

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with trees and a bright sky.

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TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Introduction

Kristen Smith – (12:05PM-12:15PM)

- Labor Law Items of Note in Final NYS Budget

Roger Bearden – (12:15 PM-12:25PM)

- NYS Budget's Key Impacts on Human Service Providers

Stephanie Fedorka – (12:25PM-12:35PM)

- Final EEOC Regulation on Pregnant Workers Fairness Act

Andrew Delzotto – (12:35PM - 12:45PM)

- Application of New York State and City Human Rights Law to Out of State Applicants and Employees

Labor Law Items of Note in Final NYS Budget



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Paid Prenatal Leave

- Amendment to New York Sick & Safe Leave Law (Labor Law 196-b)
- Starts Jan. 1, 2025
- All private employers
- 20 hours “during any 52-week calendar period”; hourly increments
- “Leave taken for the health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy.”

Paid Break Time for Breast Milk Expression

- Amendment to Labor Law 206-c
 - Current law: “shall provide **reasonable unpaid break time** or permit an employee to use paid break time or meal time to allow an employee to express breast milk for **her** nursing child each time such employee has reasonable need to express breast milk...”
 - Amendment: “shall provide **paid break time for thirty minutes, and** permit an employee to use paid break time or meal time to allow an employee to express breast milk for **such employee’s** nursing child each time such employee has reasonable need to express breast milk...”
- Takes effect in 60 days, *i.e.* **June 19, 2024**

COVID-19 Paid Sick Leave

Expires July 31, 2025

NYS Budget's Key Impacts on Human Service Providers



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Final EEOC Regulation on Pregnant Workers Fairness Act



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Pregnant Workers Fairness Act Final Rule

- Pregnant Workers Fairness Act (“PWFA”) went into effect June 27, 2023
- EEOC finally published final rule and expansive interpretive guidance regarding implementation of PWFA
- Recall, EEOC published proposed rule on August 11, 2023
 - Comment period open for 60 days (October 10, 2023)
- **Published in Federal Register:** April 19, 2024
- **Effective:** June 18, 2024

PWFA Basics

1. Requires covered employers to make reasonable accommodations to a qualified employee or applicant for known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, absent undue hardship on the business of the covered employer.
2. Prohibits requiring qualified employee to accept an accommodation other than one arrived at through the interactive process
3. Prohibits denial of employment opportunities based on need to provide reasonable accommodations
4. Prohibits requiring leave if another reasonable accommodation can be provided
5. Prohibits adverse action for requesting or using reasonable accommodation
6. Prohibits discrimination/retaliation for opposing unlawful discrimination under PWFA or participating in a PWFA related proceeding
7. Prohibits coercion in the exercise of their rights under PWFA
8. Provides remedies for violations of rights under PWFA

Who Is Covered By The PWFA?

- Covered Entities:
 - Employers with 15 or more employees
 - Public employers
- “Employees” defined under Title VII of the Civil Rights Act

Key Highlights - Definitions

- Several expansive and detailed definitions in the Rule
- “**Known Limitation**” → physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that employee or their representative has communicated to employer
 - Does not need to meet definition of “disability” under ADA
- Physical or mental condition related to, affected by, or arising out of pregnancy childbirth or related medical conditions of the employee
 - May be ***modest, minor, and/or episodic***
 - Need or problem related to maintaining employee’s health or health of the pregnancy; or seeking care related to pregnancy, childbirth, or related medical conditions

Expansive Definitions - Pregnancy and Childbirth

- **“Pregnancy”** and **“childbirth”** → Pregnancy or childbirth of the specific employee, and include but are not limited to: current pregnancy; past pregnancy; potential or intended pregnancy (including infertility, fertility treatment, and the use of contraception); labor; childbirth (vaginal and cesarean delivery)

