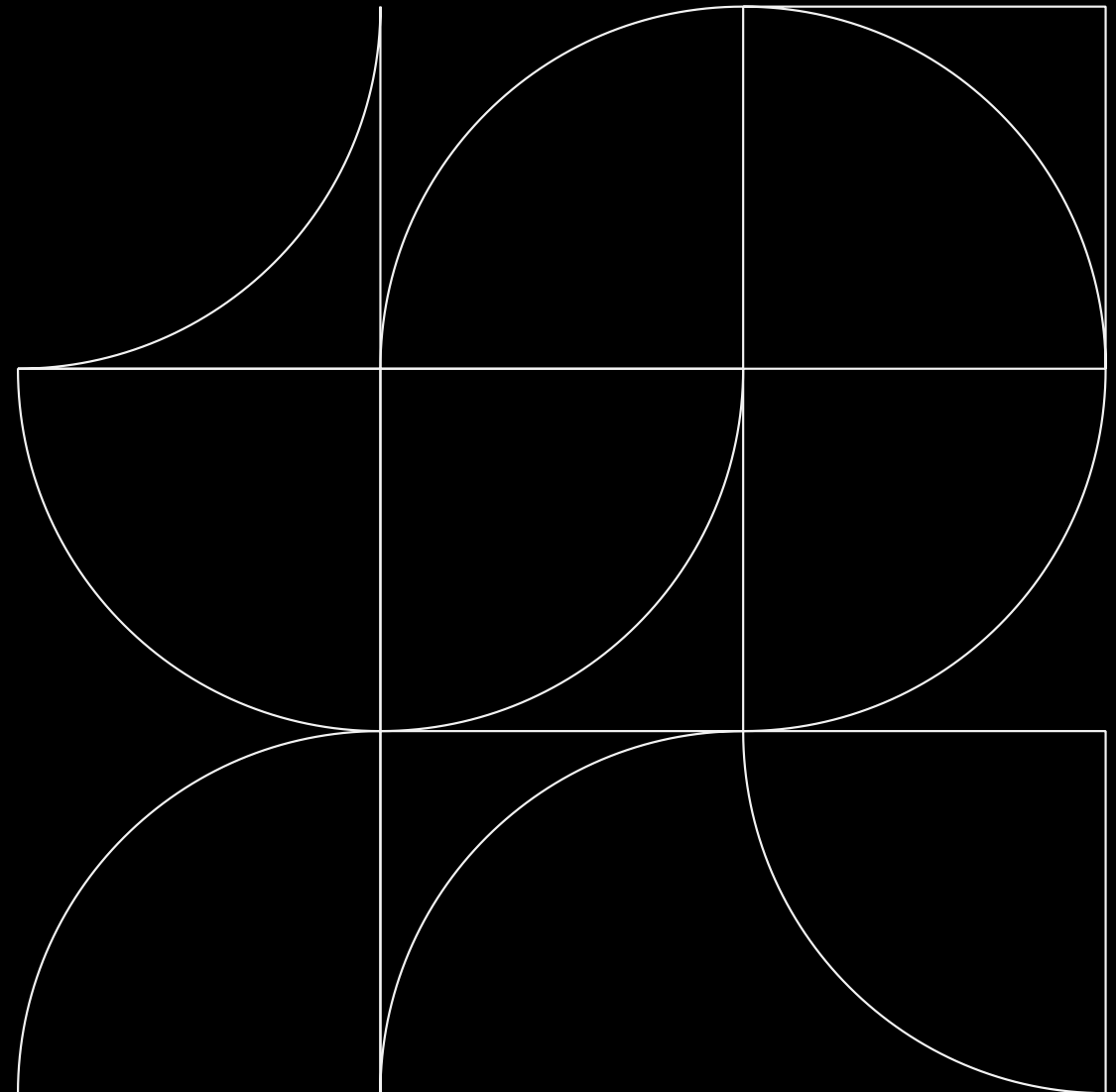
## Potential Exposure and Penalties

- Private right of action for employees (not applicants)
  - Back pay, front pay, compensatory damages, punitive damages, and injunctive relief
- Complaint with Commission (applicants/employees)
  - Monetary damages to affected employees, amend advertisements and postings, create or update policies, conduct training, provide notices of rights to employees or applicants, and engage in other forms of affirmative relief
  - Commission will not assess a civil penalty for a first violation, provided employer shows it has fixed the violation within 30 days of receiving the Commission's violation notice
    - The submission of proof of a cure, if accepted by the Commission, shall be deemed an admission of liability for all purposes
  - Civil penalties of up to \$250,000 for an uncured first violation, as well as for any subsequent violations

## Other New York Pay Transparency Laws

- **Albany County & Ithaca**
  - Track NYC law
  - Unlawful discriminatory practice to advertise a job, promotion, or transfer opportunity without stating the minimum and maximum salary or hourly wage for such position in such advertisement
  - Range may extend from lowest to highest hourly or salary compensation the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity
- **Westchester County**
  - Null and void as of 9/17/23 (when NYS law went into effect)

# NYC Earned Safe and Sick Time Act: Final Amended Regulations



# NYC ESSTA: Final Amended Regulations

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- Final amended regulations to the NYC ESSTA were released on September 15, 2023. **They took effect on October 15, 2023.**
- **Employer Size:** Finalized rules apply a “nationwide” rather than “employed within NYC” standard to determining employer size → highly burdensome for ERs with a small footprint in NYC but at least 100 EEs nationwide.
- **Accrual Programming:** Requires fractional accruals for time worked that is less than a 30-hour increment and rounding accruals to as little as the nearest five minutes → requires significant adjustments to ERs’ payroll systems and software programs used to track absences due to time off.
- **Employee Eligibility:** Finalized rules cover all employees who “regularly perform, or are expected to regularly perform” work in NYC during the calendar year → broad coverage, as it may include employees that primarily work in another state

# NYC ESSTA: Final Amended Regulations

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- **Reasonable Notice:** Finalized rules add a definition of “foreseeable leave” and include additional examples of reasonable notice procedures → these procedures were likely already reasonable, but are now explicitly included in a nonexclusive list
- **Reasonable Documentation:** Expands list of who can provide reasonable documentation → now includes licensed clinical social workers and licensed mental health counselors.



# NYC ESSTA: Final Amended Regulations

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- **Balance Notification:**

- Final Rules provide that the pay statement or other form of written documentation **must inform the employee of:**
  - (1) the amount of safe/sick time accrued that pay period;
  - (2) the amount of safe/sick time used during that pay period, and
  - (3) the total balance of accrued safe/sick time available for use.
- Final rules further state that employer **can use an electronic system for compliance if:**
  - (1) employees are electronically alerted each pay period that their accrual, use and available balance information is available for review;
  - (2) the required information is readily accessible by employees outside the workplace; and
  - (3) information from past pay periods is also readily accessible by employees outside the workplace.

