# LABOR & EMPLOYMENT LAW

**Gianelle M. Duby**

**Colin Smith**

**Gavin Gretsky**†

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† Gianelle M. Duby, associate at Bond, Schoeneck & King, PLLC; J.D., *cum laude*, 2021, Syracuse University College of Law; B.S., *cum laude*, 2018, Syracuse University. Colin Smith, associate at Bond, Schoeneck & King, PLLC; J.D., *summa cum laude*, 2024, Albany Law School; B.A., 2021, University of Rochester. Gavin Gretsky, associate at Bond, Schoeneck & King, PLLC; J.D., *cum laude*, 2024, Syracuse University College of Law; MPP, 2017, DePaul University; B.A., 2015, Elmira College. The authors would like to thank Courtney Ryan, Alexis Takishima, Alexandra Brockhuizen, and McKenzie Kestler for their assistance in preparing this Article.

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## INTRODUCTION

This year's New York Labor and Employment Law *Survey* encompasses the one-year period from July 2024 through June 2025. The past year brought significant developments in New York labor and employment law, reflecting continued legislative activity, evolving administrative enforcement, and significant court rulings impacting employers and employees across the state. This *Survey* highlights the most noteworthy statutory, regulatory, and case law developments in New York State, with an emphasis on their practical impact in the years ahead. Addressed in greater detail below, some of the most notable changes included increases to the minimum wage and minimum salary threshold in certain areas of the state, an end to lingering COVID-era legislation, amendments further strengthening employees' rights in the workplace, and litigation out of both the Supreme Court and Second Circuit that will now provide greater clarity in the anti-discrimination law space.

## I. NEW YORK WAGE AND HOUR DEVELOPMENTS

### *A. Increase to the State Minimum Wage*

For each of the past several years, New York's minimum hourly wage has incrementally increased.[1] However, the federal minimum wage has remained at $7.25 per hour since 2009.[2] New York State is divided into three regions for minimum wage purposes—New York City; Nassau, Suffolk, and Westchester counties; and the remainder of New York State (i.e., "upstate" New York).[3] As increases to minimum wage are made by region, the effective minimum wage rates differ by location.[4] It is the employee's location at the time the work is performed that determines the applicable minimum wage.[5] Effective January 1, 2025, the minimum hourly wage in New York increased from $16.00 to $16.50 in downstate New York, and from $15.00 to $15.50 in upstate New York.[6] In all regions of New York, the minimum wage will increase by $0.50 on January 1, 2026.[7] Beginning in 2027, the minimum wage will annually increase by the three-year moving average of the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W") for the Northeast Region.[8]

### *B. Increase to New York Exempt Salary Levels*

Effective January 1, 2025, the New York State Department of Labor ("DOL") adopted the proposed regulations in the State Register, raising the minimum weekly salary to qualify for the executive and administrative exemptions. On January 1, 2025, the minimum base weekly salary in downstate New York increased to $1,237.50.[9] On

1. *See Minimum Wage Rate Schedule*, N.Y. STATE: N.Y. STATE'S MINIMUM WAGE, https://www.ny.gov/new-york-states-minimum-wage/new-york-states-minimum-wage (on file with Syracuse Law Review) (last visited Jan. 7, 2026).

2. *See History of Changes to the Minimum Wage Law*, U.S. DEP'T OF LAB.: WAGE & HOUR DIV., https://www.dol.gov/agencies/whd/minimum-wage/history (on file with Syracuse Law Review) (last visited Jan. 7, 2026).

3. *See* N.Y. LAB. LAW § 652(1)(a)–(c) (McKinney 2025).

4. *See id.*; *see also Minimum Wage Rate Schedule*, *supra* note 1.

5. *See Minimum Wage Frequently Asked Questions*, N.Y. STATE: DEP'T OF LAB., https://dol.ny.gov/minimum-wage-frequently-asked-questions (on file with Syracuse Law Review) (last visited Jan. 7, 2026).

6. *See Minimum Wage Rate Schedule*, N.Y. STATE: N.Y. STATE'S MINIMUM WAGE, https://www.ny.gov/new-york-states-minimum-wage/new-york-states-minimum-wage (on file with Syracuse Law Review) (last visited Jan. 7, 2026).

7. *Id.*

8. *Id.*

9. *See Proposed Regulatory Text*, N.Y. STATE DEP'T OF LAB., https://dol.ny.gov/system/files/documents/ 2023/09/mw-orders-update-9.20.23.pdf

January 1, 2026, it will increase to $1,275.00.[10] The minimum base salary in upstate New York increased to $1,161.65 and will increase to $1,199.10 in each of the next three years, respectively.[11] The salary thresholds will be updated every three years to reflect current earnings data, beginning July 1, 2027.[12]

The DOL's final regulations also include increases to the hourly tip credits that employers in the hospitality industry may use for compensation of food service workers and service employees, effective January 1, 2025.[13] In downstate New York, food service workers' tip credit is $5.50 with a $11.00 minimum wage, and for service employees, it is a $2.75 tip credit and a $13.75 minimum wage.[14] In upstate New York, food service workers tip credit is $5.15 and $10.35 minimum wage, and for service employees, it is a $2.60 tip credit and a $12.90 minimum wage.[15] The DOL's final regulations also provide for increases to the hourly tip credits in the hospitality industry when the minimum wage increases again in 2026.[16]

## II. COVID-19 DEVELOPMENTS IN NEW YORK

### *A. The End of New York's COVID-19 Paid Emergency Leave Law*

On July 31, 2024, New York's COVID-19 Paid Emergency Leave ("Paid COVID-19 Leave") Law was officially repealed.[17] Beginning on July 31, 2024, employers were no longer required to provide employees with separate Paid COVID-19 Leave.[18]

As a reminder, under the Paid COVID-19 Leave Law, New York employers were required to provide employees with sick leave and job protection in the event they needed to stay home due to a quarantine order.[19] Private employers with 10 or fewer employees and who

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(on file with Syracuse Law Review) (last visited Jan. 8, 2026) [hereinafter *Proposed Regulatory Text*].

10. *See id.*
11. *See id.*
12. *See id.*
13. *See id.*
14. *See Proposed Regulatory Text*, *supra* note 9.
15. *See id.*
16. *See id.*
17. *See FY 2025 New York State Executive Budget: Education, Labor and Family Assistance Article VII Legislation*, N.Y. STATE 1, 74 (Jan. 14, 2024), https://www.budget.ny.gov/pubs/archive/fy25/ex/artvii/elfa-bill.pdf (on file with Syracuse Law Review).
18. *See id.*
19. *See* S.B. 8091, 242d Leg., Reg. Sess. (N.Y. 2020) (repealed 2025).

reported less than one million dollars in net income in the previous tax year were required to provide unpaid, job-protected sick leave to any employees who were subject to a mandatory or precautionary quarantine order issued by the State through the termination date of the order.[20] Private employers with 10 or fewer employees and who reported more than one million dollars in net income in the previous tax year, as well as employers with 11 to 99 employees were required to provide at least five days of job-protected paid sick leave, followed by unpaid leave until the termination of the quarantine order.[21] Employees encompassed by either of these categories were also eligible for New York Paid Family Leave benefits and New York statutory disability benefits during the quarantine period. Employers with 100 or more employees, as well as most public employers, were required to provide at least 14 days of job-protected paid sick leave throughout the duration of the quarantine order.[22]

Leave provided for any of the categories of employees described above had to be provided without loss of any of the employee's previously accrued sick leave.[23] The law also included anti-retaliation or anti-discrimination provisions for taking leave provided under the law, and also required that an employer reinstate the employee to the same position, rate of pay, and other terms of employment that the employee had prior to taking leave.[24] Employees who were asymptomatic or not diagnosed with any medical condition while in quarantine and who were physically able to work though remote access or other similar means were not eligible for the leave provided under this law.[25] Employees were also only eligible for leave up to three orders of quarantine.[26]

Beginning on July 31, 2025, at which time the Paid COVID-19 Leave Law was no longer in effect, employees had to use existing paid leave regimes to take time off to manage, care, or isolate for COVID-19. This is yet another significant action by New York State to leave COVID-era legislation in the past.

20. *See id.* at § 1(1)(a–b).
21. *See id.*
22. *See id.* at § 1(1)(c–d) (definitions of "public employers" are included in the Bill).
23. *See id.* at § 1(1)(e).
24. *See* S.B. 8091 § 1(3), 242d Leg., Reg. Sess. (N.Y. 2020) (repealed 2025).
25. *See id.* at § 1(13).
26. *See Guidance on Use of COVID-19 Sick Leave*, N.Y. STATE DEP'T OF LAB. (Jan. 20, 2021), https://coronavirus.health.ny.gov/system/files/documents/2021/01/guidanceonuseofcovid-19sickleave_0.pdf (on file with Syracuse Law Review).