Expansive, Non-Exhaustive Definition - Related Medical Conditions

- Termination of pregnancy (including via miscarriage, stillbirth, or abortion)
- Ectopic pregnancy
- Preterm Labor
- Pelvic Prolapse
- Nerve Injuries
- Cesarean or perineal wound infection
- Maternal Cardiometabolic Disease
- Gestational Diabetes
- Preeclampsia
- HELLP (hemolysis, elevated liver enzymes and low platelets) Syndrome
- Hyperemesis Gravidarum
- Anemia
- Endometriosis
- Sciatica
- Lumbar Lordosis
- Carpal Tunnel Syndrome
- Chronic Migraines
- Dehydration
- Hemorrhoids
- Nausea or Vomiting
- Edema of the legs, ankles, feet or fingers
- High Blood Pressure
- Infection
- Antenatal (during pregnancy) anxiety, depression, or psychosis
- Postpartum depression, anxiety, or psychosis
- Frequent urination
- Incontinence
- Loss of balance
- Vision changes
- Varicose veins
- Changes in hormone levels
- Vaginal bleeding
- Menstruation
- Lactation and conditions related to lactation (including low milk supply, engorgement, plugged ducts, mastitis, or fungal infections)

Qualified Employee

1. Employee or applicant who with or without reasonable accommodation can perform the essential functions of the job
2. Employee or applicant who *cannot* perform an essential function of the job for a temporary period if the individual is or is expected to be able to perform the essential function of the job in the “near future.”

*This must be evaluated on a case-by-case basis (*different* from proposed rule)

Requests for Accommodation

- Obligation to accommodate is triggered when employee or their representative has communicated with: supervisor, manager, someone who has supervisory authority for the employee or regularly directs the employee's tasks, HR personnel, or another appropriate official, or by following steps in employer's policy for requesting accommodation
 - May be made orally or in writing, or some other effective means
 - Cannot require that request be in writing, use of specific form, use of specific words, or be in a specific format
 - Employee does not have to identify medical condition or use medical terms, need only communicate an adjustment or change needed at work due to a limitation
- **Interactive Process** may be necessary to determine the appropriate accommodation

Reasonable Accommodations Generally

- Modifications or adjustments to:
 - Job application process
 - Work environment, or the manner or circumstances under which the job is customarily performed that would enable qualified employee with limitation under PWFA to perform essential functions of the position
 - Enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations
 - Temporary suspension of essential functions and/or modifications or adjustments that permit temporary suspension of essential functions

Reasonable Accommodation Examples

- Making existing facilities readily accessible to and usable
- Job restructuring; part-time or modified work schedules; reassignment to vacant position; breaks for use of restroom, drinking, eating, and/or resting; acquisition or modification of equipment, uniforms, or devices; modifying work environment; providing seats; allowing standing; adjustment or modifications of examinations or policies; **permitting use of paid leave or providing unpaid leave for reasons, including but not limited to recovery from childbirth, miscarriage, stillbirth, or medical conditions related to pregnancy or childbirth, or to attend health care appointments, or to receive treatment related to pregnancy, childbirth, or related medical conditions**; placement in light duty or modified duty program; **telework**, remote work, or change of worksite; adjustments to allow employee to work without increased pain or increased risk to employee's health or health of pregnancy; **temporary suspension of one or more essential functions of the position**; reserved parking space if employee is otherwise entitled to employer provided parking; and other similar accommodations

Presumptively Reasonable Accommodations

1. Allowing employee to carry or keep water near, and drink as needed
2. Allowing employee to take additional restroom breaks, as needed
3. Allowing employee whose work requires standing to sit, and whose work requires sitting to stand, as needed
4. Allowing employees to take breaks to eat and drink, as needed

*Documentation cannot be requested to support these requested accommodations!