# NYC ESSTA: Final Amended Regulations

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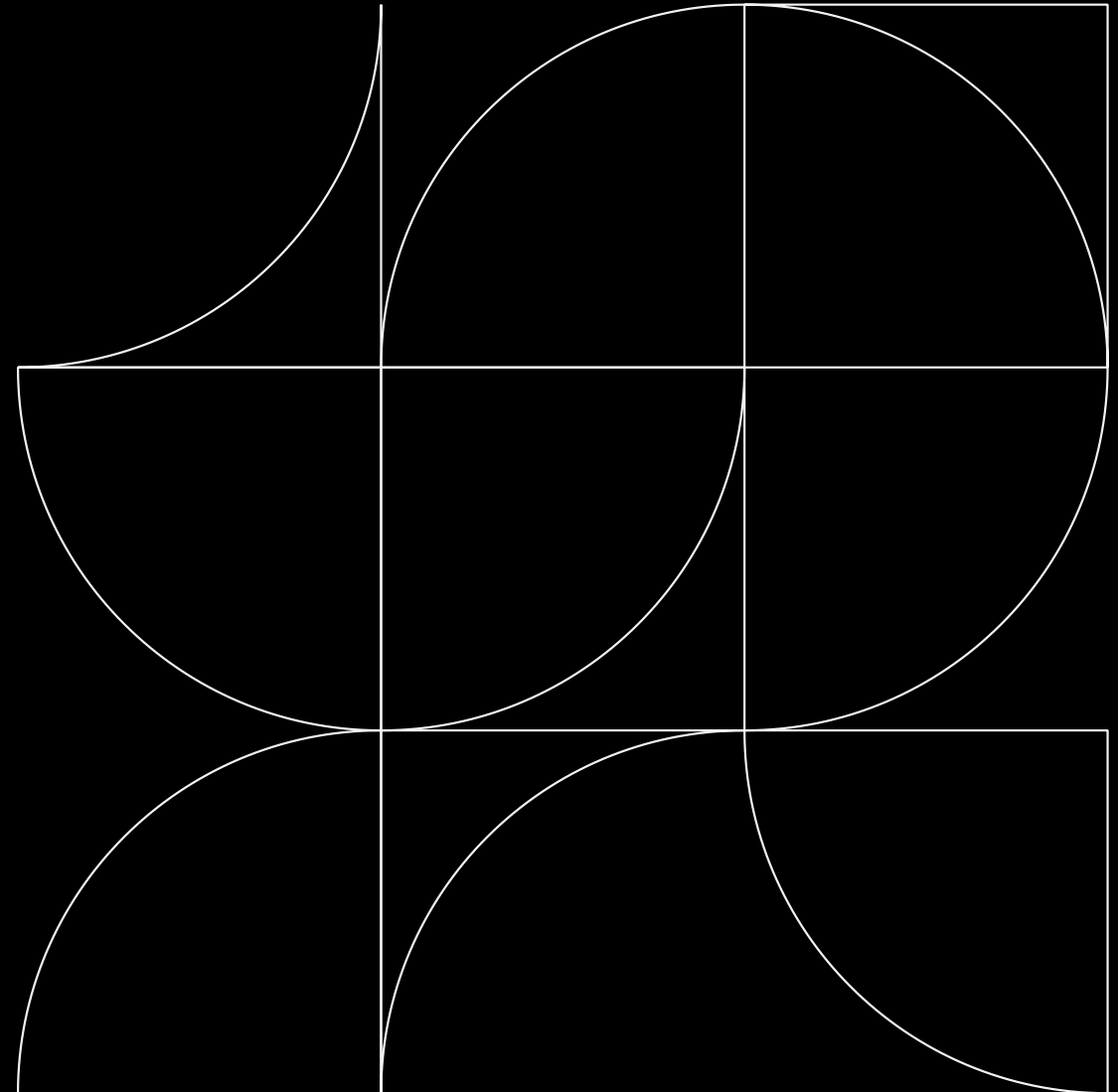
- **Written Policy:** Final rules include a few essential points regarding written ESSTA policies:
  - Employers using an **annual upfront lump grant** must inform employees that **safe/sick time is immediately available**
  - Must **specify reasonable documentation requirement**, including acceptable forms
  - Must **explicitly state if employer will withhold payment of safe/sick time** until reasonable documentation is received
  - Requires employers to specifically state that they will **keep all reasonable documentation confidential**, and **prohibits employers from asking employees to provide details** about the reason for leave
- **Rate of Pay:** Final rules clarify that the “regular rate of pay” is the **rate of pay at the time the employee uses leave** → eliminates previous inconsistency between law’s “regular rate of pay” standard and proposed rules’ “same hourly rate” standard.

# NYC ESSTA: Final Amended Regulations, Penalties

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- **Successor Employers:** Successor ERs would be **liable** in an acquisition or transfer of the original business and EEs **if the original business failed to keep appropriate records.**
- **Penalties:** Creates a “**reasonable inference**” that an ER who **(a)** does not maintain a compliant ESSTA policy and adequate records of EEs’ accrued ESSTA use and balances; or **(b)** fails to maintain and distribute an ESSTA policy to EEs, does not provide ESSTA in accordance with the right to ESSTA and accrual section of the ESSTA as a matter of official or unofficial policy or practice.
  - “Reasonable inference” → relief of **\$500 / EE covered by such policy *per calendar year.***

# **New York State COVID-19 Emergency Leave Law**



# NYS COVID-19 Emergency Leave Law



- *Will still be in effect at start of 2024*
- **10 or less employees and net income of \$1 million or less as of 1/1/2020:** Employees are entitled to unpaid sick leave for the entire period of quarantine or isolation, and employees will be eligible for paid family leave and disability benefits.
- **11-99 employees OR 10 or less employees and net income greater than \$1 million as of 1/1/2020:** Employees are entitled to 5 (calendar) days of paid sick leave and unpaid leave for remainder of the quarantine or isolation. After exhausting the 5 days of paid sick leave, employees are eligible for paid family leave and disability benefits.
- **100 or more employees as of 1/1/2020:** At least 14 (calendar) days of paid sick leave. While unclear under the law, appears that paid family benefits are available to care for child subject to covered order.