## III. NEW YORK ENACTS "FREELANCE ISN'T FREE" ACT

The "Freelance Isn't Free" Act ("FIFA"), codified in Article 44-A of the New York General Business Law, took effect on August 28, 2024.[27] Similar to the New York City "Freelance Isn't Free" Act ("City FIFA") enacted in 2017,[28] FIFA was enacted to protect freelance workers from potentially exploitative practices of hiring parties.[29]

Under FIFA, the term "freelance workers" includes any individual hired to provide services in exchange for $800 or more, either in a one-time transaction or across multiple transactions with the same hiring party over the course of 120 days.[30] The term does not include legal practitioners, licensed medical professionals, construction contractors, and sales representatives as defined by Section 191-a of the Labor Law.[31] The law broadly defines "hiring party" as "any person who retains a freelance worker to provide any service," with the exception of local, state, and federal governments.[32] Thus, based on these broad definitions, FIFA requirements will impact nearly all non-governmental entities and individuals seeking to engage freelance workers in the course of their business.

Under FIFA, any hiring party that contracts with a freelance worker must memorialize the relationship in a written agreement.[33] The hiring party must also furnish either a physical or electronic copy of the written contract to the freelance worker, implying that the burden of preparing the written contract falls on the hiring party.[34] The hiring party is required to keep each such contract for at least six years thereafter, and it must make such contract available to the New York

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27. *See* N.Y. GEN. BUS. LAW §§ 1410–1415 (McKinney 2025).

28. *See generally* N.Y.C. ADMIN. CODE §§ 20-927–20-936 (2026).

29. *See Freelance Isn't Free Act*, N.Y. STATE DEP'T OF LAB., https://dol.ny.gov/freelance-isnt-free-act (on file with Syracuse Law Review) (last visited Jan. 8, 2026).

30. N.Y. GEN. BUS. LAW § 1410 (McKinney 2025) ("any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days").

31. *See id.*; *see also* N.Y. LAB. LAW § 191-a (McKinney 2025).

32. N.Y. GEN. BUS. LAW § 1410 (McKinney 2025).

33. *See id.* at § 1412.

34. *See id.*

State Attorney General upon request.[35] If the hiring party fails to maintain or produce such contracts to the Attorney General, a presumption arises that the terms proffered by the freelance worker are the agreed upon terms.[36]

At a minimum, the written contract must include: (1) the names and mailing addresses of both parties; (2) an itemized list of the services to be performed, the value of the services to be provided, and the rate and method of compensation for the services; (3) the date upon which payment will become due, or the method by which such date will be determined in the future; and (4) the date by which the freelance worker must submit an invoice or list of services provided to the hiring party in order to ensure timely payment.[37] Notably, FIFA clearly states that any contractual provision attempting to waive the rights provided thereunder will be deemed unenforceable.[38]

Whether a payment is considered to be "timely" under FIFA depends on the terms of the freelance agreement.[39] If the written agreement provides a date for payment, the payment is considered timely if made on or before that date.[40] If the contract does not specify a date for payment, payment will be deemed timely if paid no later than 30 days after the completion of the freelance worker's services under the contract.[41] Additionally, once a freelance worker has begun performing the contracted services, the hiring party may not condition timely payment on the freelance worker accepting less pay than originally agreed upon.[42]

Like other laws in New York State, FIFA prohibits discrimination and retaliation against freelance workers who exercise or attempt to exercise the rights provided therein.[43]

FIFA provides two methods of enforcement of the provisions under the law: (1) an aggrieved freelance worker may bring a private action; or (2) the New York State Attorney General may bring a civil action on behalf of the people of the State of New York.[44]

With respect to a private right of action, a freelance worker alleging a FIFA violation may bring an action against the hiring party in any court

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35. *See id.*
36. *See id.*
37. *See* N.Y. GEN. BUS. § 1412.
38. *See id.* at § 1415.
39. *See id.* at § 1411
40. *See id.* at § 1411(1)(a).
41. *See id.* at § 1411(1)(b).
42. *See* N.Y. GEN. BUS. § 1411(2).
43. *See id.* at § 1413.
44. *See id.* at § 1414.

of competent jurisdiction.[45] If the alleged violation stems solely from the hiring party's failure to provide a written contract, the freelance worker must bring the claim within two years of the occurrence of the alleged violation, and he or she must prove that he or she had requested a written contract before beginning the services.[46] In contrast, if the claim is based on the hiring party's alleged failure to make a timely payment, or discrimination or retaliation, the freelance worker must bring the claim within six years of the occurrence of the alleged misconduct.[47]

According to FIFA, the potential penalties available for successful freelance worker plaintiffs will depend on the nature of the violation.[48] A successful claim for failure to provide timely payment may result in an award of double damages, injunctive relief, attorneys' fees and costs, and other appropriate remedies to the freelance worker.[49] In contrast, a determination that the hiring party failed to provide a written contract may result in a $250 civil penalty.[50] Finally, a freelance worker who prevails on a discrimination or retaliation claim may be entitled to damages equal to the value of the underlying contract for each proven violation, as well as other appropriate damages.[51]

As stated above, FIFA also provides the New York State Attorney General with the authority to investigate complaints of FIFA violations.[52] If the investigation uncovers sufficient evidence to support the claim, the Attorney General may bring an action on behalf of the people of the State of New York to enjoin a hiring party from engaging in the prohibited conduct and to obtain restitution for affected freelance workers.[53] Potential penalties include $1,000 for a first violation, $2,000 for a second violation, and $3,000 for a third or subsequent violation.[54] Where there is evidence of habitual violations of the Act, the court may impose civil penalties up to $25,000.[55]

Given that FIFA applies to such a vast group of individuals and organizations, it is extremely important for all affected parties to review their internal policies for hiring freelance workers to ensure

45. *See id.* at § 1414(2)(a).
46. *See id.* at § 1414(2)(b), (e).
47. *See* N.Y. GEN. BUS. § 1414(2)(c).
48. *See id.* at § 1414(3).
49. *See id.* at § 1414(3)(a), (c).
50. *See id.* at § 1414(3)(b).
51. *See id. at* § 1414(3)(d).
52. *See* N.Y. GEN. BUS. § 1414(1).
53. *See id.*
54. *See id.*
55. *See id.* at § 1414(5).

compliance with FIFA. To assist in that process, the Department of Labor has provided a model contract for hiring parties.[56]

FIFA is yet another effort on behalf of New York State to provide additional protection for non-traditional workers.

## IV. AMENDMENT TO THE NEW YORK WORKERS' COMPENSATION LAW RECOGNIZES WORK-RELATED MENTAL INJURY

On February 14, 2025, Governor Kathy Hochul signed legislation amending the New York Workers' Compensation Law to allow all employees facing mental health injuries brought on by extraordinary work-related stress to file a claim for workers' compensation benefits.[57] The law is a notable expansion of the existing protections for employees in New York consistent with Governor Hochul's proclaimed goal of strengthening the mental healthcare system in the state.[58]

Prior to the amendment, relief for employees in New York experiencing work-related stress was limited.[59] Previously, stress-related workers' compensation claims were only available to first responders who had developed post-traumatic stress disorder ("PTSD") as a result of a work-related emergency.[60] Now, all covered employees experiencing mental injuries due to extraordinary work-related stress may seek relief from the New York State Workers' Compensation Board (the "Board").[61]

To bring a successful claim under the amended law, a claimant must demonstrate to the Board that the stress arose during the ordinary course of their employment and that the stress is "extraordinary."[62] The stress need not stem from a single event, allowing employees to

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56. *See* N.Y. STATE DEP'T OF LAB., *supra* note 29.

57. *See* 2025 N.Y. Laws 79 (codified at N.Y. WORKERS' COMP. LAW § 10 (McKinney 2025)).

58. *See Governor Hochul Signs New Law to Support Workers Facing Job-Related Post-Traumatic Stress*, N.Y. STATE GOVERNOR'S OFF. (Dec. 6, 2024), https://www.governor.ny.gov/news/governor-hochul-signs-new-law-support-workers-facing-job-related-post-traumatic-stress (on file with Syracuse Law Review).

59. *See id.* ("Through an agreement with the Legislature, Legislation S.6635/A.5745 will allow any worker to file for workers' compensation for specific types of mental injury premised on extraordinary work-related stress. This expands coverage to all workers in the State of New York; previously, only certain first responders were eligible for such benefits.").

60. *See id.*

61. *See* N.Y. WORKERS' COMP. LAW § 10(3)(c) (McKinney 2025).

