

2024

BUSINESS IN 2023

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Introduction



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NYS Pay Transparency Law



Pay Transparency

- New York Labor Law § 194-b
- **Effective September 17, 2023**
- **Covered Employers:** private sector employers with 4+ employees
 - Excludes temporary help firms
 - Proposed regulations suggest law does not apply to “governmental agencies”

What's Required?

- Must disclose “range of compensation”
 - Range of Compensation → “minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement for such opportunity.”
- Post job description “if one exists”

What Positions Does This Apply To?

- Applies to any job, promotion, or transfer opportunity that will:
 - Be physically performed, at least in part, in New York;

OR

- Be physically performed outside of New York but reports to a supervisor, office or other work site in NY (remote work/work from home)

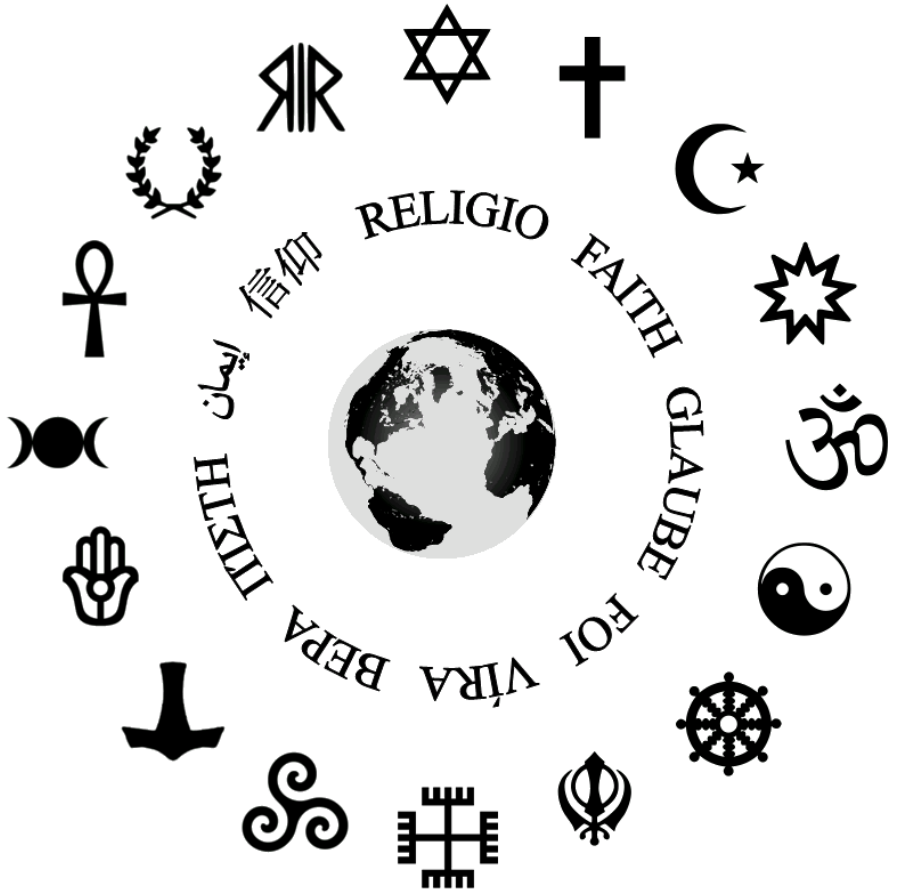
What Positions Does This Apply To?

- Applies to “advertisements”
 - “To make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.”
- Internal and external job, promotion, or transfer opportunities

Remedies for Violations

- Person claiming to be aggrieved under this new law can file complaint with NYS Department of Labor
- NYSDOL will investigate and can impose civil penalties of \$1,000 up to \$3,000 for violations of the law

Religious Accommodations



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Groff v. DeJoy - Background

- Plaintiff Gerald Groff is an Evangelical Christian who believes Sundays should be devoted to worship and rest
- Worked for USPS
- USPS implemented weekend shifts with Sunday deliveries for Amazon
- Groff attempted to avoid, eventually it caught up with him
- Received progressive discipline until he resigned

