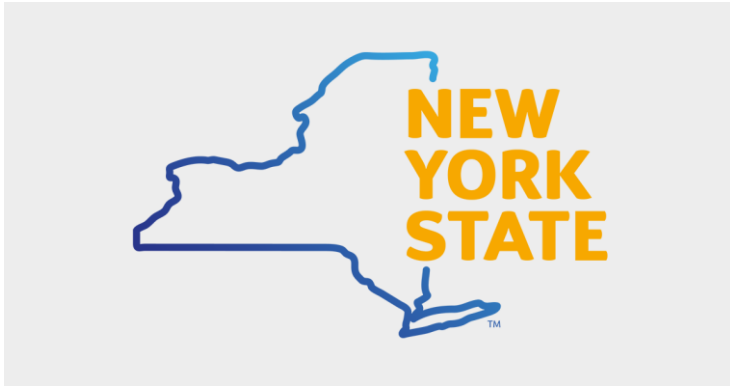


NY AND NJ CONTINUE TO EXPAND EMPLOYEE RIGHTS. HAVE YOU BEEN KEEPING UP WITH THE CHANGES?

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AGENDA: WE WILL DISCUSS NEW LAWS AND AMENDMENTS TO:



- Discrimination and harassment
- Restrictions in Hiring Phase
- Wages
- Accommodations & Leaves of Absence
- Mandatory Training
- Social Media Expressions
- Confidentiality Agreements
- Discrimination and harassment



- Restrictions in Hiring Phase
- Wages, Wage Theft and Misclassification
- Leaves of Absence
- Worker Adjustment and Retraining Notification Act (WARN)
- Confidentiality and Arbitration Agreements

NEW YORK & NEW YORK CITY

NY & NYC: DISCRIMINATION AND HARASSMENT

NY PROTECTED CHARACTERISTICS

NY State

- Race
- Color
- National origin
- Creed
- Gender
- Gender identity
- Transgender status or gender dysphoria
- Sexual orientation, incl: Heterosexuality, homosexuality, bisexuality, asexuality, and pansexuality
- Predisposing genetic characteristics
- Disability
- Pregnancy or pregnancy related conditions
- Military status
- Familial or marital status
- Criminal or arrest record
- Domestic or sexual violence status

New York City

Additional characteristics protected:

- Actual or perceived age
- Alienage or citizenship status
- Caregiver status
- Domestic violence, sexual violence or stalking
- Unemployment status
- Credit history
- Hair
- Sexual or reproductive health decisions

NEW YORK STATE HUMAN RIGHTS LAW

Amendments Effective August 2019 – August 2020

- Now applies to all employers
- NYC – Expanded prohibition on asking about salary history
 - May not rely upon salary history in any employment decision
 - Cannot retaliate or refuse to hire if refuse to provide the history
- NYC – No retaliation based on sexual or reproductive health decisions
 - If an employer has a policy, this requires the employer to notify employees of their rights

NY: PROHIBITION AGAINST SEXUAL HARASSMENT

MAJOR CHANGE TO NY HOSTILE WORK ENVIRONMENT

August 2019

- Historically, NY State interpreted its statute similarly to Title VII
- But now, the Standard is no longer “severe or pervasive”
- New standard: Conduct will constitute an unlawful discriminatory practice if:
 - The affected employee experiences inferior terms, conditions or privileges of employment
 - Need not identify a similarly situated co-worker
 - No affirmative defense based on failure to use the employer’s internal harassment complaint process
 - Trivial inconveniences or petty slights will not suffice
 - Same standards for all protected characteristics
 - Covers ALL employers regardless of size and applies to domestic workers

NY SEXUAL HARASSMENT PREVENTION

State of NY – January 2019; NY City – April 2019

Prevention Policy

- A statement prohibiting sexual harassment
- Examples of what constitutes sexual harassment
- Information about federal and state sexual harassment laws
- Remedies available to victims
- Standard complaint form
- Procedures for the timely and confidential investigation of complaints that ensures due process for all parties
- Explanations of external rights of redress or remedies
- Sexual harassment is a form of employee misconduct and those that engage in sexual harassment will be sanctioned/disciplined
- Sanctions against supervisors and managers who know about harassment and do not act and permit it to continue
- Unlawful to retaliate against anyone who reports or participates

Effective August 12, 2020, the **statute of limitations** for filing a sexual harassment complaint with the Division of Human Rights is extended from one year to three years.