62. *See id.*

bring a claim based on cumulative stress arising from multiple work-related incidents.[63]

One of the more difficult aspects of this process will likely be the evidentiary burden on the claimant to show that the stress is both "extraordinary" and "work-related." Employees will need to present the Board with detailed, credible information suggesting that the mental injury was both work-related and extraordinary.[64] The claimant should be able to provide evidence to support a connection between the claimant's stressors and the duties or conditions of their employment.[65]

The procedural and evidentiary complexity of these claims is likely to increase administrative burdens on the Board, employers, and employees alike. The fact that many of the legislation's key terms have yet to be clearly defined will likely present an administrative challenge. Without a working definition for terms like "extraordinary" and "work-related," it is evident that the administrative law judges at the Board must engage in a fact-specific analysis in each case to determine which claimants are eligible for compensation.[66] Overall, developing a workable precedent is going to be critical to clarifying the scope of this legislation and promoting uniformity in its enforcement.

## V. NEW YORK RAISES DAILY RATE OF PAY FOR TRIAL AND GRAND JURORS

For the first time since 1998, the New York State Legislature has amended the Judiciary Law to increase the daily compensation rate for trial and grand jurors.[67] Effective June 8, 2025, this amendment raised the statutory jury fee from $40 to $72 per day.[68] An employer's obligations to an employee who is on leave for purposes of jury duty depend on its total number of employees.[69] Employers with ten or fewer employees may withhold an employee's wages during jury service, in which case the State will pay the employee directly in the amount of the statutory jury fee rate.[70] Employers with more than ten employees are required to compensate employees for the first three days of jury service, but only to the extent that the employee's regular daily wage

63. *See* N.Y. WORKERS' COMP. § 10.
64. *See id.*
65. *See id.*
66. *See* 2025 N.Y. Laws 55.
67. *See id.*
68. *See* N.Y. JUD. LAW § § 519, 521 (McKinney 2025).
69. *See id.* at § 519.
70. *See id.*

equals or exceeds the statutory fee.[71] For example, if an employee's daily wage is less than the statutory jury fee, the employer must pay the employee's regular wage, and the State will pay the difference.[72]

Accordingly, the amendment most significantly impacts larger employers whose employees earn wages equal to or above the new statutory jury fee amount.[73] Thus, employers who previously paid employees $40 per day for the first three days of jury service are now obligated to pay at least $72 per day.[74] Although the amendment only affects wages for this initial three-day period, employers must also be sure to comply with all other obligations imposed by federal and state laws such as the Fair Labor Standards Act, New York Labor Law, or any applicable collective bargaining agreements.[75] In response to this amendment, employers are encouraged to review their pay practices and jury duty policies, and revise where necessary, to ensure full compliance with the amended Judiciary Law and other related labor laws.[76]

## VI. New York Implements New Freedom of Information Act Notification Requirements for Public Employers

Effective September 4, 2024, Governor Kathy Hochul signed into law a significant amendment to New York's Freedom of Information Law ("FOIL") that requires public employers to notify employees when their disciplinary records are requested under FOIL.[77] New York's FOIL is designed to promote transparency by granting public access to government records, as the public's right to be informed regarding governmental decision-making is integral to a free and functioning society.[78] FOIL applies to all state and local agencies, including municipalities, school districts, public authorities, bureaus, councils, and libraries.[79] Previously, public employers were not required to notify employees when their disciplinary records were the subject of a request under FOIL.

All agencies subject to FOIL must develop a policy to notify public employees in the event that the agency is responding to a request

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71. *See id.*
72. *See* N.Y. Unified Ct. Sys., Jury Info. for Emps., 3 (2025).
73. *See id.*
74. *See id*. at 6–8.
75. *See id.* at 7.
76. *See id.*
77. *See* N.Y. Pub. Off. Law § 87(6) (McKinney 2025).
78. *See id.* at § 84.
79. *See id.* at § 86(3).

for such employees' disciplinary records.[80] Although "public employee" is not defined in the statute, the Committee on Open Government suggests that the notification requirement will apply equally to current and former public employees.[81] Additionally, the Committee on Open Government suggests that the term "disciplinary records" is intended to encompass any record created in furtherance of a disciplinary proceeding, including but not limited to the complaints, allegations, and charges against an employee; the name of the employee complained of or charged; the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing; the disposition of any disciplinary proceeding; and the final written opinion or memorandum supporting the disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee.[82]

Although affected agencies must develop internal policies to comply with the new notification requirement, the statute does not prescribe specifics regarding the method or timing of employee notification. The memorandum accompanying the bill emphasizes that public employees should receive "minimal notice" when their personal information has been released to the public, suggesting that notice after the records have been disclosed will suffice for statutory compliance.[83] Further, while the language of the statute is silent regarding notification procedures, it is recommended that notice be given in writing to provide concrete evidence of compliance.[84]

Importantly, the new legislation does not impose penalties for noncompliance, nor does it provide a private right of action for public employees who are not notified when their disciplinary records are disclosed under FOIL. The memorandum accompanying the bill is also silent regarding this matter.

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80. *See id.* at § 87(6).

81. *See* N.Y. State Dep't of State, Comm. on Open Gov't, Chapter 302 of the Laws of 2024 Op. No. 19867 (Sept. 16, 2024), https://opengovernment.ny.gov/system/files/documents/2024/09/ch-302-l-2024-foil-ao.pdf (on file with Syracuse Law Review).

82. *See id.*; *see also* PUB. OFF. § 86(6).

83. *See* Marianne Buttenschon, A06146 Memorandum in Support of Legislation, N.Y. A.B. A6146B.

84. *See* N.Y. State Dep't of State, Comm. on Open Gov't, Chapter 302 of the Laws of 2024 Op. No. 19867 (Sept. 16, 2024), https://opengovernment.ny.gov/system/files/documents/2024/09/ch-302-l-2024-foil-ao.pdf (on file with Syracuse Law Review).

## VII. NEW YORK ENACTS RETAIL WORKER SAFETY ACT ADDRESSING WORKPLACE VIOLENCE IN RETAIL SETTINGS

On September 5, 2024, Governor Kathy Hochul signed the Retail Worker Safety Act ("the Act") into law.[85] The law went into effect on March 3, 2025, but went through some additional changes, which pushed the effective date for some provisions to June 2, 2025.[86] The Act amended New York Labor Law Section 27-e.[87]

Covered employers under the Act include "any person, entity, business, corporation, partnership, limited liability company, or an association employing at least ten retail employees."[88] State, public authority, and other governmental agencies or instrumentalities are exempt from coverage under the Act.[89] Employers are required under the law to adopt a workplace violence prevention policy, which at minimum must: (1) outline a list of factors or situations that might place retail workers at risk of workplace violence; (2) outline methods to prevent workplace violence incidents (i.e., establishing reporting systems); (3) include information about federal and state statutes that concern violence against retail workers and the remedies available to them if such violence occurs; and (4) emphasize that retaliation for complaints of workplace violence is unlawful.[90]

The New York State Department of Labor ("DOL") released a model policy for eligible employers to use as a guide; however, employers are encouraged to model the policy to their "workplace needs and company voice."[91]

As part of the Act, effective January 1, 2027, employers with 500 or more retail employees must provide every retail employee a silent response button.[92] The silent response button, when pressed, silently requests immediate assistance from a security officer, manager, or supervisor.[93] Employers can comply with this provision in one of two

85. *See* H.B. 8947B, 2023-2024 Gen. Assemb., 247th Sess. (N.Y. 2024) (enacted).

86. *See* S.B. 740, 2024-2025 Gen. Assemb., 248th Sess. (N.Y. 2025) (enacted).

87. *See* N.Y. LAB. LAW § 27-e (McKinney 2025).

88. *Id.* at § 27-e(1)(a).

89. *See id.*

90. *See id.* at § 27-e(2)(a)(i–iv).

91. *Model Retail Workplace Violence Prevention Policy for Retail Employers in New York State*, N.Y. STATE DEP'T OF LAB., https://dol.ny.gov/model-retail-workplace-violence-prevention-policy (on file with Syracuse Law Review) (last visited Jan. 24, 2026).

92. *See* N.Y. LAB. LAW § 27-e(5) (McKinney 2025).