# NYS COVID-19 Emergency Leave Law

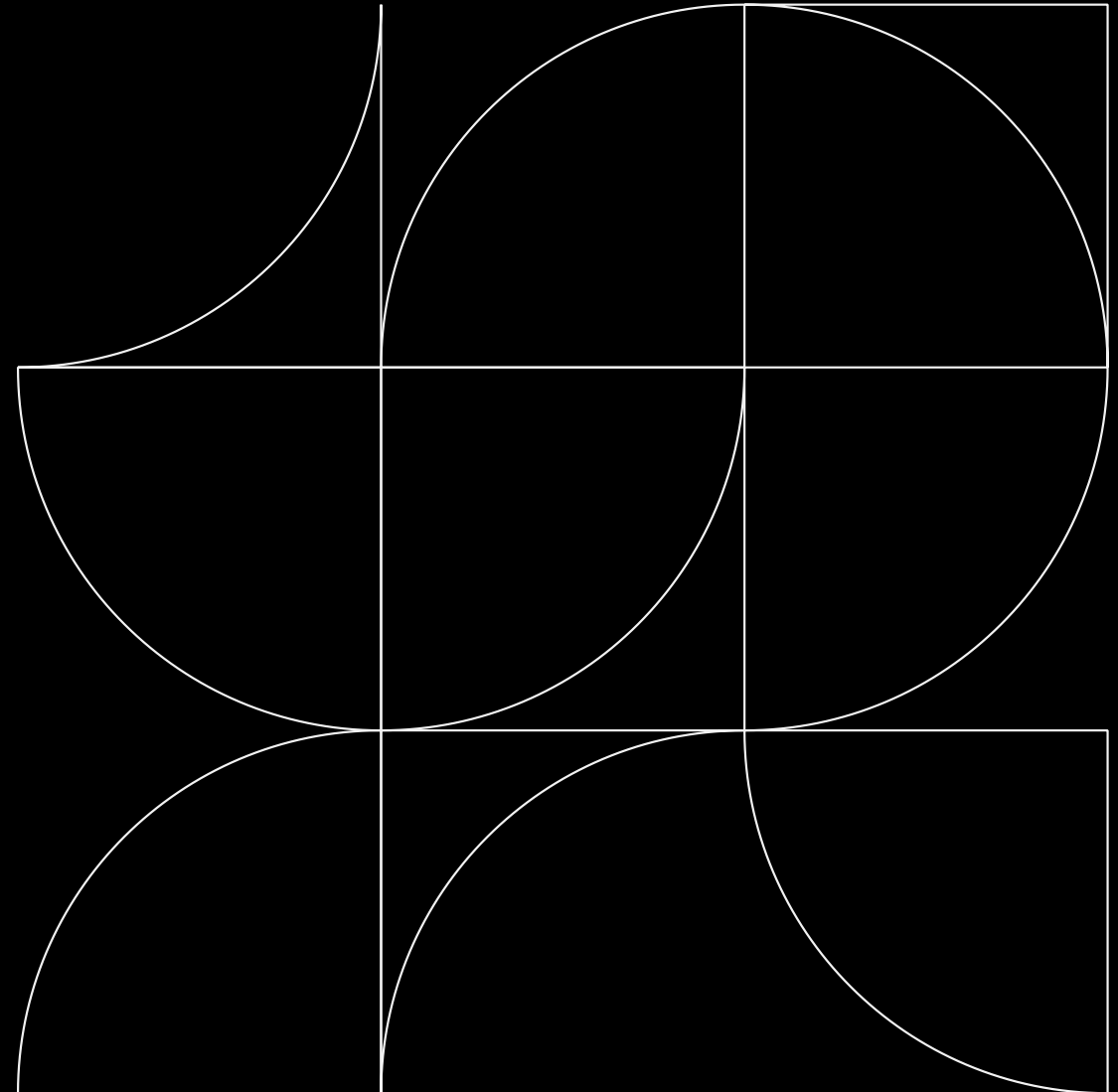
- COVID-19 paid sick leave under the Law is available to employees who are subject to **multiple** mandatory or precautionary orders of quarantine or isolation, **but** with limits:
- **(a)** Up to a certain cap, **and**
  - Paid sick leave is only available to an employee for a **maximum of three orders of quarantine or isolation**, and again, only in select circumstances.
- **(b)** In certain situations.
  - Employee **must** test positive for COVID-19 in order to use COVID-19 leave during the second and third mandatory or precautionary order of quarantine or isolation.

# NYS COVID-19 Emergency Leave Law

## Documentation

- **Documentation:** Depending on reason for use of COVID-19 emergency leave, the following may be considered reasonable documentation (i.e., may constitute sufficient proof of an “order”):
  - A mandatory or precautionary order of isolation issued by an appropriate government entity;
  - Self-Affirmation form completed by the employee; or
  - Documentation from a licensed medical provider or testing facility attesting that the employee has tested positive for COVID-19.

