



More Employment Law Changes NY Employers Need to Know

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As 2019 continues, New York employers should be preparing to train their workforces, update their manuals and posting requirements, and prepare for new reporting obligations, among other things. Below, we discuss six important changes that employers need to know:

1. Employers must report employee pay data on EEO-1 by September 30;
2. NYS and NYC publish Workplace Sexual Harassment Prevention Training videos;
3. Pre-employment screening for marijuana prohibited in NYC;
4. New gender expression protections for NYS employees;
5. Certain hair styles now protected under NYC law; and
6. Lactation law: NYC publishes model lactation policies.

Employers Must Report Employee Pay Data on EEO-1

As a result of a recent federal court order, employers with 100 or more employees must submit 2017 and 2018 pay data by September 30, 2019, as part of their EEO-1 reporting obligations with the Equal Employment Opportunity Commission (EEOC). Among the information employers must report are race- and gender-based wage information, including W-2 wage data and hours worked for full- and part-time employees within 12 specified pay bands. The new reporting requirement is part of the EEOC's effort to combat pay discrimination.

On May 3, 2019, the Department of Justice appealed the federal court's decision, but, according to the EEOC, the appeal "does not stay the district court order or alter EEO-1 filers' obligations" to submit the required pay data.

Employers are still required to report 2018 employee demographic data on race, gender and ethnicity by job category by May 31, 2019.

New York State and City Have Published Sexual Harassment Prevention Training Videos

As we previously reported, New York State employers must provide workplace sexual harassment prevention training to their workforce by October 9, 2019; and New York City employers must train employees by December 31, 2019. The State and City have published online videos that satisfy the training requirements, provided that the materials are presented in an interactive manner.

On April 1, 2019, the Commission published its free online training entitled "Confronting Sexual Harassment: Tools and strategies to create a harassment-free workplace." This training, which is currently only available in English, can be found [here](#). In the coming months, the City module will be available in Spanish, French, Chinese, Korean, Haitian Creole, Bengali, Russian, Polish, Urdu, and Arabic.

In October 2018, the State published two sexual harassment prevention training videos, which are available for download or viewing on YouTube. The first video,

among other things, provides an overview of what constitutes sexual harassment and discusses retaliation, as well as reviews supervisor and manager obligations and generally describes the investigation and reporting process. [\[link\]](#) The second video presents the State's model case studies and poses "true or false" questions to employees about topics relating to sexual harassment in the workplace, along with explanations about the correct answer and the reasoning behind the answer. [\[link\]](#)

On April 1, the Commission also published revised Frequently Asked Questions ([FAQs](#)). FAQs published by the State are available [here](#).

Employers should consider live training for management-level employees and can contact our employment lawyers for assistance.

For more information, see our prior reports [[Employment Laws NY Employees Need to Know in 2019](#) and [New York Mandated Annual Sexual Harassment Prevention Training](#)].

Pre-Employment Screening for Marijuana Prohibited in NYC

On May 10, 2019, a bill adopted by the New York City Council on April 9, 2019, banning pre-employment drug testing for marijuana or THC, the active ingredient in cannabis, became law after Mayor Bill De Blasio failed to veto or sign the legislation within 30 days. The law makes such pre-employment testing "an unlawful discriminatory practice" and becomes effective on May 10, 2020.

While most employers are subject to the ban, the following are exempted from the prohibition as a result of their trade or position:

- Police/law-enforcement officers;
- Positions requiring construction safety training or OSHA certifications under New York laws;
- Positions requiring commercial driver's licenses;
- Positions involving the supervision or care of children, medical patients, or vulnerable persons as defined under New York laws;
- Other positions with potential to significantly impact health or safety as determined under the regulations to be enacted or identified on the website of the department of citywide administrative services;

- U.S. Department of Transportation required testing;
- Testing required under federal contracts or grants;
- Testing required under federal or state statutes; and
- Testing required under collective bargaining agreements.

