

New York: 2020—New Decade, New Laws

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As we close the books on 2019, and enter the new decade, New York employers should keep a list of all new legislation handy. Below is our brief summary of legislation effective 2020.

New York State Human Rights Law (NYSHRL)

In August 2019, Governor Cuomo signed groundbreaking legislation amending the NYSHRL, which [we covered](#). Several pieces of the law will become effective in the upcoming months, including the following:

- January 1, 2020: Settlement agreements cannot bar individuals from speaking to an attorney, the New York State Division of Human Rights, the EEOC, local human rights commissions, or any other form of law enforcement.
- February 8, 2020: NYSHRL will be applicable to employers of all sizes who do business in the state.
- August 12, 2020: Statute of limitations for filing sexual harassment claims with the State Division of Human rights will be expanded from one to three years.

Additionally, employers should ensure they are in compliance with the 2019 changes to the NYSHRL and cognizant of new legal standards which became effective last year:

- The “severe or pervasive” standard no longer applies to discriminatory and retaliatory harassment claims;
- Employers can no longer rely on the *Faragher-Ellerth* defense to liability. In other words, if an employee fails to utilize the employer complaint procedure and fails to make an internal harassment complaint, the company may still be liable.
- Employers are prohibited from mandating arbitration of all claims of discrimination (expansion from previous legislation, which prohibited mandatory arbitration of sexual harassment claims only);
- Employers are prohibited from including non-disclosure provisions in settlement agreements for *all* claims of discrimination—not only sexual harassment claims—unless the condition of confidentiality is the plaintiff’s preference.

Further, employers should ensure they are up to date on the 2019 amendments which prohibit discrimination on the basis of:

- Transgender status, gender identity and expression;

- Hairstyle, including hair texture and protective hairstyles such as braids, twists, and locks;
- Facial hair or religious attire.

New York City Human Rights Law

- Effective January 11, 2020, the City law will apply to independent contractors. Further, the law applies to employers that maintain four or more employees, contractors, or freelancers at any time during the 12 months before the start of the discriminatory act.
- The law was amended in late 2019 to prohibit retaliation against individuals requesting a reasonable accommodation.

Reproductive Rights

The NYSHRL was recently amended to prohibit employers from discriminating or retaliating against employees for reproductive health decisions, including but not limited to, “the decision to use or assess a particular drug, device or medical service.” Under the new law, employers are specifically prohibited from:

- Accessing an employee's personal information regarding the employee's or the employee's dependent's reproductive health decision making without the employee's prior informed affirmative written consent;
- Requiring an employee to sign a waiver or other document which purports to deny an employee the right to make their own reproductive health care decisions; or
- Discriminating or taking any retaliatory personnel action against an employee with respect to compensation, terms, conditions, or privileges of employment because of or on the basis of the employee's or dependent's reproductive health decision making.

Effective January 7, 2020, employers must also issue a notice in their handbook of employees’ rights and remedies with respect to the new law.

New York City Pre-Employment Marijuana Testing

Effective May 10, 2020, many NYC employers will be prohibited from requiring prospective employees to take a marijuana or THC drug test as a condition of employment.

There are specific jobs excluded from the new law, including 1) safety and transportation related positions; 2) caregivers; 3) jobs where the drug testing is required by federal or state law, or required pursuant to a contract with the federal government; and 4) jobs in which a collective bargaining agreement requires drug testing.

New York City Salary History Ban

- For NYC employers with more than 11 employees, the minimum wage will remain at \$15.00.
- For employers with 10 or fewer employees, minimum wage will increase from \$13.50 to \$15.00.
- Minimum wage will increase to \$13.00 for employees in Long Island and Westchester.

New York Paid Family Leave Benefits

NY PFL benefits will remain at 10 weeks of leave; however, the benefits will increase to 60% of the

employee's average weekly wage, and will be capped at a weekly amount of \$840.70.

Fair Labor Standards Act

The salary threshold for an "exempt" employee under the FLSA executive, administrative, or professional exemption is now \$648 per week, or \$35,568 annually. This is increase to the previous threshold of \$455 a week, or \$23,660 annually. The "highly compensate employee" exemption also increased from \$100,000 to \$107,432 annually.