

New Year, New Laws: Key Changes for New York Employers

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Client Advisory

February 27, 2020 by Judith A. Lockhart and Melissa J. Erwin

As a new decade begins we remind New York employers of some recent and some upcoming changes in New York State and New York City labor and employment laws.

Employment Agreements

Effective **January 1, 2020**, all employment agreements must include a provision notifying the employee that nothing prohibits them from speaking to law enforcement, the Equal Employment Opportunity Commission, the New York State Department of Human Rights, a local anti-discrimination agency or an attorney retained by the employee about factual information related to any future claim of discrimination or harassment.

Salary History Inquiry Ban

Effective **January 6, 2020**, New York employers are prohibited from inquiring about or relying on compensation history (including benefits) from applicants or current employees seeking employment, continued employment or promotion. Employers are also prohibited from seeking compensation history from sources other than the applicant or current employee. An employer may confirm salary history if, at the time an offer is made that includes compensation, the applicant provides salary history information in support of request for a higher salary.

Data Privacy

New data security protections under the Stop Hacks and Improve Electronic Data Security (SHIELD) Act go into effect on **March 21, 2020**, requiring employers to implement safeguards to protect New York resident employees' "private information," including an employee's social security numbers, driver's license number, financial account numbers, biometric information, usernames or email addresses with a password, and any unsecured protected health information. All businesses with private information of New York residents are required to comply with the law, regardless of the business's location. Organizations that are already compliant with Title V of the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act, Security Rule (45 C.F.R. Parts 160 and 164), the New York State Department of Financial Services' Cybersecurity Regulation at 23 NYCRR Part 500, or other federal or state data security rules and regulations are deemed compliant with the SHIELD Act. All other organizations must develop, implement and maintain a "data security program" that includes reasonable administrative, technical and physical safeguards to address the organization's ability to identify, protect, detect, respond to and recover from a cybersecurity incident.

New York City Ban on Pre-Employment Marijuana Testing

Beginning **May 10, 2020**, employers will be prohibited from testing job applicants for marijuana or THC as a condition of employment, subject to certain safety-related exceptions or where testing is required under federal law.

Election Year Reminder – Paid Voting Leave

With the primaries for the 2020 presidential election underway and the general election set for November 3, 2020, we remind you that employers must allow all New York employees who are registered to vote up to three hours of paid time off at the beginning or end of working hours to vote in any election. Any registered voter seeking time off to vote must notify their employer at least two working days before the election. Employers may designate whether the time off will be taken at the beginning or end of the employee's shift. Additionally, employers must post notice of the voting time off requirement in conspicuous locations in the workplace for at least 10 working days before every election until the close of the polls.

Conclusion

We note that this advisory contains only a brief summary of the provisions of the new laws. Given the timing of recent and upcoming changes, employers should review their policies and practices to ensure compliance with the changes already in effect and take proactive steps to meet upcoming deadlines, including consulting with counsel to develop a SHIELD Act compliant data security program.

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For more information concerning the matters discussed in this publication, please contact the authors **Judith A. Lockhart**, Chair of the Employment Law Practice Group (212-238-8603, lockhart@clm.com), **Melissa J. Erwin**, (212-238-2622, erwin@clm.com), a member of Carter Ledyard's Employment Law or Cybersecurity Practice Groups, or your regular Carter Ledyard attorney.

related professionals

Judith A. Lockhart / Partner

D 212-238-8603

lockhart@clm.com