Limitations on Documentation

- Interactive process is determined on case-by-case basis
- Employer may only request supporting documentation when ***“it is reasonable under the circumstances in order to determine whether employee has physical or mental conditions related to, affected by, or arising out of pregnancy and needs adjustment or change at work due to such limitation.”***
- Rule offers several examples of when documentation is not permitted

When Documentation Cannot Be Requested

1. When limitation and adjustment/change needed due to the limitation is obvious and employee provides self-confirmation
2. When employer already has sufficient information to determine whether employee has a limitation and needs adjustment/change at work due to the limitation
3. When employee is pregnant and seeks one of the four common accommodations (listed on prior slide) and employee provides self-confirmation
4. When accommodation is related to time/place to pump breast milk at work or other modifications relating to lactation breaks and employee provides self-confirmation
5. When the requested accommodation is available to employees without known limitations pursuant to employer's practices and policies without submitting supporting documentation

Failure To Provide Reasonable Supporting Documentation

- Rule provides that an employer cannot justify failing to provide a reasonable accommodation or an unnecessary delay in providing a reasonable accommodation unless:
 - Employer seeks supporting documentation
 - Seeking the supporting documentation is reasonable under the PWFA
 - The supporting documentation sought is “reasonable documentation” under the PWFA Rule
 - The employer provides sufficient time to obtain and provide the supporting documentation

Unnecessary Delays May Result in Violation of PWFA

- Even if the employer eventually provides the accommodation
- Rule offers factors that may be considered when determining if there has been an unnecessary delay
 - Reason for delay
 - Length of delay
 - Length of time accommodation is needed
 - How much employee and employer each contributed to delay
 - Whether employer was engaged in actions related to the reasonable accommodation request during the delay
 - Whether accommodation is simple or complex to provide (four common accommodations – delay in providing will “virtually always” result in finding of unnecessary delay)
 - Whether employer offered interim reasonable accommodation during interactive process (leave is not interim reasonable accommodation that supports this factor unless employee selects or requests that as an interim accommodation)

Undue Hardship Factors

Undue Hardship = Significant difficulty or expense when considered in light of factors in PWFA

Caution!!! This is a high burden to meet

Factors:

1. Nature and net cost of accommodation
2. Overall financial resources of facility or facilities involved in the provision of the reasonable accommodation, number of employees employed at such facility, and effect on expenses and resources
3. Overall financial resources of employer, overall size of the business with respect to number of employees, number, type, and location of facilities
4. Type of operations of employer, including composition, structure, and functions of workforce, geographic separateness, administrative/fiscal relationship of facility to employer
5. Impact of accommodation on operation of the facility, including impact on the ability of other employees to perform their duties and impact on the facility's ability to conduct business

Final Highlights

- Significant differences from ADA interactive process and reasonable accommodation considerations
- Employee is not required to accept an accommodation
 - But if rejection results in employee not being able to perform essential functions of their position employee may not be “qualified” under PWFA
- Remedies/Enforcement:
 - Same as Title VII; EEOC, Attorney General, private right of action
 - Costs and fees
 - Damages

Employer To Do List

- ❑ Familiarize yourself with the new PWFA guidance (seek legal assistance for clarification!)
- ❑ Review and update current workplace accommodation policies
 - ❑ Does your policy clearly cover pregnancy, childbirth, and related medical conditions?
 - ❑ What is the current process for requesting and evaluating accommodations?
 - ❑ Who is responsible or has a part in the process?
 - ❑ Work with legal counsel to update policies and procedures as necessary
- ❑ Train decision makers, front-line supervisors, and HR
 - ❑ Anyone in management that will be responsible for fielding requests for accommodations, making decisions regarding accommodations, or participating in the interactive process (or cooperative dialogue for those in NYC!) should be educated on the significant changes and updates

Application of New York State and City Human Rights Law to Out of State Applicants and Employees



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What Does NYHRL Cover?