# **New York State COVID-19 Vaccine Leave Law**



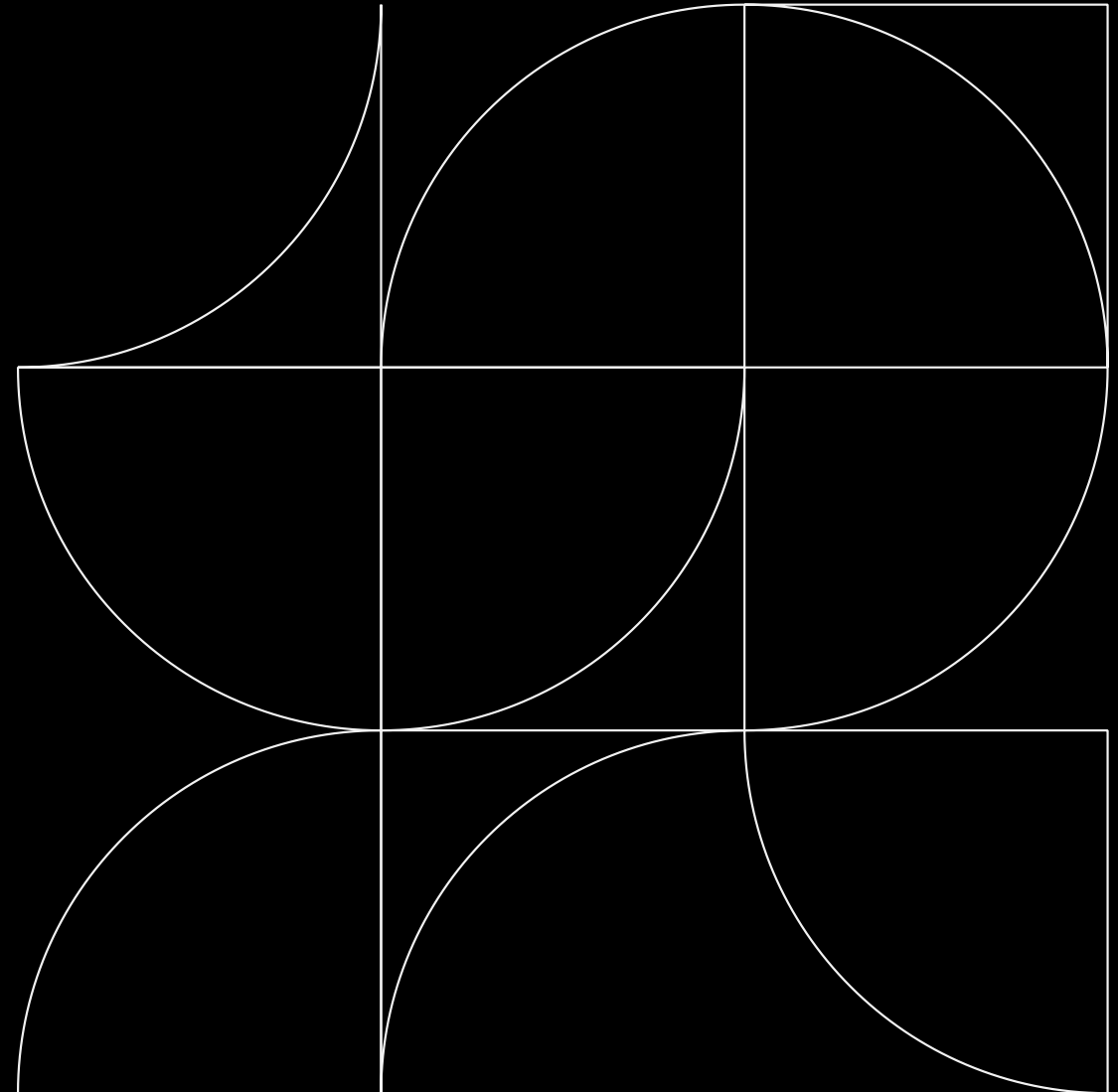


# New York State COVID-19 Vaccine Paid Leave Law

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- **Effective Date:** March 12, 2021
- **Amount of Leave:** A sufficient period of time, not to exceed 4 hours per vaccine injection.
- **Reasons for Leave:** Leave is available to employees for absences needed from work in order for the employee to receive their own COVID-19 vaccine injection.
- **Sunset Date:** December 31, 2023.
- **NYC Child Vaccine Leave Mandate:** sunset on December 31, 2022.

# New York Paid Family Leave 2024 Updates



# New York PFL – 2024 Updates and Hot Topics

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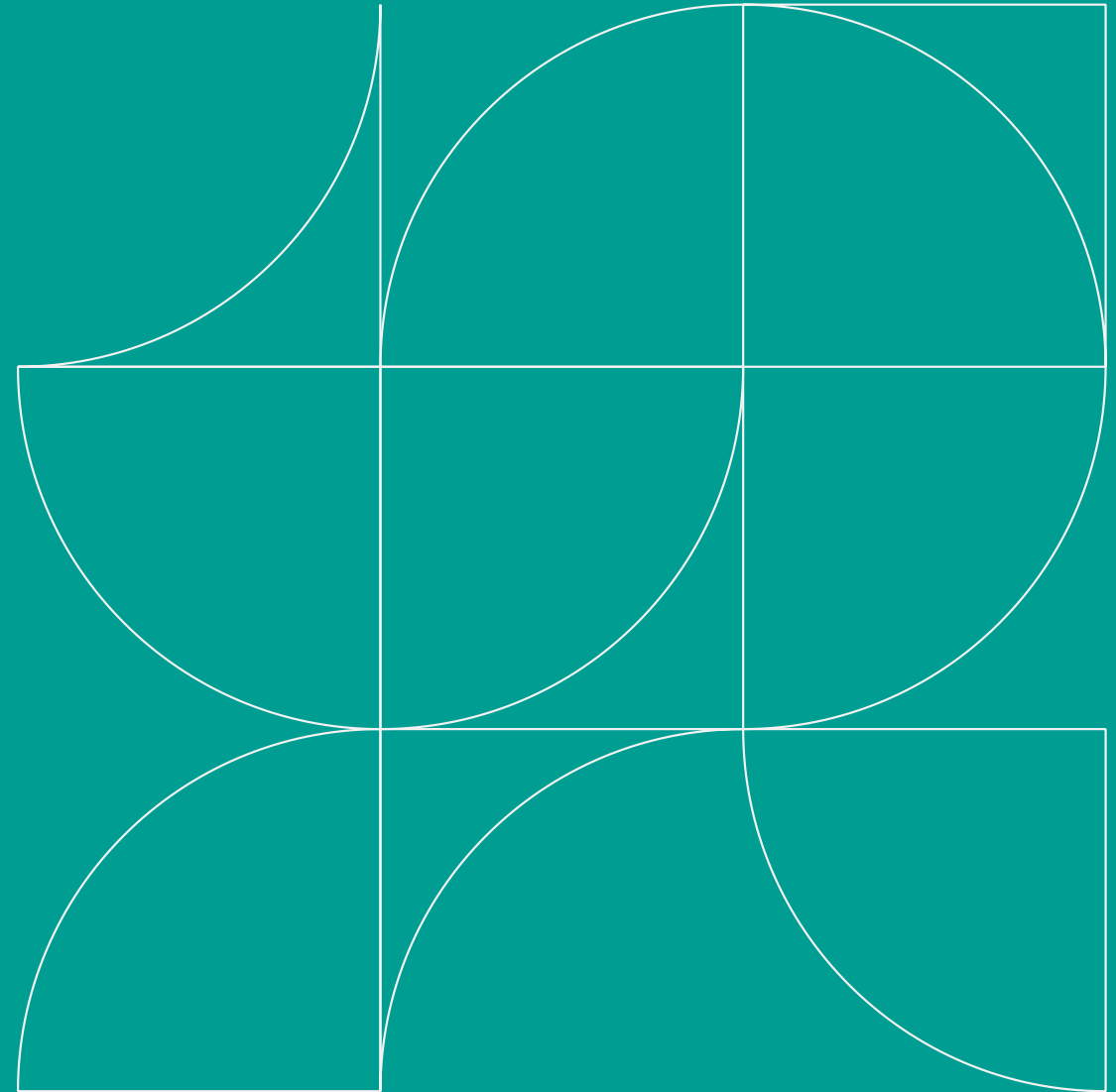
- **Maximum Weekly Benefit:** For 2024, the SAWW will be \$1,718.15, which means the maximum weekly benefit will be \$1,151.16. This is \$20.08 more than the maximum weekly benefit for 2023, which is \$1131.08.
- **Employee Contribution % and Maximum:** 2023: 0.455%, up to \$399.43 annual max; 2024: 0.373%, up to \$333.25 annual max.

# New York PFL – 2024 Updates and Hot Topics (cont'd)

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- **Remote Employees**: With remote and hybrid work schedules remaining a post-COVID workplace fixture across many industries, companies want to know how NY PFL impacts such employees.
  - **Answer**: To be eligible for NY PFL an EE's work **must be localized** in New York.
- **Enforcement and Activity**:
  - **Quarterly Arbitration Reports**: Since 2021, the NY Workers' Compensation Board (WCB) has published quarterly "PFL Arbitration" reports. The reports contain summaries of PFL claim-related disputes handled by NAM (National Arbitration and Mediation) for that quarter.
  - **Annual Report**: NYS releases an annual PFL report. The report, which was last updated through 2022, contains data as collected by PFL insurance carriers from the Request for Paid Family Leave (Form PFL-1), which is completed by the employee requesting leave. See [https://www.dfs.ny.gov/reports\\_and\\_publications/pfl](https://www.dfs.ny.gov/reports_and_publications/pfl).