NY SEXUAL HARASSMENT PREVENTION

Requirements of Training Program:

- Explanation of sexual harassment and specific examples of inappropriate conduct
- Detailed information about federal, state and local laws and remedies available to victim
- Explanation of the employer's internal process for reporting sexual harassment
- Explanation of the employee's EXTERNAL rights of redress - e.g. administrative and judicial forums including NYS Division of Civil Rights, NYC Commission on Human Rights, and the EEOC, with contact information
- Interactive Training

In NYC:

- all employees, including interns must have training
- must include information about bystander intervention to curb workplace harassment
- managers and supervisors require specialized training – covering specific responsibilities and measures they can take to appropriately address sexual harassment
- New hires trained within 90 days
- Must keep training records for 3 years
- Must keep acknowledgement records for 3 years verifying attendance

CONFIDENTIALITY PROVISIONS IN SETTLEMENTS

- Confidentiality is the exclusive prerogative of the employee
 - If the employee does not want a confidentiality provision, no lawful provision
 - If the employee agrees to a confidentiality provision – must have a separate agreement with separate consideration manifesting consent

NY: COMPENSATION

NY PAY EQUITY

October 2019 and January 2020

Two Components:

1. Ban employers asking for, or relying on, salary history to set pay rates
2. A prohibition on employers' paying employees less based on a broad range of characteristics beyond sex if they perform "substantially similar work" as their colleagues who are not in that protected class

Salary History Ban – January 2020

Employers are prohibited from:

- Relying on an applicant's salary history in determining whether to make a job offer or when setting salary.
- Asking an applicant or current employee for their salary history as a condition of being interviewed or as a condition of employment or promotion.
- Seeking salary history from an applicant or current employee's former or current employer, including an agent (e.g. a recruiter), or from another employee.
- Retaliating against an applicant or current employee for not sharing salary history information or filing a complaint.

NY PAY EQUITY

Equal Pay for “substantially similar work” – October 2019

Employers are prohibited from:

- Paying employees with status within one or more protected classes less than an employee without status within the same protected class or classes for equal work or “substantially similar work” based on a composite of skill, effort, and responsibility, and performed under similar working conditions.
 - For instance, an employer cannot pay a housekeeper and a janitor differently if they perform “substantially similar work.”
- “Protected class” includes age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status.

Exceptions include differential based upon:

- seniority
- merit system
- system that measures earnings by quality or quantity of production
- any other bona fide factor other than a protected class

INCREASES TO MINIMUM WAGE AND SALARY BASIS TEST

- Minimum Wage
 - NYC - \$15/hr
 - Nassau, Suffolk, and Westchester - \$13/hr
 - Everywhere else - \$11.80/hr
- Fast Food Minimum Wage
 - NYC - \$15/hr
 - Everywhere else - \$13.75/hr
- Exempt Employees – Salary Basis Changed
 - NYC - \$1,125/wk
 - Westchester and Long Island - \$975/wk
 - Everywhere else - \$885/wk

NY: ACCOMMODATION & LEAVE LAWS

NY CITY ACCOMMODATIONS

Accommodations subject to the **cooperative dialogue** include:

- Religion accommodations
- Disability accommodations
- Pregnancy or childbirth, related medical conditions
- For victims of domestic violence, sex offenses, stalking

Lactation Accommodation effective in NYC March 2019:

- Lactation room must be in reasonable proximity to the employee's work area
- A refrigerator suitable for breast storage must be provided in reasonable proximity to the employee's work area
- Lactation room must be sanitary, cannot be a bathroom, be shielded from view and free from inclusion
 - Must have an electrical outlet
 - Chair
 - Surface on which to place a breast pump and other personal items
 - Nearby access to running water
- Employers must have a policy stating employees have a right to request lactation room

RELIGIOUS ACCOMMODATIONS

- Unless it is an undue hardship, accommodate employees who seek leave or to be excused from work for the observance of his or her Sabbath or holy day.
- Where practicable and in the reasonable judgment of the employer, the employee may make up this absence by an equivalent amount of time and work at some other mutually convenient time, or be charged against the employee's paid time off allotment (except for sick leave).
- In the event the leave cannot be made up and the employee does not have any paid time off allotment, the leave will be given as unpaid leave.

NY STATE PAID FAMILY LEAVE

Established 2016, amended January 2018

Job Protected Paid Leave:

- Benefits paid entirely through employee funded contributions from payroll deductions
- 10 weeks of job protected paid leave up to maximum of 60% of employee's average weekly wage, up to 60% of NY State average weekly wage

Eligibility:

- Employed full-time eligible after 26 weeks or part-time eligible after 175 days
- Not required, but permitted to use PTO

Purposes:

- Parental Leave only available for bonding (not prenatal conditions) during first 12 months following birth, adoption or fostering of a child
- Caring for family member with serious health condition
- Assist loved one when family member is on Active Military Duty

NY STATE PAID SICK LEAVE

COVID-19

- Employers with **10 or fewer employees** (as of 1/1/2020) **and a net income of less than \$1 million** (in 2019) is not required to provide employees paid sick leave.
- Employers with **10 or fewer employees** (as of 1/1/2020) **and a net income of over \$1 million** (in 2019) are required to provide employees at least **5 paid sick days**.
- Employers with between **11 and 99 employees** (as of 1/1/2020) must provide employees at least **5 paid sick days**.
- Employers with **100 or more employees** (as of 1/1/2020) must provide employees at least **14 paid sick days**.
- **Public employers** of any size must provide employees at least **14 paid sick days**.

