

# 2022 Roundup: New York Employment Law Legislation

December 23, 2022 | Blog | By [Michelle Capezza](#), [Corbin Carter](#), [Evan M. Piercey](#)

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**2022 has been an eventful year for New York employers, as the State and City have instituted a variety of new employment laws. Top of mind are New York City's Salary Transparency Act and New York City's sweeping regulation of automated employment decision tools; but we have also seen other laws emerge that may have missed employers' radars. As 2022 comes to a close, we highlight below some of these important new developments.**

### ***New York City's Salary Transparency Act***

Arguably the most impactful piece of legislation passed in 2022 is New York City's Salary Transparency Act, which makes it an unlawful discriminatory practice for an employer to advertise a job or transfer opportunity without stating the salary range for the position. The law went into effect November 1, 2022, and employers have since added required salary ranges to job postings and transfer opportunities. We reported on this new law in detail [here](#), [here](#) and [here](#), but it is worth highlighting some of the more salient portions here.

As most NYC employers know, the law requires employers utilizing job postings to disclose salary ranges—which includes both annual salaries or hourly wages as applicable—for any position that “can or will be performed, in whole or in part, in New York City” whether in-person or remotely. In identifying the appropriate salary range, an employer is obligated to disclose the lowest and highest salary it in *good faith* believes at the time of posting it would pay to a successful applicant. The disclosed salary range *does not* need to include other forms of compensation, such as bonuses, tips, benefits, and time off – though NYC employers with employees in other jurisdictions (e.g., Colorado or Washington) may be required to disclose additional compensation and benefit details.

Going forward, employers should continue to assess the accuracy of salary ranges for positions that fall within the ambit of the law, a process that likely involves ascertaining appropriate metrics and criteria upon which to base salary ranges. This process is especially critical as employers could be called upon to justify certain salary discrepancies and differences that emerge, thus necessitating the existence of objective justifications for given salary ranges. Employers should also pay close attention to pay transparency and salary disclosure laws in other jurisdictions, as the salary disclosure trend will likely continue in 2023 and beyond.

Finally, New York State recently passed its own pay transparency law, with Governor Hochul signing the bill into law on December 21, 2022. We covered this law in detail [here](#). Although it does not go into effect until September 17, 2023, it is worth noting here given the salience of the topic and the similarities it shares with New York City's law.

## **NYC Local Law 144 – Regulation of Automated Employment Decision Tools**

Effective January 1, 2023, NYC employers that want to use automated employment decision tools (“AEDT”) to aid, facilitate, or otherwise assist in assessing or evaluating employees or candidates must first comply with certain requirements under NYC Local Law 144. Chief among these requirements is the “bias audit,” which must be conducted by an independent auditor within one year of the use of any AEDT, and which must ascertain (1) the selection rate for each race/ethnicity and sex category that is required to be reported to the EEOC pursuant to the EEO-1 Component report; and (2) the “impact ratio” for each such category.

While AEDTs that incorporate artificial intelligence (“AI”) are certainly covered by the law, the law broadly defines “AEDT” as including far more than only those processes utilizing advanced AI, and extends to computational processes and systems utilizing more rudimentary analytics, ranking systems, and decision analyses calculated to “substantially assist” employers in the decision-making process. Thus, in coming into compliance with the law, employers should closely scrutinize *all* processes that could be potentially construed as AEDTs. Employers should also remember that the law not only requires employers to subject AEDTs to bias audits conducted by independent auditors, but also to provide candidates or employees notice that an AEDT will be used in connection with a given evaluation or assessment, as well as the option of requesting an accommodation or alternative form of assessment.

The New York City Department of Consumer and Worker Protection (“DCWP”) issued [proposed rules](#), which we discussed [here](#), and held a public hearing on November 4, 2022. Due to the high volume of comments, DCWP recently announced that it would not begin enforcing Local Law 144 until April 15, 2023, and that it plans to hold a second public hearing. That said, and while *enforcement* of the law may be delayed, employers should still endeavor to come into compliance with the law as fully as possible by the January 1, 2023 *effective date*, which remains unchanged.

## **New York State’s Electronic Monitoring Law**

Starting on May 7, 2022, New York employers were required to begin providing notice to employees of any employer monitoring of work phones, emails, or internet use. We previously reported on New York’s Electronic Monitoring Law [here](#), but the most important takeaway for employers is that they must (1) obtain written acknowledgment (which may be electronic) from all new hires who are subject to electronic monitoring covered under the law; and (2) post notice of any electronic monitoring covered under the law in a conspicuous place, which is readily viewable by employees subject to such monitoring. While we anticipated the release of notice or onboarding templates, none have been released to date. Accordingly, and to ensure compliance with the law, we recommend tracking the language of the statute in any notice or acknowledgment documents and postings.

## **Amendments to New York Labor Law Section 740 – The “Whistleblower Law”**

Governor Hochul signed into law amendments to New York Labor Law (“NYLL”) Section 740, which significantly expanded whistleblower protections under the law, and which went into effect January 26, 2022. The amendments created several material changes, including: (1) expanding who qualifies as an employee to include former employees as well as independent contractors; (2) removing the requirement that employees first notify employers of what they suspect to constitute illegal activities, policies, or practices, and only requiring that they make a “good faith effort” to notify the employer—which is even subject to several exceptions (as discussed in greater detail [here](#)); (3) broadening the scope of protected activities; (4) expanding the types of actions that could be considered retaliatory; and (5) expanding available employee remedies.

