COLLAZO FLORENTINO & KEIL LLP Client Advisory

For Clients And Friends Of The Firm

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New York Employment Law Update for 2013-2014

The year 2013 brought several major legal developments to private-sector employers in the Empire State, particularly in New York City. Though enacted in 2013, a number of these new laws do not go into effect until early 2014. Now may be a good time for employers that have not already done so to familiarize themselves with the requirements of these new laws to help ensure their ongoing legal compliance. This advisory recaps the five most significant employment law developments in 2013 for New York employers.

(1) New York City's Pregnancy Accommodation Law

On October 2, 2013, then-Mayor Michael Bloomberg signed into law an amendment to the New York City Human Rights Law requiring employers with four (4) or more employees to provide reasonable accommodations for pregnancy, childbirth and related medical conditions, unless the employer can demonstrate that the accommodation will impose an undue hardship. Notably, the new amendment not only covers an employer's employees, but also any independent contractors engaged by the employer who are not themselves employers in New York City.

For purposes of the amendment, a "reasonable accommodation" may include "bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor, among other things."

Employers also are required to provide employees with written notice of their rights under the amendment. New employees must be notified of their rights upon commencing employment beginning as of January 30, 2014, while current employees must be notified prior to May 30, 2014. The New York City Commission on Human Rights has created Pregnancy and Employment Rights posters, available in seven languages,

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to satisfy this requirement.[1] Employers also should update their handbooks, as necessary, to address the amendment's requirements concerning reasonable accommodations for pregnancy, childbirth and related medical conditions.

(2) New York City's Paid Sick Leave Law

On June 23, 2013, the New York City Council overrode a veto of then-Mayor Bloomberg to enact the "Earned Sick Time Act." By doing so, New York joined several other cities, including Seattle, Philadelphia, San Francisco, and Washington D.C., and the state of Connecticut, all of which have passed similar laws in recent years. New York City is now the largest city in the nation, by population, to mandate employer-provided paid sick leave.

The Act requires employers that employ twenty (20) or more employees to provide paid sick time to their employees beginning as of April 1, 2014. As of October 1, 2015, the Act is expanded to cover employers who employ fifteen (15) or more employees. Smaller employers, however, still remain subject to the law: Employers who employ fewer than twenty (20) employees will be required to provide up to 40 hours of *unpaid* sick leave to employees once the law takes effect on April 1, 2014.

Under the Act, employees begin earning sick time upon the start of employment but must work 120 days before being allowed to use the accrued time. The Act excludes from its coverage independent contractors, work-study students, government employees, and certain hourly occupational, speech, and physical therapists.

Although the Act will not go into effect until April 2014, current Mayor Bill de Blasio has already proposed significant amendments to the Act, which have garnered wide support and are expected to be enacted within the next few months. The proposed changes would, among other things:

[1] The Commission's poster is available for download at http://www.nyc.gov/html/cchr/html/publications/pregnancy-employment-poster.shtml

- Extend paid sick leave to workers at businesses with five (5) or more employees. As noted, the Act currently only requires paid sick leave for businesses with fifteen (15) or more employees;

- Eliminate the Act's phase-in of coverage at businesses with between fifteen (15) and twenty (20) employees. Under the proposed changes, such employees would be covered as of April 2014, not October 2015;

- Add grandparents, grandchildren and siblings to the definition of family members whom employees may care for while using paid sick time under the Act; and

- Eliminate the economic trigger that would have otherwise delayed implementation of paid sick leave based on certain economic benchmarks.

New York City employers should familiarize themselves with the requirements of the new Act and proposed amendments and, as necessary, update their sick leave policies and employee handbooks to remain legally compliant. Employers also should be aware of the Act's notice and recordkeeping obligations. The Act requires employers to provide each employee with a written notice at the start of employment concerning the employee's rights under the Act. This notice must address, among other things, the earning and use of sick leave, the right to be free from retaliation under the Act, and the right to file a complaint with the New York City Department of Consumer Affairs in case of an alleged violation. The Department of Consumer Affairs will make the required notices available to employers prior to the law going into effect in April. The Act also mandates that employers maintain records documenting their compliance with the Act for no less than two years.

(3) New York City's Law Against Unemployment Discrimination

In 2013, the New York City Council enacted legislation amending New York City's Human Rights Law to add unemployment status as a new

protected category. The amendment, which took effect on June 11, 2013 and which applies to employers with four (4) or more employees, provides legal protections for unemployment status akin to other legally protected classifications, such as race, sex, age, and disability.

The amendment defines "unemployed" and "unemployment" as "not having a job, being available for work, and seeking employment" and specifically prohibits employers from basing any employment decision "with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant's unemployment." It also prohibits employers from including in any advertisement for a job vacancy a statement indicating that "being currently employed is a requirement or qualification for the job" or that individuals will not be considered for employment "based on their unemployment."

(4) New York State Regulations on Wage Deductions

On October 9, 2013, new Department of Labor regulations took effect addressing permissible deductions from wages under Section 193 of the New York State Labor Law. The regulations concern when deductions from an employee's wages for the benefit of the employee comply with Section 193, including, most notably, under what conditions an employer may recover overpayments and wage/salary advances.

Pursuant to the new regulations, Section 193(1)(c) expressly permits an employer to make deductions from an employee's wages for "an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer." To do so, the regulations require that an employer first provide the employee with a notice of its intention to make such deductions and must specify the amounts and dates the deductions will be made. The regulations also establish a maximum amount that may be deducted from each wage payment and provide that an employer may only seek to recover overpayments that were made within the eight-week period prior to the issuance of the notice.

Also, the new regulations provide that, under Section 193(1)(d), an employer may make deductions from an employee's wages for

"repayment of advances of salary or wages made by the employer to the employee." An "advance," according to the regulations, is the "provision of money by the employer to the employee based on the anticipation of earning of future wages." To lawfully recoup an advance through wage deductions, the employer and employee must agree to the timing and duration of the deductions *before* the advance is made. The employee must also sign a written acknowledgement authorizing the employer to make the deductions. No further advances may be made or deducted by the employer until an existing advance is repaid in full. If an employer provides an employee with an amount in excess of the agreed upon advance, the excess cannot be recovered by the employer through additional wage deductions.

(5) Increases to the New York State Minimum Wage

New York state's minimum hourly wage increased, effective December 31, 2013, from $7.25 to $8.00. Effective December 31, 2014, the minimum wage will increase to $8.75, and then again to $9.00, on December 31, 2015.

The New York Department of Labor is expected to finalize its regulations in early 2014 detailing the impact of the new minimum wage increases on tipped employees.

If you have any questions regarding any of these developments or need further guidance to ensure your business complies with this new law, please contact Phil Repash at (212) 758-1078 or any other attorney at the Firm.