- **1974** → the Law was broadened to protect people with disabilities
- **1991** → the Law was amended to protect families in the area of housing
- **1997** → the Law was changed to include an express provision requiring reasonable accommodations in employment for persons with disabilities
- **2002** → the Law was amended to protect both religious practices and religious observances
- **2003** → the Sexual Orientation Non-Discrimination Act was passed so to include sexual orientation among the protected traits/characteristics
- **2003** → the Law was extended to encompass military status

<p>New York State Human Rights Law</p>	<p>“...age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence.”</p>
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*For purposes of this webinar, we are not covering NYC’s Human Rights Law, which is largely analogous to the NYSHRL

Nafessa Syeed v. Bloomberg L.P. (Ct App Mar. 14, 2024)

Facts

- Plaintiff (Ms. Syeed) began working for Bloomberg Media as a reporter covering cybersecurity in its Washington, D.C. office
- Ms. Syeed applied for an open position covering the United Nations based out of Bloomberg's Manhattan Office but was not ultimately chosen to fill the role.
- The job was assumed by a man whom Ms. Syeed claimed had lesser qualifications and practical experience
- Ms. Syeed left Bloomberg and filed this action in New York State Court as a **California resident**, alleging sex and race discrimination by denying her promotion

Decision

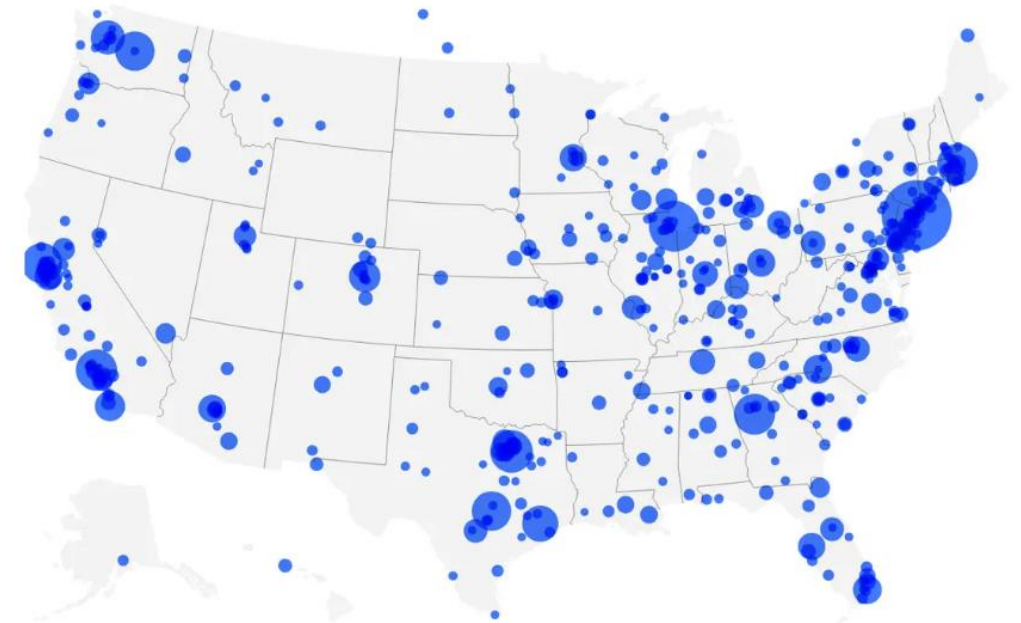
- Defendant Bloomberg removed the case from New York State Court to New York Federal Court, where the United States District Court for the Southern District of New York granted Bloomberg's motion to dismiss
- On Plaintiff's appeal, the United States Court of Appeals for the Second Circuit reserved its decision and certified the question of whether the New York City and State Human Rights Laws extend to cover a non-resident, giving New York's highest court, the Court of Appeals, the opportunity to answer this question
- The Court of Appeals answered in the affirmative and unanimously held that a non-resident who has been discriminately denied a job in New York City or State "**loses the chance to work, and perhaps live, within those geographic areas,**" which is enough to establish a right of action for non-residents actively seeking employment in New York

Why is This Important?

This is the No. 1 city attracting young professionals—demand grew nearly 7 times since 2019

Published Tue, Oct 10 2023-11:44 AM EDT

Top 500 cities by application volume



Map: Application volume (7/2022-7/2023)

H HANDSHAKE
INSIGHTS

<https://www.cNBC.com/2023/10/10/this-is-the-no-1-city-where-young-people-want-to-work-most.html>

<https://joinhandshake.com/blog/employers/where-are-college-students-going-after-they-graduate/>

Questions?



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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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