NYC employers should review and revise their drug-testing policies and procedures to ensure compliance.

Gender Identity or Expression Is Now a Protected Class Under New York State Law

On January 25, 2019, the Gender Expression Non-Discrimination Act ("GENDA") was signed into law, explicitly adding "gender identity or expression" as a protected class under New York State's non-discrimination laws. The Law became effective on February 25, 2019.

GENDA amends Section 296(1) of New York's Executive Law to make it an unlawful discriminatory practice for an employer with four or more employees to discriminate against an individual because of that person's "gender identity or expression." GENDA also adds a new Subsection 35 to Section 292 of the Executive Law, defining "gender identity or expression" as a "person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender." For those individuals employing domestic workers, GENDA also amends Section 296-b of the Executive Law to prohibit harassment based on "sexual orientation, gender identity or expression."

With this amendment, New York joined 20 other states, the District of Columbia and many cities, including NYC, which already had such protections in place. As previously reported [\[link\]](#), as of May 11, 2018, the New York City Human Rights Law (the "NYCHRL") expanded gender-based protections by broadening the definition of "gender" to include "gender identity, and gender expression including a person's actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth."

As a result of the new law, employers should take proactive steps to make sure their existing equal employment opportunity and anti-discrimination policies

and employee handbooks are updated to comply with the new amendment, and that supervisors, managers, and human resources staff are informed of the new protected category.

Dress Policies that Restrict Certain Hair Styles May Violate New York City Law

In February 2019, the New York City Commission on Human Rights published legal enforcement guidance defining an individual's right to wear "natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state." The guidance applies to workplace grooming and appearance policies "that ban, limit, or otherwise restrict natural hair or hairstyles":

[W]hile an employer can impose requirements around maintaining a work appropriate appearance, [employers] cannot enforce such policies in a discriminatory manner and/or target specific hair textures or hairstyles. Therefore, a grooming policy to maintain a 'neat and orderly' appearance that prohibits locs or cornrows is discriminatory against Black people because it presumes that these hairstyles, which are commonly associated with Black people, are inherently messy or disorderly. This type of policy is also rooted in racially discriminatory stereotypes about Black people, and racial stereotyping is unlawful discrimination under the [New York City Human Rights Law].

Workplace policies prohibiting natural hair and/or treated/untreated hairstyles may not be implemented "to promote a certain corporate image, because of a customer preference, or under the guise of speculative health or safety concerns." Where there is a legitimate health or safety concern, alternative ways to address the concern (e.g., hair ties, nets, head coverings and alternative safety equipment) must be considered before imposing a ban or

restriction on the employee's hairstyle. Examples of unlawful grooming policies include:

- requiring employees to alter the state of their hair to conform to the company's appearance standards, including having to straighten or relax hair (i.e., use of chemicals or heat); or
- banning hair that extends a certain number of inches from the scalp thereby limiting Afros.

NYC employers should review their workplace grooming and appearance policies to ensure compliance with the newly issued legal enforcement guidance.

New York City Releases Model Policies for Lactation Room Law

As we previously reported [\[link\]](#), on March 18, 2019, amendments to the NYCHRL went into effect requiring NYC employers with 15 or more employees to provide lactating employees with reasonable unpaid or paid break time and a private space to express milk. The law also requires employers to provide employees with a written policy that informs employees of their lactation accommodation rights and request form.

The City Commission has since published model policies on its dedicated lactation accommodations page [\[link\]](#), including:

- Workplaces with Dedicated Lactation Room(s) [\[link\]](#);
- Workplaces with Multi-Purpose Space [\[link\]](#); and
- Workplaces with No Available space for a lactation room [\[link\]](#).

Additionally, the lactation accommodations page includes a Model Lactation Accommodation Request Form [\[link\]](#).

Moses & Singer LLP employment lawyers can assist you in making sure you remain compliant with the myriad of employment laws New York State and City employers are required to abide by and implement.

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