Procedural History



Groff sued under Title VII of the Civil Rights Act of 1964



District Court granted summary judgement to USPS



3rd Circuit affirmed based on *Hardison's low standard*

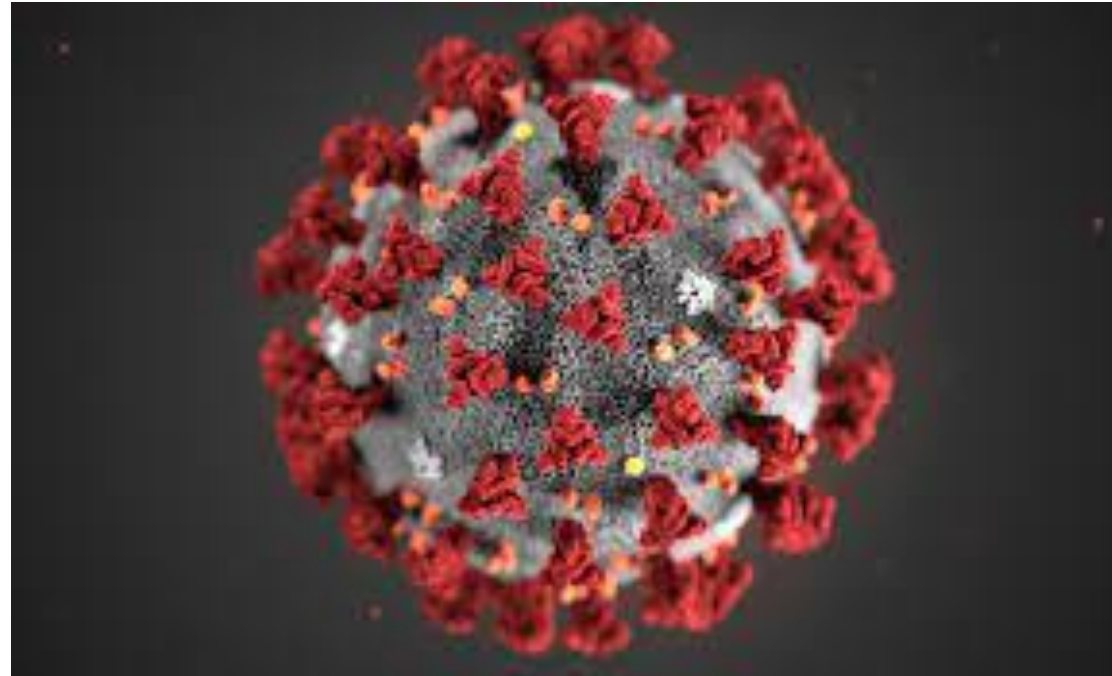
Religious Accommodations

- SCOTUS fundamentally changed analysis for evaluating religious accommodation requests
- **Previously:** Employer could deny religious accommodation requested based upon “undue hardship” so long as the burden of granting the accommodation would result in “more than a *de minimis* cost”
- **Now:** Rejected “*de minimis* cost” analysis and articulated new standard
 - **New Standard:** To establish “undue hardship” employer must show that “burden of granting an accommodation would result in ***substantial increased costs in relation to the conduct of its particular business.***”

Groff Takeaways

- Requires a fact specific / individualized inquiry
- Impact on co-workers without more is not sufficient to establish undue hardship
- The goal must be to find an actual reasonable accommodation that is workable for employee and business

COVID Sick Leave & Vaccination Leave Laws



COVID-19 Paid Sick Leave

- NYS Paid COVID-19 Sick Leave Law → Still in effect
- The law has no sunset date
- Proposed bill that would repeal the law

COVID-19 Vaccination Leave

- Set to expire **December 31, 2023**
- Workers receive up to 4 hours of leave per vaccination, including boosters

Updated NYS Model Sexual Harassment Policy



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New York Proposes Revised Model Sexual Harassment Prevention Policy

- Revised Model Sexual Harassment Prevention Policy Released April 11, 2023
 - <https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>

New York Proposes Revised Model Sexual Harassment Prevention Policy

- Renewed and stronger emphasis on gender identity discrimination
- New section on bystander intervention
- Broadened to include discrimination
- Expanded discussion of NY's broader definition of harassment
- Stronger emphasis on supervisory responsibility

New York Proposes Revised Model Sexual Harassment Prevention Policy

- Addition of examples of retaliatory acts
- More detailed harassment examples
- Addresses remote work
- New sexual harassment prevention hotline (1-800-HARASS3)
- Greater emphasis on external reporting options

Notable NLRB Developments



McLaren Macomb

- The Board addressed the inclusion of confidentiality and non-disparagement provisions in severance agreements
- Held: broad confidentiality and/or non-disparagement provisions impermissibly chill employees' Section 7 rights

McLaren Macomb

- Agreement is unlawful if “its terms have a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Section 7 rights...”
- Non-disparagement – employees’ ability to discuss workplace, breadth of provision, lack of time limitation.
- Confidentiality – prohibited disclosing terms to “any” person, coerce employees from filing ULP, talking to union.

Lion Elastomers LLC II

- Lion Elastomers discharged an employee after he was disruptive during a workplace safety meeting.
- The Board revisited the legal standards applicable to situations involving employees who are disciplined/discharged for misconduct that occurs during Section 7 activity
- Board drew distinction between misconduct that occurs during ordinary work vs. that which occurs in the course of protected activity

A Return to “Setting-Specific” Standards

- If the employee was engaged in protected activity, the Board will apply the following tests to determine whether the abusive conduct is severe enough to lose protection of the Act:
 - 1. Conduct toward management: Consider (1) the place of the discussion; (2) the subject matter of the employee’s statements; (3) the nature of the employee’s outburst; and (4) whether the outburst was caused by the employer’s unfair labor practice
 - 2. Conduct on social media: Consider the totality of the circumstances
 - 3. Picket-line conduct. Consider whether, “under all of the circumstances, non-strikers reasonably would have been coerced or intimidated by the picket-line conduct.”

Stericycle, Inc.

- New legal standard to determine when employer work rules violate Section 8(a)(1) of the NLRA
- Work rules that have a reasonable tendency to chill employees' rights under the NLRA are unlawful
- Employer may rebut presumption that rule is unlawful by establishing that the rule advances a legitimate and substantial business interest, and that the employer cannot advance said interest with a more narrowly tailored rule

Employer Takeaway

- Increased scrutiny of employer policies
- Work rules that could chill employees' rights under the NLRA need to be narrowly tailored
- Common policies subject to scrutiny: social media, dress codes, recording, use of electronic communications, among other common handbook policies and rules

Cemex Construction Materials Pacific

- Significant changes to unionization process
- Unions can more easily secure recognition through signed union authorization cards
 - Disfavoring secret ballot elections
- Whenever a union requests recognition on the basis of signed union authorization cards or files an election petition, an employer faces a significant risk of a bargaining order from the NLRB without the union winning an election and, in some scenarios, without an election being held at all

Thank You

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