93. *See id.*

ways: (1) installing a panic button throughout the workplace in an "easily accessible location"; or (2) providing all employees with wearable company mobile phone-based buttons.[94]

Additionally, covered retail employers with at least 50 employees must provide workplace violence prevention training to all employees upon hire and on an annual basis.[95] Covered retail employers with less than 50 employees are also required to provide the training upon hire and an updated training every two years.[96] The workplace violence prevention policy must be available in writing to all employees during the program and employees are to be given written notice of the information in the training program.[97] Moreover, employers must develop a clear and easy to use system to report incidents of workplace violence.[98] The DOL recommends that employers maintain a record of all incidents of workplace violence reported under the law.[99]

## VIII. NEW YORK STATE INTRODUCES NEW REGISTRATION REQUIREMENT FOR CONTRACTORS & SUBCONTRACTORS ON PUBLIC & PRIVATE CONSTRUCTION PROJECTS

Effective December 30, 2024, all contractors and subcontractors who submit bids or perform work on public work projects or private projects covered by Article 8 of the New York Labor Law are required to register with the New York State Department of Labor.[100] The new registration requirement was enacted as part of a broader effort to ensure that entities bidding on or performing construction work are in good standing with labor regulations, including prevailing wage requirements.[101] "Covered projects" subject to the statutory reporting requirement include public works projects, public subsidy-funded projects, broadband infrastructure projects, climate risk-related projects,

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94. *Id.*

95. *See id.* at § 27-e(3)(c).

96. *See id.*

97. *See* N.Y. LAB. LAW § 27-e(5) (McKinney 2025).

98. *See Retail Workplace Violence Prevention Policy*, N.Y. STATE DEP'T OF LAB., https://dol.ny.gov/retail-workplace-violence-prevention-policy (on file with Syracuse Law Review) (last visited Jan. 24, 2026).

99. *See id.*

100. *See* N.Y. LAB. LAW § 220-i (McKinney 2025).

101. *See Governor Hochul Signs Legislation to Protect Integrity of Public Work Projects*, N.Y. STATE (Dec. 30, 2022), https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-integrity-public-work-projects#:~:text=The%20law%20requires%20contractors%20and%20subcontractors%20to,workers%20are%20treated%20fairly%20on%20the%20jobsite (on file with Syracuse Law Review).

energy transition projects, and utility excavations and other work requiring roadway excavation permits.[102]

Contractors must register with the DOL before submitting any bids, and subcontractors must be registered prior to commencing work on any covered projects.[103] As defined under the statute, a "contractor" means "any entity entering into a contract to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication" subject to Article 8 of the New York Labor Law.[104] Similarly, a "subcontractor" is defined under the statute as any entity subcontracting with a contractor, as defined above, to perform any of the tasks mentioned in the contractor definition.[105]

To comply with the statutory requirement, affected contractors and subcontractors must submit an application through the DOL's Contractor Registry Portal.[106] They will be required to disclose requested information pertaining to business structure and ownership, tax identification and insurance information, history of labor law violations, history of tax law violations, history of debarments, outstanding wage assessments, history of Occupational Safety and Health Act ("OSHA") violations, participation in apprenticeship programs, and certification status as a New York State Minority or Women-owned Business Enterprise ("MWBE").[107] There is a nonrefundable registration fee of $200, which is reduced to $100 for MWBEs.[108] Once approved by the DOL, registration shall be valid for two calendar years from the date of registration.[109] Registration renewal must occur at least 90 days prior to the expiration date of the immediately preceding registration.[110] If a contractor or subcontractor's registration is denied, or if a contractor or subcontractor's registration is suspended or

102. *See* N.Y. LAB. LAW § 220-i(1)(c) (McKinney 2025); *see also* N.Y. LAB. LAW § § 224-a, 224-d–224-f (McKinney 2025).

103. *See id.* at § 220-i(6).

104. *Id.* at § 220-i(1)(a).

105. *See id.* at § 220-i(1)(b).

106. *See How to Register for the Contractor and Subcontractor Registry*, N.Y. STATE DEP'T OF LAB., https://dol.ny.gov/how-register-contractor-and-subcontractor-registry (on file with Syracuse Law Review) (last visited Jan. 24, 2026).

107. *See* N.Y. LAB. LAW § 220-i(2)(a) (McKinney 2025).

108. *See id.* at § 220-i(3); *see also Frequently Asked Questions for NYSDOL Contractor Registry*, N.Y. STATE DEP'T OF LAB., https://dol.ny.gov/frequently-asked-questions-nysdol-contractor-registry (on file with Syracuse Law Review) (last visited Jan. 24, 2026) [hereinafter *Contractor FAQ*] .

109. *See* N.Y. LAB. LAW § 220-i(4) (McKinney 2025).

110. *See id*.

revoked, the affected contractor or subcontractor may request a hearing within 30 days of notification of unfitness.[111] The DOL must notify the contractor or subcontractor in writing of the reasons for unfitness, and the contractor or subcontractor must be given an opportunity to cure or be heard.[112] A determination of unfitness will not bar a contractor or subcontractor from reapplying for registration once the period of ineligibility or debarment has passed, or once wage law violations preventing registration have been fully satisfied and proof of such has been provided.[113]

Contractors who knowingly fail to register and who bid on or commence work on a covered project, or contractors who allow subcontractors whom they know or should have known are not registered to work on a covered project, shall be subject to a civil penalty of up to $1000 and a stop work order may be issued.[114] Subcontractors who begin work on a covered project knowing that they are not registered shall similarly be subject to a civil penalty of up to $1000.[115] However, if a contractor or subcontractor's registration lapses while performing already-commenced contracted work on a covered project, they will not be prohibited from completing such contracted work.[116] Additionally, owners and developers of private projects covered by Article 8 of the New York Labor Law have a responsibility to ensure that all contractors and subcontractors hired to perform work on a covered project are registered.[117] Such owners and developers who commence work with a contractor or subcontractor that it knows or should have known is not registered shall be subject to a civil penalty of up to $1000.[118]

It is essential for covered contractors and subcontractors to diligently comply with these new registration requirements in order to avoid significant repercussions.

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111. *See id*.
112. *See id.*
113. *See Contractor FAQ*, *supra* note 108.
114. *See* N.Y. LAB. LAW § 220-i(8)(a); *see also Contractor FAQ*, *supra* note 108.
115. *See id.*
116. *See id.* at § 220-i(5).
117. *See id.* at § 220-i(7).
118. *See id.* at § 220-i(8)(a).

## IX. NEW YORK STATE ATTEMPTS TO STEP IN WHILE THE NATIONAL LABOR RELATIONS BOARD STEPS BACK

The National Labor Relations Board ("NLRB") has lacked a quorum since the beginning of 2025, preventing it from issuing decisions until the quorum is resolved.[119] As a result, New York and other pro-labor states have attempted to step in while the NLRB's lack of quorum continues.[120] For example, New York passed legislation to amend New York Labor Law Section 715 in an attempt to provide an alternative forum for deciding labor disputes while the NLRB lacks a quorum.[121]

In general, the United States Supreme Court has held that the National Labor Relations Act ("NLRA") preempts state and local laws that attempt to regulate private sector labor.[122] Where a potential conflict between a state or local law and the NLRA exists, the NLRA preempts the state or local law and prevents the state from regulating or resolving the labor dispute at issue.[123] But, where the NLRB expressly declines jurisdiction, under Section 14(c)(2) of the NLRA, states may regulate private sector labor in a limited capacity.[124] However, this section of the NLRA is unclear about how states may operate in the absence of a quorum within the NLRB.[125]

The New York State Legislature passed Senate Bill S8034A ("the Bill"), which amends New York Labor Law Section 715, allowing the State to step in the shoes of the NLRB when they cannot act due to a lack of a quorum.[126] The amendments to Section 715 give the New York Public Employment Relations Board ("PERB") the authority to oversee labor disputes in situations where the NLRB cannot or will

119. *See* Robert Iafolla, *Trump Stymies Labor Board by Firing Democrat Gwynne Wilcox*, CONG. LAB. CAUCUS (Jan. 28, 2025), https://laborcaucus.house.gov/media/in-the-news/trump-stymies-labor-board-by-firing-democrat-gwynne-wilcox (on file with Syracuse Law Review).

120. *See* Office of Public Affairs, *Acting General Counsel Statement on Potential State Legislation Regulating Private Sector Labor Relations*, NAT'L LAB. RELATIONS BD. (Aug. 15, 2025), https://www.nlrb.gov/news-outreach/news-story/acting-general-counsel-statement-on-potential-state-legislation-regulating (on file with Syracuse Law Review).

121. *See* N.Y. LAB. LAW § 715 (McKinney 2025).

122. *See* San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 244 (1959).

123. *See id.* at 245.

124. *See* 29 U.S.C. § 164(c)(2).

