

Law Alert: New Obligations for New York Employers, 10-23-2023

New York State employers are facing a host of new obligations given the flurry of legislation that was signed into law by Governor Kathy Hochul last month. To help assist employers in understanding these new obligations, below is an overview of each law and the practical considerations.

Mandatory Political and Religious Meetings

Governor Hochul signed Legislation S4982/A6604 that protects employees from discrimination or retaliation for refusing to attend employer-mandated meetings when the primary purpose of such meeting is to communicate an employer's opinion regarding religious or political matters.

The law defines "political matters" as matters relating to "elections for political office, political parties, legislation, regulation and the decision to join or support any political party or political, civic, community, fraternal, or labor organization." Non-partisan comments made in employer-mandated meetings, such as neutral comments like "get out the vote," are permitted because they may represent how workplaces can positively influence civic action. The law further provides that employers must post a sign in the workplace to notify employees of their rights under the law. This law is now in effect, so employers should take prompt action to comply with this posting requirement.

Wage Theft as a Form of Larceny

Legislation has also been signed into law (S2832-A/A154-A), that amends section 155 of the New York penal law (which governs larceny) to include wages in the definition of "property." The legislation also adds a provision explaining that "wage theft" occurs when an employer "does not pay wages [to someone hired to perform services for the employer], at the minimum wage rate and overtime, or promised rate, if greater than the minimum wage rate and overtime . . . for work performed." By amending the penal law, this legislation allows prosecutors to seek penalties against employers who do not pay wages in accordance with the minimum wage and/or overtime laws. The legislation further provides that when bringing larceny charges for "wage theft," the prosecutor may aggregate all non-payments or underpayments to an entire workforce into one larceny count even where the non-payment or underpayment occurred in multiple counties. This law too is now in effect. Given the potential criminal implications, it is imperative that employers ensure that they are in compliance with all applicable wage and hour laws.

Accessing Electronic Personal Accounts

Governor Hochul has also signed legislation (S. 2518/A.836) prohibiting employers from requesting or requiring username, login information, and passwords, of "personal accounts" as a condition of hiring, employment or for use in a disciplinary action. The definition of "personal account" includes electronic accounts where an employee may upload or download videos/photographs, blogs, podcasts, instant messages, or internet website profiles or locations (i.e. social media accounts). Under this new law, employers will be prohibited from the following:

- Requesting, requiring or coercing an employee or applicant to "disclose any username, password, or other authentication information for accessing a personal account through an electronic communications device." This includes computers,

telephones and personal digital assistants and other similar devices and would cover any “user-generated content” including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, instant messages, or internet website profiles used by an employee or an applicant exclusively for personal purposes.

- Accessing the employee’s or applicant’s personal account in the presence of the employer.
- Reproducing in any manner photographs, video, or other information contained within a personal account obtained by the means prohibited by the law.

Employers are prohibited from retaliating against employees that refuse to disclose information protected by this law. There are certain exceptions as an employer may access “nonpersonal accounts” that are used for business-related purposes. However, in order for an employer to access accounts or devices that were provided by the employer, it must provide notice in accordance with New York’s electronic monitoring law (which took effect last year). The law further provides that an employer is prohibited from accessing a personal account that was downloaded on an employer-provided device. This law goes into effect March 12, 2024.

Notice of Eligibility of Unemployment Benefits

There is also recent legislation (S. 4878-A /A. 398-A) that imposes an additional notice requirement related to an employee or former employee’s eligibility for unemployment benefits. While employers are generally required to provide an employee with notice of their rights to unemployment benefits when there is a permanent or indefinite separation from employment, employers will now be required to provide this written notice to employees when they may be eligible for partial unemployment benefits. As such, employers will also be required to distribute the notice whenever there is a temporary separation of employment, a reduction in hours, or any other interruption to the employment relationship that would make the employee eligible for partial unemployment benefits.

This law takes effect on November 13, 2023. The New York State Department of Labor has approved a form notice, which can be accessed here: [IA12.3 - Record of Employment \(ny.gov\)](#).

Kaufman Dolowich Can Help

The host of new laws facing employers continues to grow, which only creates a greater compliance burden. If your firm needs assistance navigating any of these new laws or existing ones, our team of skilled labor and employment attorneys can help.

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