NY STATE PAID SICK LEAVE

September 2020 accruals begin

Under the new sick leave provisions:

- Employers with **4 or fewer employees and a net income of less than \$1 million** in the prior tax year must provide employees with up to **40 hours** of unpaid sick leave.
- Employers with between **5 and 99 employees** and employers with **4 or fewer employees and a net income of greater than \$1 million** in the prior tax year must provide each employee with up to **40 hours** of paid sick leave per year.
- Employers with **100 or more employees** will provide up to **56 hours** of paid sick leave per year.

Employees must accrue sick leave at a rate of at least 1 hour for every 30 hours worked (which is also the accrual rate set forth under the New York City Earned Safe and Sick Time Act and the Westchester County Earned Sick Leave Law).

Alternatively, employers may fulfill their obligation under the law by providing the full amount of sick leave in a lump sum at the beginning of each year.

Unused sick leave carries over to the following year, though employers may limit its use.

An employer is not required to pay the employee for unused sick leave upon termination.

NY CITY PAID SAFE & SICK LEAVE

Established 2014, amended May 2018

All employees who work more than 80 hours per calendar year in New York City are entitled to sick leave

- Employers with **4 or fewer employees** must provide employees with up to **40 hours** of unpaid sick leave.
- Employers with **5 or more employees** must provide each employee with up to **40 hours** of paid sick leave per year.
- Employees must accrue sick leave at a rate of at least 1 hour for every 30 hours worked.
- Alternatively, employers may fulfill their obligation under the law by providing the full amount of sick leave in a lump sum at the beginning of each year.
- Up to 40 hours of unused safe and sick leave can be carried over to the next calendar year. However, employers are only required to allow employees to use up to 40 hours of safe and sick leave per calendar year.
- An employer is not required to pay the employee for unused safe and sick leave at termination.

WESTCHESTER COUNTY PAID SICK LEAVE

July 2019 accruals began

All employees who work more than 80 hours per calendar year in Westchester County are entitled to sick leave.

- Employers with **4 or fewer employees** must provide employees with up to **40 hours** of unpaid sick leave.
- Employers with **5 or more employees** must provide each employee with up to **40 hours** of paid sick leave per year.
- Employees must accrue sick leave at a rate of at least 1 hour for every 30 hours worked.
- Alternatively, employers may fulfill their obligation under the law by providing the full amount of sick leave in a lump sum at the beginning of each year.
- Up to 40 hours of unused safe and sick leave can be carried over to the next calendar year. However, employers are only required to allow employees to use up to 40 hours of safe and sick leave per calendar year.
- An employer is not required to pay the employee for unused sick leave at termination.

NY: SOCIAL MEDIA EXPRESSIONS

NY SOCIAL MEDIA EXPRESSIONS

Raising Workplace Concerns

NLRB Case: Mexican Radio Corp. (NY April 2018)

- Former employee sent email to all current employees and owners of NYC restaurant complaining of wages, work schedules, tip policies, and management's treatment of employees (alleged to be discriminatory)
- Email informed government agencies to whom employees could complain
 - 4 current employees responded with "reply all" after discussing amongst themselves that they would do so agreeing with the concerns raised and thought others would too
 - Day after emails sent, owners met with the employees to question them about the email

One employee terminated after confirming her belief that the concerns were valid

- Other employees told they were not welcome to work at the restaurant
 - Employer tried to justify the terminations by referencing tardiness, calling out
 - NLRB ruled these responses were pre-textual and concluded the conduct was protected by Section 7 of the NLRA – protected concerned activity

Reminder: emails and social media posts complaining about workplace matters – no matter how lengthy, untrue, or unpleasant – that fact alone will not cause the communication to lose its protected characteristic

NY: HIRING CONCERNS

NY & NYC HIRING ISSUES

- NYC – cannot test for marijuana unless employer falls into one of the exceptions
 - Law enforcement, works with children, federal contractor, DOT driver
 - Medical marijuana users are considered disabled and require accommodation – use of the interactive dialogue
- Criminal Convictions
- Credit History
- Salary

NEW JERSEY

NJ: DISCRIMINATION & HARASSMENT

NJ LAW AGAINST DISCRIMINATION (LAD)