125. *See id.*

126. *See* S.B. 8034, 2025-2026 Leg. Sess., Reg. Sess. (N.Y. 2025) (enacted).

not oversee such disputes (i.e., a lack of quorum).[127] Further, the amendment requires the NLRB to affirmatively assert jurisdiction.[128]

On September 12, 2025, in response to the amendment of Section 715, the NLRB sued New York State claiming the amendment was unconstitutional.[129] The NLRB asked the United States District Court for the Northern District of New York to strike down the law and issue a temporary injunction blocking the PERB from acting pursuant to the amendment until the constitutionality issue is resolved.[130] The NLRB alleged that New York's law is preempted by the NLRA pursuant to the Supremacy Clause and current precedent, where states are prohibited from regulating activities that the NLRA has authority to regulate relating to private sector labor unions.[131]

As litigation challenging the amendment to Section 715 continues, it remains to be seen whether PERB's expanded jurisdiction, as envisioned under the amendments, will permissibly fill the gap left by the NLRB's lack of a quorum.

## X. New York Clean Slate Act Takes Effect

On November 16, 2024, the Clean Slate Act (the "Act"), a law signed by Governor Kathy Hochul one year before, officially went into effect.[132] The Act calls for the automatic sealing of criminal convictions for most misdemeanors and felonies after a certain amount of time has passed since conviction or release.[133] The amount of time that must pass before a conviction is sealed depends on the type of conviction.[134] Generally, for misdemeanor convictions, an individual's dockets are eligible for sealing three years after conviction or release, whereas a felony conviction may be eligible for sealing after eight

127. *See id.* The purpose of the Act is "[t]o make sure employees still receive protections guaranteed by the National Labor Relations Act if the National Labor Relations Board is unable to successfully assert jurisdiction." *Id.*

128. *See id.*

129. *See* Fisher Phillips, *Hamstrung NLRB Doesn't Want States Grabbing Labor Power: Agency Challenges NY Law As More States Consider Similar Path*, J.D. SUPRA (Oct. 1, 2025), https://www.jdsupra.com/legalnews/hamstrung-nlrb-doesn-t-want-states-7457375/#:~:text=NLRB%20Sues%20New%20York%2C%20Claims,most%20private%20sector%20labor%20relations.%E2%80%9D (on file with Syracuse Law Review).

130. *See id.*

131. *See id.*

132. *See* Clean Slate Act, N.Y. CRIM. PROC. LAW § 160.57 (McKinney 2024).

133. *See id.*

134. *See id.*

years.[135] Of course, there are some conditions that a conviction must meet before it may be sealed. First, the conviction cannot be for certain serious crimes, like sex offenses and Class A felonies that are not drug related.[136] Second, the convicted individual must not be "on parole, probation, post-release supervision, or have a pending misdemeanor and/or felony."[137]

Importantly, the Act seeks to provide individuals with real opportunities to thrive in their personal and professional lives after criminal convictions.[138] As records begin to seal, the anticipated effect is that individuals will heal and move forward.[139] However, the Act taking effect has left employers questioning what they can and cannot do during their hiring processes throughout 2024 and 2025. Since the Act impacts the New York State Human Rights Law, employers generally cannot inquire about or use criminal convictions to make hiring decisions.[140] Further, an employee with a sealed record can answer inquiries as "if the criminal conviction did not exist."[141]

However, there are limited exceptions to the Act. For example, sealed convictions may be accessed by law enforcement agencies and courts for purposes related to hiring or the possession of weapons, and federal jobs or entities that work with vulnerable populations may conduct fingerprint background checks that include criminal records.[142] In short, where consistent with the Act and other laws, some entities and employers may inquire into prior criminal convictions, provided that there is a direct relationship between the offense and employment or where there is an unreasonable risk to property and safety.[143]

The Act provides the New York State court system until November 16, 2027, to design and implement the processes required to

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135. *See id.* (stating timing is based on the later date of conviction or release from incarceration).

136. *Id.*

137. N.Y. CRIM. PROC. § 160.57

138. *See Clean Slate Signed Into Law*, CLEAN SLATE N.Y., https://www.cleanslateny.org/?gad_source=1&gad_campaignid=1063715443&gbraid=0AAAADvPxtyvbmRd5zgoFr4XSts7LyxcG&gclid=Cj0KCQjwvJHIBhCgARIsAEQnWlDqFnZR_jm2wwFmE3cimxGzkY5xANSA8X-HeJXorcQEG_bW-ljsJAcaAlZNEALw_wcB (on file with Syracuse Law Review) (last visited Oct. 31, 2025).

139. *See id.*

140. *See* JONATHAN L. SULDS, N.Y. EMP. LAW (1) § 9.06 (McKinney 2025).

141. *Id.*

142. *See* N.Y. EXEC. LAW. § 845-d(4) (McKinney 2025).

143. *See* SULDS, *supra* note 140 at § 9.06.

automatically seal convictions.[144] Additionally, individuals or their attorneys may demand a review of convictions if they believe they should be sealed.[145] The proper documentation required to file such a request with the courts will be available no later than November 16, 2027.[146]

## XI. NEW YORK'S PAID PRENATAL LEAVE LAW TAKES EFFECT

Effective January 1, 2025, New York amended New York Labor Law § 196-b to include Paid Prenatal Leave.[147] Under the Paid Prenatal Leave Law, all full-time and part-time private sector employees (exempt and non-exempt) are entitled to 20 additional hours of paid prenatal leave over a 52 week period.[148] Federal, state, and local employees are not eligible for paid prenatal leave under NY Labor Law § 196-b.[149] The 20 hours of paid prenatal leave is in addition to other leave options available to the employee and apply to any pregnancy-related health care appointments, including but not limited to "physical examinations, medical procedures, monitoring . . . testing . . . discussions with [your] healthcare provider," end of pregnancy care, and fertility treatments.[150] According to guidance issued by the New York State Department of Labor, paid prenatal leave is only available to the pregnant employee for prenatal care—not a spouse, partner, or other support person.[151]

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144. *See* Clean Slate Act, N.Y. CRIM. PROC. LAW § 160.57 (McKinney 2024); CRIM. PRO. § 160.57(6).

145. *See* Clean Slate Act, N.Y. CRIM. PROC. LAW § 160.57 (McKinney 2024); CRIM. PRO. § 160.57(1)(e).

146. *See* Clean Slate Act, N.Y. CRIM. PROC. LAW § 160.57 (McKinney 2024); CRIM. PRO. § 160.57(6).

147. *See New York State Paid Prenatal Leave,* N.Y. STATE (Dec. 23, 2025, at 08:00 ET), https://www.ny.gov/programs/new-york-state-paid-prenatal-leave (on file with Syracuse Law Review) [hereinafter *Paid Prenatal Leave Law Employee Fact Sheet*]; N.Y. LAB. LAW § 196-b(4-a) (McKinney 2025).

148. *See* N.Y. LAB. LAW § 196-b(4-a) (McKinney 2025); *Paid Prenatal Leave Law Employee Fact Sheet*, N.Y. STATE DEP'T OF LAB. (Dec. 23, 2025, at 14:00 ET), https://dol.ny.gov/system/files/documents/2024/12/p695-paid-prenatal-leave-law-employee-12-10-24.pdf (on file with Syracuse Law Review) ("Private sector employees include people or businesses, outside of government, that employ others. These employers include persons, corporations, limited liability companies, or associations in any occupation, industry, trade, business, or service.").

149. *See* N.Y. LAB. LAW § 190(2)–(3) (McKinney 2025); *Paid Prenatal Leave Law Employee Fact Sheet*, *supra* note 147.

150. N.Y. LAB. LAW § 196-b(4-a); *Paid Prenatal Leave Law Employee Fact Sheet*, *supra* note 147.

151. *Paid Prenatal Leave Law Employee Fact Sheet*, *supra* note 147 (Paid Prenatal Leave is unavailable for post-natal care.).

Paid prenatal leave can be taken in hourly increments and employees entitled to leave are to be paid at their regular rate, or the appropriate minimum wage, whichever is greater.[152] Similar to New York State Paid Sick Leave, employers are not required to pay out unused paid prenatal leave time upon separation of employment.[153] Upon request for paid prenatal leave, employers are not entitled to confidential information about the employees' health or the nature of the appointment and employees seeking paid prenatal leave are not required to provide documentation in support of their leave request.[154] Moreover, employers cannot retaliate or discriminate against employees requesting to use paid prenatal leave.[155] New York's Paid Prenatal Leave Law is yet another example of the state's consistent efforts to strengthen employee rights and protections in the workplace.

## XII. Significant Amendments to New York Labor Law Under the 2025–2026 Budget Bill

On May 8, 2025, Governor Kathy Hochul and the New York Legislature finalized the 2025–2026 state budget.[156] The budget brings significant amendments to New York Labor Law ("NYLL"), including changes to liquidated damages, the New York State Department of Labor's ("DOL") enforcement powers, civil penalties, and employment of minors.[157]

First, the amendment to NYLL Section 198 addresses the costs and remedies of wage claims, and caps liquidated damages for unpaid wages at one hundred percent of the amount of wages due to the employee.[158] However, the cap on liquidated damages increases when an employer willfully violates NYLL Section 194, which prohibits paying employees lower wages because of their membership in a

152. N.Y. Lab. Law § 196-b(4-a); *Paid Prenatal Leave Law Employee Fact Sheet*, *supra* note 147.

153. *See id.*

154. *See id.* at § 196-b(5)(a); *Paid Prenatal Leave Law Employee Fact Sheet*, *supra* note 147.

