

Hedge Up Alert

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New York Enacts Various New Employment Laws

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Key Points:

- The New York State Equal Pay Act (EPA) now will apply to all protected categories (including race, national origin, religion, etc.) rather than just gender, dramatically expanding the reach of the statute.
- New York also now prohibits discrimination against employees based on traits “historically associated with race,” such as their hairstyles, including dreadlocks and braids.
- Firms throughout New York State now will be prohibited from inquiring about or relying upon a candidate’s salary history when hiring or setting compensation.
- A new state law requires firms to provide employees with up to three hours of paid voting leave in connection with an election, under terms more generous than those provided under prior law.

Changes to New York Employment Laws

While much attention has been focused on recent amendments to New York State law regarding workplace harassment (see [here](#) for a discussion of such amendments), New York also recently has enacted a number of other measures governing the workplace.

The Equal Pay Act Is Significantly Broadened

Perhaps most notably, the EPA has been broadened to prohibit discrimination in pay based on any protected category, not just sex. (We discussed previous amendments to the EPA [here](#)). The new law also lowers the legal standard for establishing pay discrimination claims. While in the past, plaintiffs needed to establish that they performed “equal work” to particular comparators, they now can prevail by showing that they performed “substantially similar work.” Unequal pay remains lawful in certain instances, such as where the difference is based on a bona fide seniority system, a merit system, a production-based system or another “bona fide factor.”

Importantly, the recent EPA amendments were passed under the New York Labor Law, which provides a six year statute of limitations for pursuing claims. This doubles the statute of limitations applicable to pay discrimination claims under the New York

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State Human Rights Law (NYSHRL), which is just three years. As a result, firms' exposure for backpay in EPA suits will increase dramatically.

The amendments to the EPA go into effect on October 8, 2019.

Race Discrimination Now Includes Bias Against Hairstyles

Separately, the New York State legislature amended the definition of "race" under the NYSHRL to include "traits historically associated with race, including but not limited to hair texture" and certain "hairstyles," including braids, locks and twists. Firms thus cannot maintain appearance or grooming policies that prohibit such hairstyles.

This new state-law measure mirrors the law already in place in New York City. In guidance issued this past February, the New York City Commission on Human Rights indicated that discrimination on the basis of an employee's hairstyle likely would violate the New York City Human Rights Law (NYCHRL) (see [here](#)).

A Statewide Ban on Salary Inquiries

Effective January 6, 2020, New York is implementing a statewide ban on inquiries into a candidate's salary history. Because a similar measure already is in place in New York City (see [here](#)), the impact of this new state law primarily will be felt by firms outside of New York City.

Like the city law, the new state law will prohibit firms and their agents from inquiring about a candidate's salary history or relying on such history in making an offer of employment or in setting compensation. Also like the city law, the new state law permits applicants and employees to voluntarily disclose their salary history if they choose to do so without prompting by the hiring firm. Unlike the city law, however, the state law does not expressly permit firms to utilize such prior salary information following its voluntary disclosure by a candidate. While such a right seems implied by the statutory language, we expect this issue to be clarified through guidance from the New York State Division of Human Rights and/or through future case law.

Paid Voting Leave

Finally, New York State has amended Section 3-110 of the Election Law to require firms to provide employees who are registered voters up to three hours of paid leave to vote in elections. The law requires firms to provide time off to vote at the beginning or end of the work day. Employees needing voting leave must notify their firm of such need at least two working days in advance.

As a reminder, firms also are required to post a notice setting forth the provisions of Section 3-110 at least 10 working days before an election. (An updated version of the notice is available [here](#)). Previously, firms were required to provide only two hours of paid voting leave, and only when an employee did not have four consecutive hours in which to vote.

Take Aways

- Firms should consider conducting privileged reviews of their compensation systems to ensure that there are no discrepancies that could run afoul of the amended EPA. With firm bonus season approaching, firms should be particularly focused on the amounts awarded through that process, ensuring that any discrepancies can be explained by valid distinctions between employees.

- Firms should review their workplace grooming and/or appearance policies to ensure that they do not contain unlawful provisions regarding employee hairstyles.
- Firms should ensure that their employees (and the firm's agents, such as recruiting firms, headhunters and the like) do not ask job candidates about their pay histories.
- Firms also should update their employee handbook and other policy documents to reflect changes to the voting leave law. If they have not done so already, firms should post the updated required voting leave **notice**.

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