# Lightning Round Updates



# Freelance Isn't Free

## What Does It Do?

- Provides new protections for independent contractors and freelancers

## When Does It Go Into Effect?

- Goes into effect May 20, 2024 and covers contracts entered into after that date

## What Is Covered?

- Any contract for services valued at \$800 or over in any 120-day period

# Freelance Isn't Free

## Who Is Excluded?

- Lawyers, doctors, sales people, construction workers

## What Is Required?

- A written contract specifying:
  - Names and addresses of the parties
  - Itemized list of services to be provided
  - Rate or fee for those services
  - Pay date



# Settlements and NDAs

## What Does It Do?

- Changes the legal requirements around agreements settling claims of discrimination or harassment

## What Is Covered?

- Any agreement with an employee or independent contractor settling an asserted claim or discrimination or harassment
- Could include a separation agreement if the employee or contractor has made a complaint

## What Is (Probably) Not Covered?

- Garden variety separation agreements where the employee or contractor has not made any claims of discrimination or harassment
- But the statute is ambiguous...



# Settlements and NDAs

## What Does It Require?

- Agreements settling discrimination or harassment claims that contain an NDA cannot impose liquidated damages if the employee or contractor violates the NDA
- This includes the standard provision that the employee or contractor has to return the settlement payment

## What Does It Allow?

- The mandatory 21-day waiting period to enter into an NDA is now waivable
  - The 21 day period is still mandatory if the agreement is settling filed litigation
- The employer can still seek economic damages if the employee violates the NDA

# Social Media Access Law

## What Does It Require?

- Provides that employers may not require employees to provide their social media information as a condition of
  - Hiring
  - Promotions
  - Transfersor as part of a disciplinary process

## What Does That Include?

- Providing login information
- Accessing the account in the presence of the employee
- Requiring the employee to reproduce content from the account

# Social Media Access Law

## What Is Covered?

- All employee social email accounts and personal email
- Even on devices provided by the employer

## What Isn't Covered?

- Business accounts to which an employee may have access
- Any accounts or content that are public



# Employee Intellectual Property Rights

## What Does It Do?

- Prohibits employers from requiring employees to assign all intellectual property to the company without exception

## What Is Covered?

- Employers cannot require employees to assign inventions that are created on the employee's own time and are unrelated to the company's business

## What Is Excluded?

- Inventions created using the employer's time, resources, or trade secrets
- Inventions created as a part of the employee's job duties

# Employee Intellectual Property Rights

## What Doesn't It Do?

- It doesn't define the word "invention"
  - Unclear if the scope is limited to patentable work, or whether it covers works that could be trademarked or copyrighted
- It doesn't appear to provide a private right of action – the only remedy is a complaint to the Department of Labor

## What Should Employers Do?

- Review your IP agreements to ensure the scope is properly defined
  - Include all works created during work time or using employer resources or trade secrets
- Be mindful of the fact that in the post-COVID era, "work time" has become ambiguous

# Clean Slate Act

## What Does It Do?

- Seals certain conviction records and prohibits employers from asking about them

## What Is Sealed?

- Misdemeanor records three years after completion of any sentence or probation (whichever is later)
- Certain felony records eight years after completion of any sentence or probation (whichever is later)



# Clean Slate Act

## What Is Not Sealed?

- Records of any Class A felonies (e.g., sex crimes, murder, rape, kidnapping)
- If the individual is charged with another crime before the 3-year or 8-year waiting period is over, the record will not be sealed
- Any records relating to federal crimes or crimes adjudicated in another state

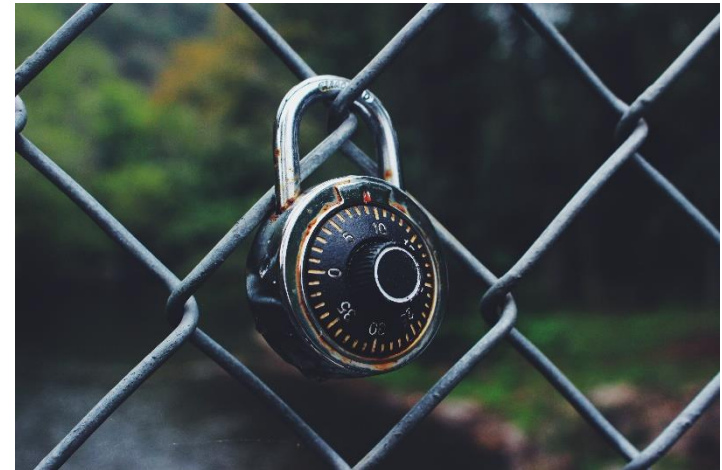
## Who Is Not Covered

- Employers required to conduct background checks for jobs involving vulnerable populations (children, the elderly)
- Employer permitted or required by law to run fingerprint-background checks on new hires (securities industry)
- Certain court and law enforcement personnel

# Clean Slate Act

## What Should Employers Do?

- Review your application and on-boarding process to ensure you are not reviewing sealed records
- Confirm with any third-party background check agencies you use that they have the proper processes in place and review your agreements with them for compliance





# NY Captive Audience Meetings

## Attempts at Limiting Employer Speech: A Growing Nation Trend

- Section 8(c) of the NLRA allows for the expression of views without threat of reprisal or force or promise of benefit
- NLRB General Counsel Memo 22-04 (Apr. 2022)
  - “the Board years ago incorrectly concluded that an employer does not violate the Act by compelling its employees to attend meetings in which it makes speeches urging them to reject union representation.”
- Connecticut, Maine, Minnesota, and Oregon
  - Connecticut Litigation (Chamber of Commerce of the United States of America et al v. Bartolomeo et al)
    - Challenge under the First and Fourteenth Amendments and, additionally, arguing the NLRA preempts the Connecticut state law prohibiting captive audience meetings.
    - Motion to Dismiss Denied

# NY Captive Audience Meetings

## Attempts at Limiting Employer Speech: A Growing Nation Trend

- New York Law
  - It is unlawful to take an adverse employment action based on an individual's refusal to attend an employer-sponsored meeting with the employer or its agent, representative or designee, the primary purpose of which is to:
    - communicate the employer's opinion concerning religious or political matters;
    - listen to speech or view communications, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters
  - The law empowers the Attorney General to apply to enjoin or restrain an employer from continuing to violate the law and allows for the imposition of civil penalties on the employer of \$300 for an initial violation and \$500 for each subsequent violation.