155. *See* N.Y. Lab. Law § 196-b(7) (McKinney 2025); *Paid Prenatal Leave Law Employee Fact Sheet*, *supra* note 147 (Retaliation includes reducing the number of other leave hours available to the employee because they used prenatal leave, changing work location or hours, or firing/demoting the employee after a request to use prenatal leave.).

156. *See* Off. of Budget & Pol'y Analysis, Enacted Budget Rep.: State Fiscal Year 2025-26 1, 1 (June 2025), https://www.osc.ny.gov/files/reports/budget/pdf/enacted-budget-report-2025-26.pdf (on file with Syracuse Law Review).

157. *See* S.B. 3006-C, 2025-2026 Leg. Sess., Reg. Sess. (N.Y. 2025) (enacted).

158. *See* N.Y. Lab. Law § 198(1-a) (McKinney 2025).

protected class or prohibiting employees from discussing wages.[159] In the event of a willful violation of NYLL Section 194, liquidated damages may rise to three hundred percent of the total amount of wages due to the employee.[160] Therefore, if an employee is successful in an action against their employer for a wage claim, the employee is entitled to recover the amount of underpayment, reasonable attorneys' fees, prejudgment interest, and liquidated damages.[161] However, liquidated damages are not recoverable if the employer in good faith believes that its underpayment was in full compliance with the law.[162]

There is an exception to this amendment for employees who were paid regularly, meaning no less than semi-monthly.[163] Under the exception, if it was the employer's first violation, they shall pay no more than one-hundred percent of the daily lost interest rate.[164] Additionally, if employers have one or more findings for the same violations or for employees doing the same work, liquidated damages are limited to one-hundred percent of the underpaid wages.[165]

Second, NYLL Sections 218 to 219 have been amended to allow "the labor commissioner to repurpose long-standing tax-collection tools for wage enforcement."[166] Now, when an order or decision has been filed by the DOL, the order or decision will automatically have the full force and effect of a judgment, such that the employee may enforce the order and any liens attach immediately to the employer's real property and chattels.[167] If the employer does not comply with the order, they may face a fifteen percent surcharge.[168] In addition to those remedies, the commissioner may issue a warrant to levy upon and sell the employer's property for the amount the employer owes plus interest, penalties, and costs of issuing the warrant.[169]

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159. *See id.* at §§ 194(1), (4), 198(1-a).
160. *See id.* at § 198(1-a).
161. *See id.*
162. *See id.*
163. N.Y. LAB. LAW § 198(1-a) (McKinney 2025).
164. *See id.* at § 198(1-a)(i).
165. *See id.* at § 198(1-a)(ii).
166. Scott Deluca et al., *EXPERT INSIGHTS—New York's 2025–26 budget includes immediate labor law reforms, important changes to pay frequency laws*, VITALLAW (May 20, 2025), https://www.vitallaw.com/news/expert-insights-new-york-s-2025-26-budget-includes-immediate-labor-law-reforms-important-changes-to-pay-frequency-laws/eld01c6ca0b1f2a8d4e86b0086080c846df36# (on file with Syracuse Law Review).
167. *See* N.Y. LAB. LAW §§ 218(3)(a)–(b), 219(a)–(b) (McKinney 2025).
168. *See id.* at §§ 218(1), 219(1).
169. *See id.* at §§ 218(3)(b), 219(3)(c).

Third, the Budget Bill amends NYLL Section 141 to increase civil penalties for violations regarding child labor.[170] Now, an employer with one violation may owe up to $10,000, employers with two violations may owe up to $25,000, and employers with three or more violations may owe up to $55,000.[171] Where violations involve a serious injury, however, penalties increase up to $30,000 for one violation, $75,000 for two, and $175,000 for three or more.[172]

Fourth, part X of the Budget Bill amends the NYLL to require the DOL to create and maintain a confidential database with all minor-employees' information.[173] Under the amendment, employers would register in the database and provide information about the minors they employ and the type of work performed.[174] Minors must register in the database and provide any employment certificate or permit they hold.[175] Issuance and revocation of employment certificates will be handled electronically by the commissioner.[176]

These amendments to the NYLL reflect the state's goal of enforcing labor laws, protecting employees' and minors' rights, and doing so in an efficient manner. Employers should implement safeguards in their procedures to ensure full compliance with the laws, as failing to do so may result in hefty fines and penalties.

## XIII. LEGAL DEVELOPMENTS IN NEW YORK CITY

### *A. Amendments to the New York City Earned Safe and Sick Time Act: Paid Prenatal Leave Requirements*

In a shift towards enhancing maternal health and workplace equity, the New York City Department of Consumer and Worker Protection ("DCWP") recently amended the Earned Safe and Sick Time Act ("ESSTA") to incorporate paid prenatal leave requirements for employers.[177] These changes align with and expand upon the recently enacted New York State's Paid Prenatal Leave Law, effective January 1, 2025.[178] As of July 2, 2025, the effective date of the ESSTA

170. *See id.* at § 141(1).
171. *See id.*
172. *See* N.Y. LAB. LAW § 141(1) (McKinney 2025).
173. *See* S.B. No. 3006—C, 2024–2025 Leg. Sess., Reg. Sess. (N.Y. 2025) (enacted); N.Y. LAB. LAW § 135(1) (McKinney 2025).
174. *See id.* at § 135(3).
175. *See id.* at § 135(5).
176. *See id.* at § 135(6).
177. *See* 6 RCNY § 7-216 (2025).
178. LAB. § 196-b(4-a).

amendments, employers with employees working in New York City must comply with both the New York State Paid Prenatal Leave Law, enacted through amendments to the New York State Paid Sick Leave Law, and the New York City amended ESSTA rules.[179]

As discussed above, under New York State's Paid Prenatal Leave Law, private sector employers are required to provide employees with 20 hours of paid prenatal personal leave during any 52-week calendar period.[180] This leave may be used for pregnancy-related healthcare services, including, but not limited to, physical examinations, medical procedures, monitoring, testing, and consultations with health care providers related to the pregnancy.[181] While only employees directly receiving prenatal healthcare services are eligible to use paid prenatal leave—spouses and partners are not eligible—employees who qualify may access the leave immediately, with no accrual period.[182] Employees who take advantage of this benefit must be compensated at their regular rate of pay or the applicable minimum wage, whichever is greater.[183]

While both the New York State Paid Prenatal Leave Law and the New York City ESSTA amendments mandate 20 hours of paid prenatal leave during any 52-week calendar period, ESSTA imposes additional administrative compliance requirements upon employers.[184] Employers must maintain records for each employee that show the date and time of each instance that paid prenatal leave was used and the amount paid for each instance.[185] For each pay period that an employee uses paid prenatal leave, the employer must provide the employee with written documentation detailing the amount of paid prenatal leave used during the pay period and the total amount of paid prenatal leave still available for use in the applicable 52-week calendar period.[186] Such documentation may be in the form of pay stubs, pay

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179. *See Paid Safe and Sick Leave Law: Frequently Asked Questions*, N.Y. CITY DEP'T OF CONSUMER AND WORKER PROT., § XI(1) (May 30, 2025), https://www.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeave-FAQs.pdf (on file with Syracuse Law Review) [hereinafter *Paid Safe FAQ*].

180. *See* N.Y. LAB. LAW § 196-b(4-a) (McKinney 2025).

181. *See id.*

182. *See New York State Paid Prenatal Leave: Frequently Asked Questions*, N.Y. STATE DEP'T OF LAB., https://www.ny.gov/new-york-state-paid-prenatal-leave/frequently-asked-questions (on file with Syracuse Law Review) (last visited Mar. 25, 2026).

183. *See* N.Y. LAB. LAW § 196-b(4-a).

184. *See generally* 6 RCNY §§ 7-201 et seq. (2025).

185. *See id.* at § 7-212(b)(3) (2025).