Importantly, employers are now required to post a notice that informs employees of their rights, protections and obligations under the law, which must be posted “conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.” Thus, the most practical steps employers should take to ensure compliance with the NYLL Section 740 amendments are to post notice of employee protections and consider how these amendments otherwise impact employee training and investigation practices.

### ***Amendments to New York Labor Law Section 215 – the “Lawful Absence Law”***

On November 21, 2022, Governor Hochul signed into law amendments to NYLL Section 215, which many have referred to as the “lawful absence law.” These amendments, found [here](#), prohibit employers from “assessing any demerit, occurrence, or any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action” for the use of any “legally protected absence under federal, local, or state law.” This would include virtually all New York State, New York City, and federal statutory leaves, including but not limited to New York Paid Family Leave, New York State Paid Sick Leave, New York City Safe and Sick Leave, and leave taken under the Family and Medical Leave Act.

Further, the law seeks to limit the use of “no fault” attendance policies, pursuant to which absent employees are often assessed “points” or “demerits” for taking leave. Under the new law, issuing demerits or points for an employee’s use of lawful leave could constitute retaliation or disciplinary action, necessitating that employers significantly curtail or eliminate “no fault” policies. While this law does not take effect until February 19, 2023, it is worth highlighting given its potential impact on employer policies.

### ***New York State Expands Lactation Accommodation Requirements***

Another piece of legislation signed by Governor Hochul on the eve of 2023 was an amendment to the Nursing Mothers in the Workplace Act, which builds on existing protections and sets forth a new notice requirement. The new law requires employers to provide nursing employees time to express breast milk “each time such employee has reasonable need to express breast milk” for up to three years following childbirth. The new law also requires that, upon request, a room or location (other than a restroom or toilet stall), which can be used by nursing mothers to express breast milk. Much of the law mirrors New York City’s existing lactation accommodation requirements, although it does include new notice provisions. Specifically, the law requires employers to adopt a lactation accommodation policy, distribute it to each employee upon hire and to employees returning to work following childbirth, and to all employees annually. Effective June 7, 2023, employers who have New York City locations may already be compliant with most of the law—with the exception of the new notice requirements—but, regardless, should review existing policies to ensure compliance.

### ***Amendments to Workplace Harassment and Discrimination Laws***

There have been two notable amendments to New York’s workplace harassment and discrimination laws in 2022. First, on March 16, 2022, New York amended its workplace harassment and discrimination laws to expand protections for employees, specifically expanding the definition of “retaliation” to include the disclosure of an employee’s personnel file if they complain of, or assist in proceedings involving, unlawful discriminatory practices by an employer. This amendment does not prohibit employers from disclosing an employee’s personnel file when filing or responding to a complaint in a judicial or administrative proceeding. Second, effective July 14, 2022, New York implemented a toll-free and confidential hotline (1-800-HARASS-3) for employees with complaints of sexual harassment in the workplace. Employers must include an explicit reference to this hotline in anti-discrimination policies and postings.

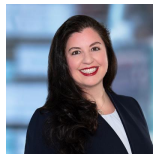
### ***Amendment to New York Labor Law Section 201 to Require Electronic Versions of Mandatory Workplace Postings***

On December 16, 2022, section 201 of the NYLL was amended to require employers to provide mandatory employee rights postings and notices electronically—either by email or on the employer’s website. This amendment takes effect immediately. Thus, employers should review all documents that are required to be physically posted at a worksite, ensure that they have the most recent versions posted, and then provide employees copies either via email or afford employees access via the employer’s website or intranet page. The amendments require that employers inform employees that these documents are available electronically—a requirement that becomes more relevant for those employers that choose only to post on a website or intranet, and do not also email all employees copies.

## **Conclusion**

New York State and City gave employers a great deal to consider in 2022. While it is tough to imagine that 2023 will bring workplace legislation of comparable magnitude, especially considering the implications of the wage transparency and AEDT laws, employers should nevertheless remain prepared and monitor new developments, including those impacting workplace benefit programs. As always, Mintz's Employment, Labor and Benefits team stands ready to help employers understand and navigate these laws and any future laws enacted in 2023 and beyond.

## **Authors**



**Michelle Capezza**, Of Counsel

Michelle is an accomplished employee benefits and executive compensation lawyer with more than 25 years of experience advising clients on ERISA, benefits, and executive compensation matters, including in connection with corporate transactions.



**Corbin Carter**, Associate

Corbin Carter is a solution-oriented employment counselor and litigator who guides clients through all aspects of the employment lifecycle. Corbin's practice covers everything from day-to-day counseling to leading investigations and the management-side defense and prosecution of various employment-related claims.



**Evan M. Piercey**, Associate

Evan M. Piercey is an Associate at Mintz who litigates employment disputes before state and federal courts and administrative agencies. He also advises clients on a range of issues, including employment agreements and compliance with employment laws.

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