# New York Human Rights Law Statute of Limitations

## Extending the Statute of Limitations

- On November 17, 2023, Governor Hochul signed a statute into law extending the statute of limitations for discrimination and retaliation claims brought under the New York State Human Rights Law (“NYSHRL”) from one year to **three years**.
- Extends Statute of Limitations for Discrimination, Harassment and Retaliation Suits and harmonizes the limitations period for all claims of discrimination (previously, only sexual harassment claims had a three year limitations period).
- The new law went into effect on February 15, 2024 and will apply prospectively.

# New York City Workers' Bill of Rights

## Notice Requirement Effective July 1, 2024

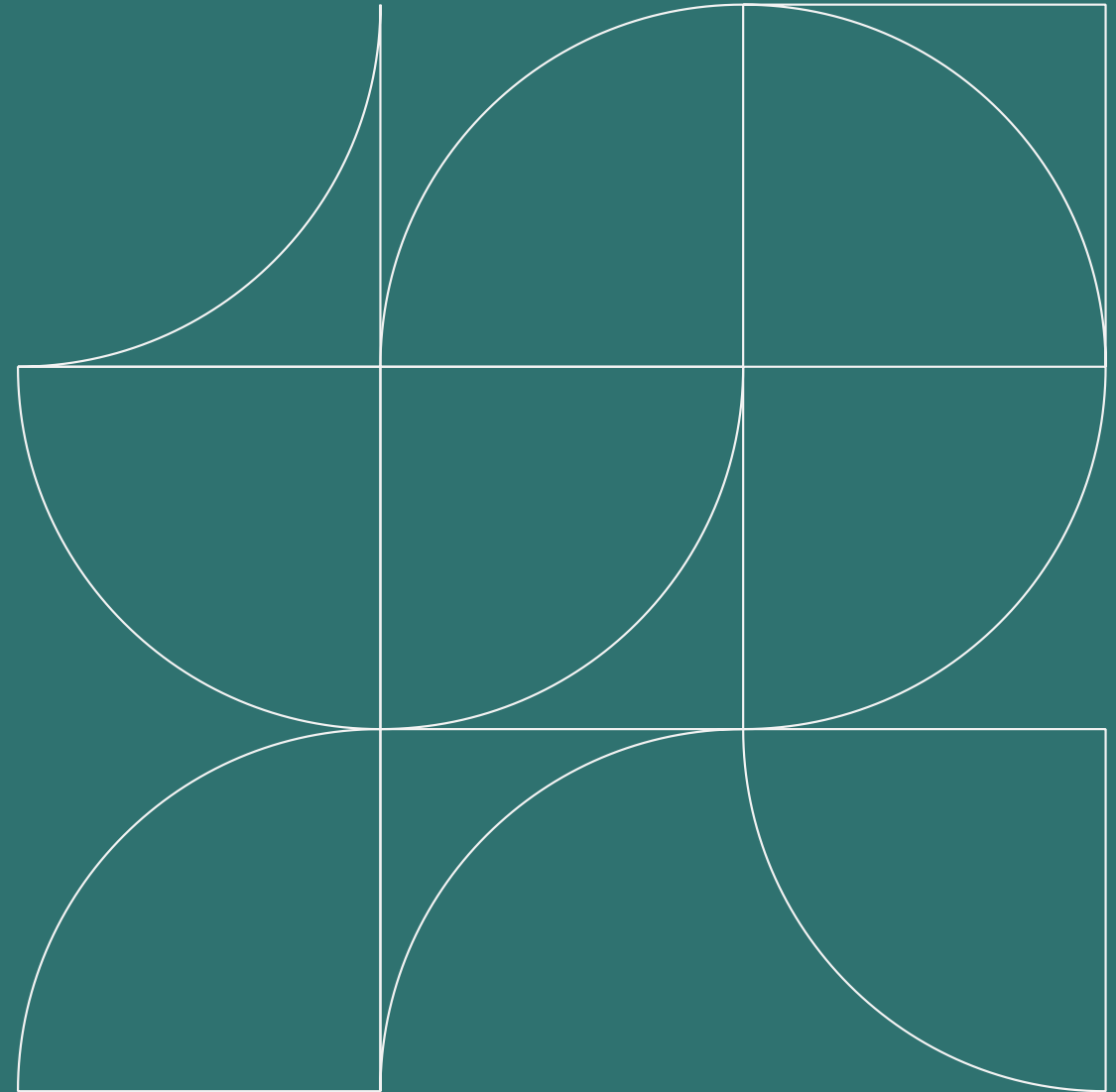
- Beginning on July 1, 2024, employers in New York City will need to distribute and post a “Workers’ Bill of Rights” notice informing employees of their employment rights.
  - Must be posted in an area of the worksite that is both accessible and visible to employees.
  - Businesses that regularly communicate with employees via an intranet, website, or mobile application will also be required to post the notice through those mediums.
  - Any employer who violates the new law could be liable for a civil penalty of \$500, though first time violators will be provided an opportunity to correct a violation before a penalty is imposed.
- We expect the posting to be available any day now.

# NJ Temporary Workers' Bill of Rights (NJTWBR)

## Beware: The NJDOL is Construing the Law Broadly

- NJTWBR overhauls New Jersey's staffing industry.
  - Among other things, it requires pay equity between temporary laborers and full time employees under certain conditions.
- Defines "Third-party client" as any person who contracts with a temporary help service firm for obtaining temporary laborers in a designated classification placement.
- Currently, the law applies to temporary laborers
  - assigned by the temporary help service firm to work in a designated classification placement within New Jersey, or
  - assigned by the temporary help service firm to work in a designated classification outside of New Jersey, but who has his or her primary residence in New Jersey
- Joint and several liability on pay equity
- Recordkeeping Requirements
- NJDOL is investigation potential violations despite the fact regulations are not final.

# New York Sexual Harassment Policy and Training Requirements



# NY Sexual Harassment Policy Requirements

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New York Policy Requirements:

- 1. prohibit sexual harassment consistent with guidance issued by state agencies**
2. provide examples of prohibited conduct that would constitute unlawful sexual harassment
3. include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws
4. include a complaint form

## NY Sexual Harassment Policy Requirements (Cont.)

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New York Policy Requirements:

5. include procedure for timely and confidential investigation of complaint
6. inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially
7. inform employees of available remedies
8. clearly state that sexual harassment is considered a form of employee misconduct and sanctions will be enforced against (i) perpetrators and (ii) managers who knowingly allow such behavior
9. clearly state that retaliation is unlawful