186. *See Paid Safe FAQ*, *supra* note 179, at § V(5).

statements, or any other written form of documentation.[187] Although employers may not require disclosure of the reason(s) why an employee used paid prenatal leave, an employer may request reasonable documentation if the employee uses more than three consecutive workdays of paid prenatal leave.[188] Such reasonable documentation may include a signed note from a doctor or a notarized letter from the employee explaining the need to use leave.[189] Where such reasonable documentation is requested, the employer must allow the employee seven days from the date the employee returns to work to submit the documentation.[190]

Additionally, under the updated ESSTA rules, New York City employers must update their written safe and sick leave policies to include a written paid prenatal leave policy that complies with ESSTA, all in a single writing.[191] This policy must be distributed personally to all employees upon commencement of employment, within 14 days of the effective date of any changes to the policy, and upon request by an employee.[192] At a minimum, the updated written policy must include the employer's method of calculating safe and sick leave; the availability of paid prenatal leave; employer-specific policies regarding the use of safe and sick leave and paid prenatal leave, including any limitations or conditions; the employer's policy regarding carryover of unused safe and sick leave at the end of the calendar year; a statement that the employer will not ask employees to provide details regarding the medical condition that led to the use of sick leave or paid prenatal leave, or the personal situation that led the employee to use safe time; and a statement that any information received by the employer about an employee's use of safe and sick leave or paid prenatal leave will be kept confidential and not disclosed to anyone without the employee's written permission or as required by law.[193] If the employer uses a term other than "safe/sick time" or "safe and sick leave" to describe leave provided in compliance with the ESSTA, the policy must state

187. *See id.*

188. *See* N.Y.C. ADMIN. CODE § 20-914(a)(2) (2025).

189. *See id.*

190. *See Paid Safe FAQ*, *supra* note 179, at §§ IV(2), IV(9), VI(40).

191. *See* 6 RCNY § 7-211(a) (2025).

192. *See id.* at § 7-211(b).

193. *See id.* at § 7-211(c); *see also Paid Safe and Sick Leave Law: Frequently Asked Questions*, N.Y.C. DEP'T OF CONSUMER AND WORKER PROT. (May 30, 2025), https://www.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeave-FAQs.pdf (on file with Syracuse Law Review) [hereinafter *Paid Sick Leave FAQ*].

that employees may use the provided leave for safe and sick leave purposes.[194]

It is also important to note that while employees cannot be forced to use or exhaust other forms of leave in lieu of paid prenatal leave, upon mutual consent between the employee and the employer, the ESSTA amendments allow for an employee's schedule to be changed rather than using paid prenatal leave.[195]

The amendments to ESSTA are consistent with the growing national trend to expand protections for employees receiving prenatal care.

## XIV. IMPACTFUL LITIGATION

### *A. Supreme Court Clarifies Legal Standard in "Reverse Discrimination" Case Under Title VII*

On June 5, 2025, the United States Supreme Court unanimously invalidated the heightened evidentiary standard that was previously applied to majority-group plaintiffs in "reverse discrimination" cases under Title VII of the Civil Rights Act of 1964 ("Title VII").[196] This landmark decision resolves a longstanding circuit split and reaffirms the textual commitment of Title VII to protect "any individual" from employment discrimination.[197]

Title VII prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.[198] Courts have differed and long struggled regarding how to apply Title VII to claims of "reverse discrimination," or claims by plaintiffs who belong to majority groups alleging that they were treated unfairly because of their group status.[199] Majority groups—those that have not historically been

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194. 6 RCNY § 7-211(c)(5) (2025); *see also Paid Sick Leave FAQ*, *supra* note 193.

195. *See* 6 RCNY § 7-216(c)–(d) (2025); *see also* N.Y.C. ADMIN. CODE § 20-915 (2025).

196. *See generally* Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303 (2025).

197. *Id.*

198. *See* 42 U.S.C.S. §§ 2000e et seq.

199. The Sixth, Seventh, Eighth, Tenth, and D.C. Circuits have either held or suggested that a heightened burden must be satisfied in order for a majority-group plaintiff to successfully make a prima facie case of disparate treatment under Title VII of the Civil Rights Act of 1964. *See* Murray v. Thistledown Racing Club, Inc., 770 F.2d 63, 67 (6th Cir. 1985); *see also* Mills v. Health Care Serv. Corp., 171 F.3d 450, 457 (7th Cir. 1999); *see also* Hammer v. Ashcroft, 383 F.3d 722, 724 (8th Cir. 2004); *see also* Notari v. Denver Water Dep't, 971 F.2d 585, 589 (10th Cir. 1992); *see also* Harding v. Gray, 9 F.3d 150, 153 (D.C. Cir. 1993). However, the other circuits have not imposed any such heightened burden on majority-group plaintiffs.

considered disadvantaged—include white, heterosexual, or male employees.

In *Ames v. Ohio Dep't of Youth Services*, the plaintiff, a heterosexual woman, had worked for the Ohio Department of Youth Services since 2004.[200] In 2019, she was passed over for a promotion in favor of a lesbian woman.[201] Shortly thereafter, she was demoted and her position was filled by a gay man.[202] Plaintiff filed suit under Title VII, alleging employment discrimination on the basis of sexual orientation.[203] The trial court and the Sixth Circuit Court of Appeals denied plaintiff's claims, applying the heightened *McDonnell Douglas* standard of proof framework to her prima facie case.[204]

In order for a plaintiff to successfully demonstrate a prima facie case of discrimination under the *McDonnell Douglas* framework, the plaintiff must show that (1) they are a member of a protected class; (2) they applied and were qualified for the employment position in question; (3) they suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of discrimination.[205] Generally, this burden to establish a prima facie case is described as "not onerous."[206] However, in the context of "reverse discrimination" claims, the Sixth Circuit applied the background circumstances rule, under which majority-group plaintiffs must demonstrate "background circumstances to support the suspicion that the defendant is the usual employer who discriminates against the majority" in addition to the usual prima facie showing.[207] The Sixth Circuit affirmed the trial court's grant of summary judgment to the defendant, holding that plaintiff failed to make this showing in addition to the usual showings for establishing a prima facie case.[208]

In a unanimous opinion authored by Justice Brown, the Supreme Court held that the Sixth Circuit's background circumstances rule cannot be reconciled with the text of Title VII.[209] Title VII protects "any individual" from employment discrimination regardless of whether they are a minority or majority group member, and a heightened

200. *See Ames*, 605 U.S. at 306.
201. *See id.*
202. *See id.*
203. *See id.*
204. *See id.* at 306–07.
205. *See generally* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).
206. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981).
207. Ames v. Ohio Dep't of Youth Servs., 87 F.4th 822, 825 (6th Cir. 2023).
208. *See id.*
209. *See Ames*, 605 U.S. at 305–06.

evidentiary burden placed only on majority-group plaintiffs does not align with the statutory text or the Court's longstanding precedents.[210] Title VII focuses on individuals rather than groups, and Congress left no room for courts to impose additional requirements on majority-group plaintiffs alone.[211]

It is important to note that in describing the *McDonnell Douglas* standard for establishing a prima facie case of discrimination under Title VII, the Court omitted the first element—that the plaintiff is a member of a minority group or protected class.[212] The Court instead described the *McDonnell Douglas* standard as a showing "that [plaintiff] applied for an available position for which [plaintiff] was qualified but was rejected under circumstances which give rise to an inference of unlawful discrimination."[213]

The Supreme Court's decision in *Ames* makes it clear that the standard for proving disparate treatment under Title VII does not vary based on whether the plaintiff is a member of a majority group or a minority group. All Title VII plaintiffs, regardless of group status, are now subject to the same evidentiary burden at the initial prima facie stage.

### *B. Second Circuit Revives Reproductive Health Decision-Making Notice Requirement Under Labor Law Section 203-e*

On January 2, 2025, the U.S. Court of Appeals for the Second Circuit vacated a permanent injunction against the enforcement of New York Labor Law Section 203-e to the extent that it requires New York State employers to provide a notice in their employee handbooks informing employees of their rights under the Act.[214]

New York Labor Law Section 203-e prohibits employers from accessing information about the reproductive health decisions of an employee or a dependent of the employee without prior written consent.[215] Section 203-e further prohibits employers from using an employee's reproductive health decisions—including, but not limited to, the use of a particular drug, device, or medical service—to discriminate against employees for the same.[216] Notably, New York Labor

210. *See id.* at 309.
211. *See id.* at 310.
212. *See id.* at 308–09.
213. *Id.* at 305.
214. *See* CompassCare v. Hochul, 125 F.4th 49 (2d Cir. 2025).
215. *See* N.Y. LAB. LAW § 203-e (McKinney 2025).
216. *See id*.

