

LICP Talks Labor & Employment

*Employee Handbooks +
Policies in 2022:
Where Are We Now?*

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As many employees in New York City are returning to the office, businesses should consider reviewing and updating their employee handbooks.



Employee Handbooks

- Educate employees re: policies and procedures;
- Communicate corporate culture and values;
- Easily identify the Company's expectations;
- Provide management with guidance for implementing policies and maintaining consistency; and
- Provide a platform for legally required notifications.

Remote Work Policy or Agreements

- Post-pandemic - growing number of companies shifting to hybrid workforce models.
- A remote work policy or remote work agreement can help communicate clear expectations to your employees and lead to less business disruption and greater efficiencies.



Remote Work Policy/Agreement Should Address:

1. Eligibility for remote work;
2. Standards for tracking time of hourly employees;
3. Equipment and Security/Privacy;
4. Attendance and availability expectations;
5. Standards of Conduct.

Things to consider...

- Fully remote workers may live in a different state than where your Company is located and does business
 - Employees working remotely will be subject to the laws of where they work, i.e. leave requirements, wage and hour, tax liability, etc.
 - Contact your legal counsel to advise you of your responsibilities if you have a remote employee who lives in a different state

Airborne Infectious Disease Exposure Prevention Plan: NYLL 218-b

The HERO Act (NYLL § 218-b) requires every employer to establish an airborne infectious disease exposure prevention plan. Employees can adopt the model plan (www.dol.ny.gov/ny-hero-act) or implement their own plan that meets or exceeds the minimum standards in the model plan.

In March of 2022, the designation of COVID-19 as an airborne infectious disease that presents a serious risk of harm to the public health under the HERO Act ended. Private sector employees are no longer required to implement their workforce safety plans.

HERO Act still requires that the Plan be included in your Handbook.

Sick Leave

Effective in 2021, New York State passed paid sick leave laws requiring employers to provide employees with sick leave.



How many hours of sick leave is required?

The number of hours is tied to the size and revenue of employers.

- 0 – 4 Employees >\$1M Net Income: 40 hours of *unpaid* sick leave per calendar year
- 0 – 4 Employees < \$1M Net Income: 40 hours of *paid* sick leave per calendar year
- 5 – 99 employees: 40 hours of *paid* sick leave per calendar year
- 100+ employees: 56 hours *paid* sick leave per calendar year

Accrual and Carryover Requirements

- At a minimum, employees accrue 1 hour of leave for every 30 hours worked.
 - Employers are not required to follow the accrual method and may frontload the leave
- Unused leave must carry over, however employers can cap leave to the maximum an employee may accrue in the year.
 - Example: If employer has 50 employees, they can cap an employee's use of leave to 40 hours per year, regardless of the carryover

Use of Sick Leave

Employees must be able to use sick leave:

- for their own health condition;
- to provide care or assistance to a family member;
or
- for safe leave when the need for leave is related to the employee (or the employee’s family member) being a victim of domestic violence.

How does sick leave impact an employer's existing leave or PTO policies?

- Companies are not prevented from providing a more generous sick leave policy **OR** providing a PTO policy rather than separate sick leave
- If you have a PTO policy, you must review to ensure that the policy complies with the carry over, use and accrual requirements of NYLL 196-b

Anti-Retaliation Policy

Effective January 26, 2022,
NY expanded whistleblower
protections.

Under the new law,
employers are required to
post a notice of the statute's
protections in a conspicuous
and easily accessible location.



Anti-Retaliation Policy

Who is protected by the new law?

Employees and Independent Contractors

Enhanced Standard

Employer cannot retaliate against an employee who *reasonably believes* employer's conduct is in violation of a law, rule or regulation, **or** poses a substantial and specific danger to the public health or safety.

Anti-Retaliation Policy

Expansion of Protected Activity

Employees must make a ***good faith effort*** to notify their employer, however, notice is not required if:

- Imminent danger to public health
- Employee reasonably believes risk of destruction of evidence or harm
- Employee reasonably believes supervisor knows

Anti-Retaliation Policy

Expansion of Retaliatory Conduct

- Adverse Employment Action (discharge, suspension, etc.)
- Actions or threats to adversely impact former employees current or future employment
- Threats or reporting to immigration authorities

Electronic Monitoring

Effective May 7, 2022, employers in NY must provide notice to employees before monitoring employees' electronic devices and systems.

Companies should update their policies regarding computer use and electronic surveillance.

Consider including an acknowledgement of receipt with your onboarding materials.



Amendments to NY Workplace Harassment and Discrimination Laws

Companies should update their workplace harassment and discrimination policies to ensure that they address new ways that employees communicate **and** to address new changes in the law



Amendments to NY Workplace Harassment and Discrimination Laws

New York amended its laws to further expand protections for employees

- “Retaliation” expanded to include disclosing the personnel files of an employee if they complain of, or assist in proceedings involving unlawful discrimination
- New York expressly prohibits employment discrimination based upon “reproductive health decision making”

Amendments to NY Workplace Harassment and Discrimination Laws

Effective July 14, 2022, New York will implement a toll-free and confidential hotline for employees with complaints of workplace sexual harassment. Employers must notify their employees of the hotline.

Drug-Free and Alcohol-Free Workplace

As of March of 2021, NYS law permits individuals who are at least 21 to possess and use small amounts of marijuana.

Permissible employer action related to cannabis use:

- the employer's actions were required by state or federal law;
- the employee is impaired by the use of cannabis; or
- the employer's actions would cause the employer to be in violation of federal law or would result in the loss of a federal contract/funding.



Lactation Accommodations

Under NY law, employers are required to have a written lactation policy.

The policy must:

- Include a statement regarding the right to request a lactation room
- Address how the request is submitted
- Acknowledge that the employer must respond to the request in 5 business days
- Provide information regarding the procedure to be followed when 2 or more employees need the lactation room at the same time, and
- Acknowledge that a cooperative dialogue must occur between employees and employer if providing a lactation room would cause an employer “undue hardship”



Looking Ahead....

NY already prohibits employers from inquiring into the salary history of applicants and employees.

Effective November 1, 2022, NYC employers are required to include minimum and maximum starting salaries for any advertised job, promotion or transfer opportunities.

Make sure future external and internal job postings are updated to include the latest requirements.



Thank you.

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