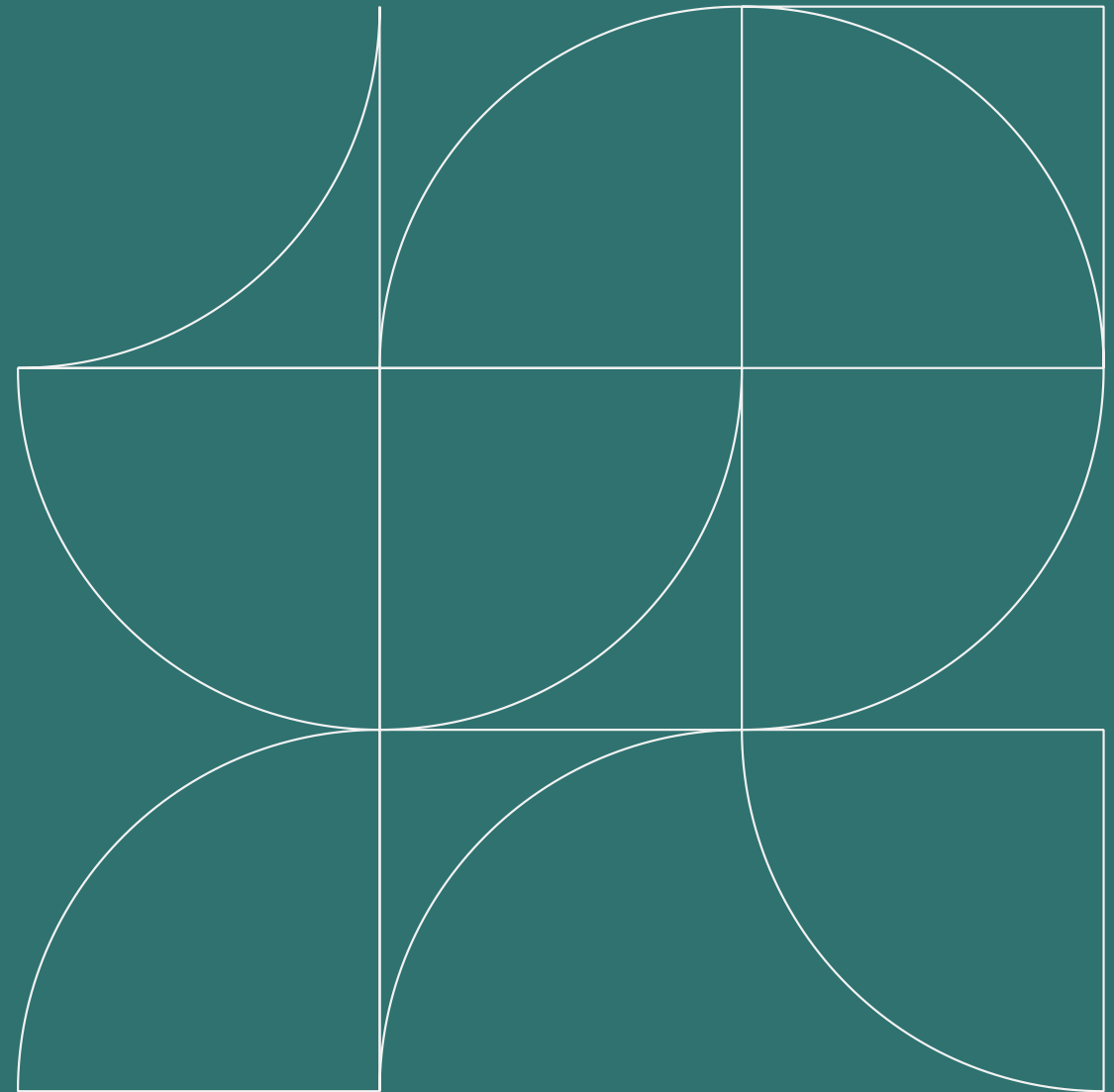
# NY Sexual Harassment Policy – New Model Policy (2023)

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Major changes:

1. A detailed explanation that the gender spectrum is nuanced
2. Emphasis of a lower standard for harassment to be deemed to have occurred under New York state law
3. An updated list of examples of sexual harassment and retaliation
4. A new emphasis on the remote workplace
5. A new section on bystander intervention
6. Information concerning the state's confidential hotline for complaints of workplace sexual harassment

# NYC: Weight/Height Discrimination



## NYC Prohibits Weight/Height Discrimination

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Effective November 26, 2023, the New York City's Human Rights Law (NYCHRL) prohibits employment discrimination based on actual or perceived height and weight.

Examples include:

- rejecting applicant
- criteria for layoffs or discipline
- job advertisements containing limitations based on height/weight
- harassing or offensive language
- fail to consider alternative actions

# Weight/Height Discrimination - Exceptions

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The law exempts necessary action based on a person's height or weight such as:

- 1) required by federal, state, or local law or regulation, or
- 2) permitted by regulation adopted by the commission identifying particular jobs or categories of jobs for which a person's height or weight could prevent performing the essential requisites of the job, and the commission has not found alternative action that covered entities could reasonably take to allow persons who do not meet the height or weight criteria to perform the essential requisites of the job or category of jobs, or
- 3) permitted by regulation adopted by the commission identifying particular jobs or categories of jobs for which consideration of height or weight criteria is reasonably necessary for the execution of the normal operations of such covered entity.