Law Section 203-e explicitly requires New York employers to include a provision in their employee handbooks notifying employees of their rights under the Act and the remedies available in the event of a violation.[217]

In the case of *CompassCare v. Cuomo*, three religious groups challenged the constitutionality of the Act, arguing, among other claims, that requiring employers to include a notice of an employee's rights under New York Labor Law Section 203-e in employee handbooks required compelled speech contrary to the plaintiff organizations' religious beliefs as they related to reproductive healthcare.[218] The U.S. District Court for the Northern District of New York applied the strict scrutiny standard and ultimately agreed with the plaintiffs, issuing a permanent injunction against the enforcement of the notice requirement in New York Labor Law Section 203-e.[219]

The Second Circuit later reversed the injunction on appeal finding that, although the notice requirement was a content-based regulation of speech, it is subject to the rational basis review standard outlined in *Zauderer v. Office Of Disciplinary Counsel Of Supreme Court* ("*Zauderer*").[220] Accordingly, the Second Circuit found that the notice requirement did not violate the First Amendment because it did not "interfere with [the] [p]laintiffs' greater message and mission."[221] The court likened the notice requirement to the required commercial disclosures that were at issue in *Zauderer* and the workplace posting requirements provided by federal and New York State Departments of Labor.[222]

The court's decision in *CompassCare v. Hochul* followed quickly in the footsteps of its decision in *Slattery v. Hochul* where the court held that an employer may have an associational-rights claim if New York Labor Law Section 203-e "forces [the employer] to employ individuals who act or have acted against the very mission of its organization."[223] In order to prevail in an associational-rights claim, the employer must be able to show that an association threatens the employer's mission "in the context of a specific employment

217. *See id*.
218. *See generally* CompassCare v. Cuomo, 465 F. Supp. 3d 122 (N.D.N.Y. 2020).
219. *See id.* at 157–59.
220. *See CompassCare*, 125 F.4th at 64–65.
221. *Id.* at 66.
222. *See id.* at 65.
223. Slattery v. Hochul, 61 F.4th 278, 288 (2d Cir. 2023).

decision."[224] Should the plaintiffs succeed in their expressive-association claim on remand, the District Court will need to determine whether the notice requirement meets the *Zauderer* standard and therefore should be applied to all plaintiffs.[225]

## XV. UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ISSUES NEW TECHNICAL ASSISTANCE DOCUMENTS RELATED TO DIVERSITY, EQUITY, AND INCLUSION

On March 19, 2025, the U.S. Equal Employment Opportunity Commission ("EEOC") and the U.S. Department of Justice ("DOJ") released two technical assistance documents aimed at educating the public on understanding Diversity, Equity, and Inclusion ("DEI") discrimination and protections under Title VII of the Civil Rights Act of 1964 ("Title VII") protections.[226] From a practical perspective, DEI is a broad term that is not defined in Title VII.[227] As a reminder, Title VII prohibits employment discrimination based on protected characteristics such as race and sex.[228] Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's protected status. [229]

In recent years, DEI policies, programs, and practices have become increasingly prevalent amongst employers in various industries.[230] However, through the issuance of two technical assistance documents, discussed more fully below, the EEOC seeks to remind the public that the widespread adoption of DEI, however, does not change longstanding legal prohibitions against the use of race, sex, and other protected characteristics in employment.[231]

The EEOC's release of the technical assistance documents follows the issuance of two Executive Orders addressing DEI signed by President Trump in January 2025. The Executive Orders are EO 14173

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224. *CompassCare*, 125 F.4th at 61.

225. *See id.* at 67.

226. *See EEOC and Justice Department Warn Against Unlawful DEI-Related Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (Mar. 19, 2025), https://www.eeoc.gov/newsroom/eeoc-and-justice-department-warn-against-unlawful-dei-related-discrimination (on file with Syracuse Law Review).

227. *See id.*

228. *See id.*

229. *See id.*

230. *See id.*

231. *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 226.

"Ending Illegal Discrimination and Restoring Merit-Based Opportunity", issued on January 21, 2025, and EO 14151 "Ending Radical and Wasteful Government DEI Programs and Preferencing", issued on January 20, 2025.[232] The premise of these Executive Orders is that many DEI initiatives cross the line into unlawful discrimination because they result in more favorable treatment based on race.[233]

The first document is titled "What to Do if You Experience Discrimination Related to DEI at Work."[234] This document defines DEI as a "broad term" but states that DEI policies may be unlawful if an employer is motivated by an employee's race, sex, or other protected characteristic.[235] The document provides four examples of potential DEI-related discrimination in the workplace. First, the EEOC states that DEI programs may result in disparate treatment against employees or applicants in the terms, conditions, or privileges of employment, such as hiring, firing, compensation, exclusion from training, promotions, demotions, fringe benefits, exclusion from fellowships, exclusion from mentoring or sponsorship programs, and selection for interviews.[236] Second, DEI-related programs may give rise to a claim of harassment by causing an adverse change in the terms and privileges of employment or creating an intimidating and hostile environment.[237] Third, DEI-related programs may constitute discrimination by limiting, segregating, and classifying employees based on race, sex, or other protected characteristics.[238] With respect to this example, the EEOC provides examples of limiting membership in workplace groups, such as Employee Resource Groups ("ERG") or other employee groups, to certain protected groups, or separating employees into groups based on protected characteristics when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same resources or programming content.[239] Lastly, DEI-related programs may give rise to instances of discriminatory retaliation, stating that reasonable opposition to a DEI training

232. Proclamation No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025); Proclamation No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025).

233. *See id.*

234. *What To Do If You Experience Discrimination Related to DEI at Work,* U.S. EQUAL EMP. OPPORTUNITY COMM'N (Mar. 19, 2025), https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work (on file with Syracuse Law Review).

235. *See id.*

236. *See id.*

237. *See id.*

238. *See id.*

239. *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 234.

may constitute protected activity if the employee provides a fact-specific basis for their belief that the training violates Title VII.[240] The document also states that DEI-related discrimination can affect anyone protected under Title VII, including employees, potential and actual applicants, interns, and training program participants.[241]

Additionally, and consistent with most EEOC guidance documents, the first technical assistance document relating to DEI provides contact information for the EEOC and links on how to file a charge of employment discrimination and advises those who suspect they have experienced DEI-related discrimination to contact the EEOC promptly.[242]

The second technical assistance document, titled "What You Should Know About DEI-Related Discrimination at Work," covers many of the same topics as the first technical assistance document but also provides answers to hypothetical questions that employers and employees may have regarding DEI in the workplace.[243] This document provides guidance on the procedure for non-federal employees regarding potential DEI discrimination claims stating that employees must first file a charge of discrimination with the EEOC prior to bringing a lawsuit in federal court.[244] This document also provides guidance to federal employees, outlining the process of how federal employees may bring complaints of DEI discrimination.[245] The EEOC emphasizes that Title VII does not only protect minority groups and women and explains that Title VII applies equally to all workers, applicants, and training or apprenticeship programs.[246] The EEOC also emphasizes that it does not require a higher showing of proof for "reverse" discrimination claims, stating that there is no such thing as "reverse" discrimination, and that the EEOC will apply the same standard of proof for all claims regardless of the victim's race.[247]

The EEOC also lists ways in which DEI programs could be considered unlawful under Title VII as it did in the first technical

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240. *See id.*

241. *See id.*

242. *See id.*

243. *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, *What You Should Know About DEI-Related Discrimination at Work* (Mar. 19, 2025), https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work (on file with Syracuse Law Review).

244. *See id.*

245. *See id.*

246. *See id.*

247. *Id.*

assistance document and goes on to provide guidance that employers should "provide 'training and mentoring that provides workers of all backgrounds the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs.'"[248] Additionally, the EEOC takes the position that businesses have no legal interest in diversity that would excuse preferences or actions motivated by protective characteristics such as race and sex and also clarifies that an employment action where a protected characteristic was only a small factor in the decision making process is still unlawful.[249] The EEOC states that DEI training can create a hostile environment.[250] More specifically, it provides that "[d]epending on the facts, an employee may be able to plausibly allege or prove that a diversity or other DEI-related training created a hostile work environment by pleading or showing that the training was discriminatory in content, application, or context."[251] The EEOC concludes by emphasizing that employees who oppose certain unlawful DEI practices or trainings are protected by Title VII, depending on the facts of each case.[252]

The issuance of and content of the two documents described above signals a significant shift from the prior administration's perspective on DEI in the workplace. In response, employers in New York need to review their DEI policies, practices, and initiatives to ensure compliance with Title VII.

## CONCLUSION

The *Survey* year saw a multitude of changes, both expected and unexpected, primarily concerning continued efforts to strengthen employees' rights in the workplace, new obligations on the part of employers, the repeal of COVID-era legislation, changing perspectives and regulatory enforcement dynamics, and new legal standards. All of these changes will significantly affect employers and employees in New York City and throughout the remainder of New York State. The changes highlighted in this *Survey* represent only a selection of important changes; employers and their legal counsel should continue to monitor legal developments to ensure compliance with all applicable laws, especially in light of the ever-growing shift towards more employee-friendly legal frameworks.

248. U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 243.
249. *See id.*
250. *See id.*
251. *Id.*
252. *See id.*