# Weight/Height Discrimination – Affirmative Defenses

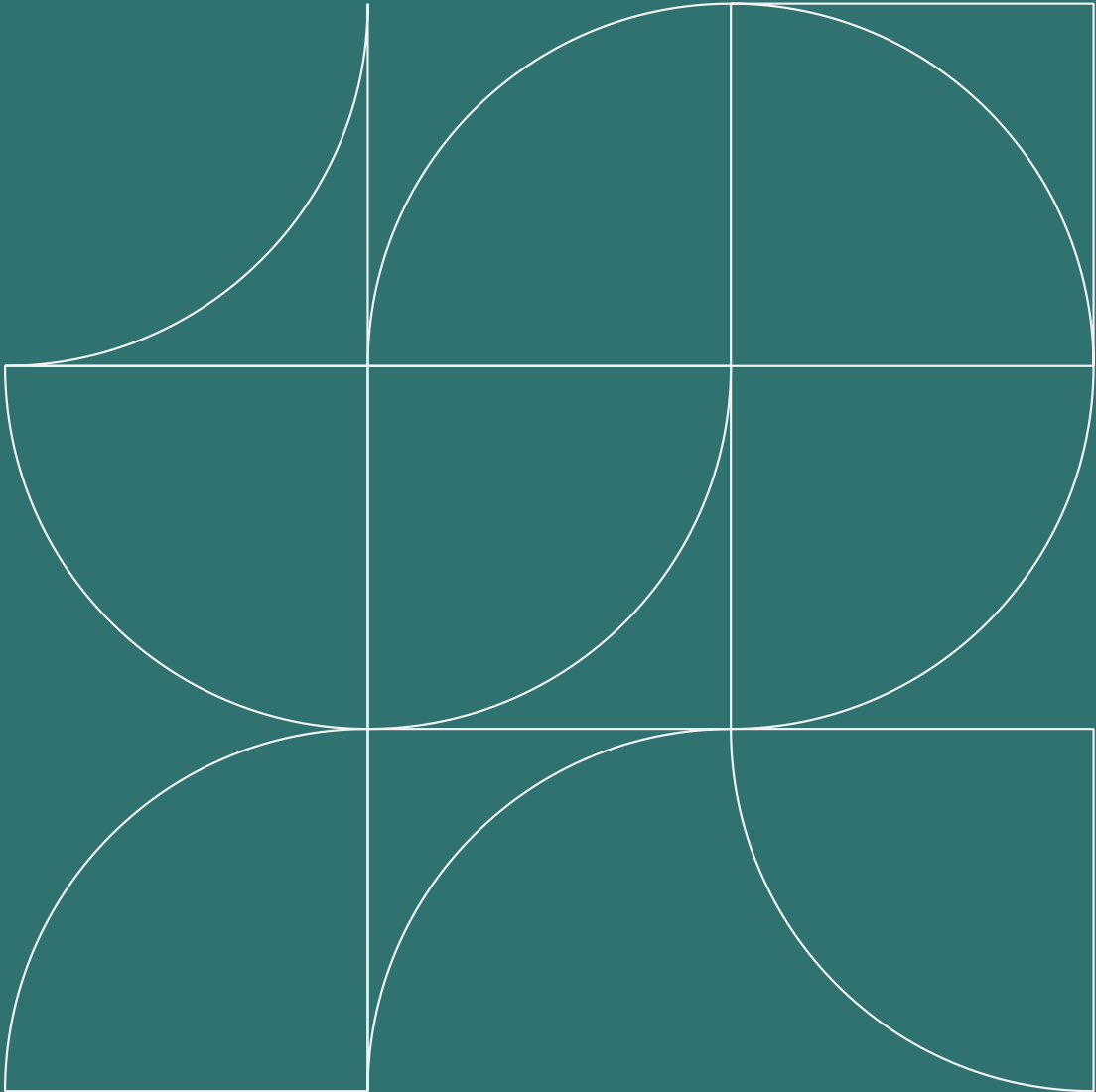
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Even if none of the above exemptions apply, an employer can assert the following affirmative defenses to avoid liability:

- 1) a person's height or weight prevents the person from performing the essential requisites of the job, and there is no alternative action\* the covered entity could reasonably take that would allow the person to perform the essential requisites of the job
- 2) criteria is reasonably necessary for the execution of the normal business operations

*\*not same per se as reasonable accommodation*

# NY and NJ: Changes to Unemployment Programs



**WE ARE YOUR DOL** Unemployment Insurance Division  
 Department of Labor  
**Record of Employment**  
 (For Unemployment Insurance purposes only.)

**Employer:** Complete and give this form to each worker who is permanently, indefinitely, or temporarily laid off; discharged; quits; or has their hours reduced to 30 or less each week.

Date given to employee: / /  Employer Name: \_\_\_\_\_  
 NYS Employer Registration No.: ---- Payroll Records are kept at: \_\_\_\_\_  
 Federal Employer Identification No.: --------- Street: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Optional if needed by employer to locate employee record:  
 Payroll or Clock No.: \_\_\_\_\_ Location of employment or code: \_\_\_\_\_

**Employee:** Keep this certificate. Have it with you if you apply for Unemployment Insurance (UI) benefits. This certificate shows that your job was insured. It does not necessarily mean you qualify for benefits. The UI Claims Center will make that determination if you apply. Please complete the following:  
 Your Name: \_\_\_\_\_ Social Security No.: -----  
 This may not be used as an identification card.

IA 12.3 (11/23)

**How to Apply For New York State Unemployment Insurance**

Unemployment Insurance is temporary income for eligible workers who are out of work through no fault of their own. It provides them a weekly benefit while they look for work. If you become unemployed and want to apply for Unemployment Insurance benefits, apply online at [www.labor.ny.gov](http://www.labor.ny.gov) for a quick and convenient way to file your claim or call the Telephone Claim Center toll free at (888) 209-8124.

Have the following information available when you apply:

1. Your Social Security number.
2. A valid New York State driver's license or Non-Driver Photo Identification Card number (if you have either one).
3. Your complete mailing address and ZIP code.
4. A telephone number, including area code, where we can contact you Monday through Friday between 8:00 am and 5:00 pm Eastern Time.
5. Your Alien Registration Number (A#) or USCIS Number, if you are not a United States citizen.
6. Details about your employment for the last 18 months:
  - Employer names, addresses, and phone numbers (including out-of-state employers)
  - NYS Employer Registration Number or Federal Employer Identification Number (FEIN) for each employer. The FEIN can be located on your W-2 form(s).
  - Your total gross earnings (before any deductions) for each employer. You may be asked for pay stubs, W-2 forms, or other payment records.
7. A copy of your Notice to Federal Employee about Unemployment Insurance, Form SF8, if you have employment with the federal government.
8. Form DD-214, member copy 4, if you have military employment. (If member copy 4 is not available, you may use copy 2-3, or 5-8, or DD-215. You can request a DD-214 through the U.S. National Archives and Records Administration website at: <http://www.archives.gov/st-louis/military-personnel/standard-form-180.html>.)
9. A blank personal check so you may enter your bank routing and checking account numbers, if you want direct deposit of your weekly benefits. **The fastest way to receive your benefits is through direct deposit.**

You can file a claim without all of these documents. However, missing information could delay your first payment.

# Changes to New York's Unemployment Notice (2023)

As of November 13, 2023, New York employers must provide separated employees with written notice of right to file for unemployment.

DOL published a compliant "Record of Employment" form for employers to use.

## Changes to New Jersey's Unemployment System (2023)

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As of July 31, 2023, NJ employers are faced with additional unemployment insurance reporting obligations and significantly increased penalties for noncompliance with new amendments to the Unemployment Compensation Law.

- All communications with NJ DOL must be conducted electronically
  - FAQs suggest simply registering for email correspondence with DOL via “Employer Access” is sufficient at this time.
- NJ DOL still has not published required forms for employers.
  - FAQs suggest leniencies until DOL provides forms and instructions



# Changes to New Jersey's Unemployment System (2023)

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## Increased Penalties

- *Previously:* \$25 fine for every 10 days for failing to provide benefits-related information to DOL.
- *Now:* an employer that “willfully fails or refuses to furnish any reports or information . . . including [the required separation information],” is liable for a \$500 fine, or 25% of the “amount fraudulently withheld,” whichever is greater.
- *Now:* “each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.”

# Prohibition of Non-Competes

- June 2023: Legislature passed sweeping prohibition
- June-December 2023: Compromise discussions
- December 22, 2023: Governor vetoed bill
- No new bills yet introduced

**thank  
you**

**contact information**

For more information, please  
contact Rob Whitman

email: [rwhitman@seyfarth.com](mailto:rwhitman@seyfarth.com)

or Nick De Baun

email: [ndebaun@seyfarth.com](mailto:ndebaun@seyfarth.com)