- Applies to all employers in NJ who have at least one employee
 - Cannot discriminate in the terms and conditions of employment
 - Hiring
 - Promotions
 - Pay practices
 - Discipline
 - Benefits
 - On the basis of any protected characteristic or perceived protective characteristic
 - Cannot subject an employee to “harassment” on the basis of a protected characteristic

NJ LAD PROTECTED CHARACTERISTICS

- Race or color
- Religion
- National Origin, Nationality, Ancestry
- Age
- Sex – includes pregnancy and sexual harassment
- Marital status, domestic partnership, civil union status
- Affectional or sexual orientation
- Gender identity or expression
- Atypical heredity cellular or blood trait, genetic information
- Liability for military service
- Physical or mental disability

LAW AGAINST DISCRIMINATION AMENDMENTS

- Crown Act – Create a Respectful and Open Workplace for Natural Hair Act
 - Cannot discriminate on the basis of hair style, including natural hair styles
 - New Jersey 3rd state to enact such an act
 - Neutral grooming policies
- Organ and Bone Marrow Donors
 - Job restoration guarantees
 - Eligible for short term disability

NJ: COMPENSATION

NJ PAY EQUITY

July 2018

- Diane B. Allen Equal Pay Act – Named after a retired state legislator who championed pay equity and women's rights during her 20-plus years of service
- Cannot prevent or discipline employees for discussing compensation
- New Jersey's Pay Equity Law expands the NJLAD to:
 - prohibit unequal pay for “substantially similar” work
 - require that employers justify differences in compensation, including benefits, among protected classes (gender, race, etc.)
 - restart the clock for filing a wage discrimination claim to each time a discriminatory paycheck is issued
 - add additional provisions to prohibit retaliation against an employee for discussing compensation
 - require greater transparency in state contracting

SUBSTANTIALLY SIMILAR WORK

The law does not specifically define the term 'substantially similar'

"A composite of skill, effort, and responsibility required for that work"

It does, however, explicitly allow differences in pay when they are based on a seniority system or a merit system, or, the employer can demonstrate that:

- the difference can be accounted for based on some legitimate factor (like training, education, experience, or productivity) other than the protected trait
- the factor is not based on, nor does it perpetuate, a compensation difference as a result of a protected trait
- each factor is applied reasonably
- one or more of the factors accounts for the entire wage differential
- the factors are job-related with respect to the position and based upon business necessity.

THIS ACT HAS SHARP TEETH!

- An employee who has evidence of wage discrimination can receive back pay up to six years
- For violation, damages can be tripled!
- Potential for punitive damages if intentional act
- Fee-shifting – meaning if employee wins at trial, entitled to recover his/her attorneys' fees and costs



NJ WAGE THEFT ACT

August 2019 & November 2019

The key components of the WTA are:

- Employers must provide written notice to current employees and all new hires of the employee's rights under New Jersey's wage and hour laws. This requirement is in addition to the mandatory wage and hour posters employers must display in the workplace.
- The statute of limitations for filing unpaid minimum wage and unpaid overtime pay is now six years for all claims.
- The Labor Commissioner has expanded audit rights and jurisdiction and may now handle claims for unpaid wages up to \$50,000 (up from \$30,000), may impose liquidated damages and adjudicate retaliation claims.
- Liquidated damages of 200% of wages owed are now authorized and may only be avoided for first time violators by showing: the mistake was inadvertent and in good faith; a reasonable ground for believing the act or omission was not a violation; an employer acknowledgment of violation; and payment of all amounts due within 30 days.
- Employers who fail to maintain adequate records face a rebuttable presumption that the employee's claims are true unless the employer can show "good cause" for its failure to present records or there was a natural disaster responsible for record destruction.

NJ WAGE THEFT ACT

August 2019 & November 2019

Key components of the WTA are (continued):

- There is a rebuttable presumption of retaliation if the employer takes an adverse employment action against an employee within 90 days of that employee filing an external or internal complaint about unpaid wages. This presumption may be overcome upon a showing of “clear and convincing” evidence of a legitimate reason for the adverse action unrelated to the complaint.
- Retaliation is a “disorderly persons offense” and the penalties include both civil and criminal remedies
- The new law expands civil and criminal penalties for wage violations and expands individual liability.
- The law expands joint and successor liability holding staffing companies and their clients liable for wage and hour laws as well as certain criminal violations. Successor liability is easier to establish under the new law as well.
- In November 2019, the law created a new crime -- Pattern of Wage Nonpayment, a crime of the third degree. Employers who have been convicted of wage and hour violations on two or more occasions may be found to exhibit a “pattern of wage nonpayment.”

NJ MISCLASSIFICATION

- Employers and labor contractors jointly liable
 - Wage violations
 - Tax violations
- “Any person acting on behalf of the employer” can be liable for violations including: owners, directors, officers, and managers ...
- Stop Work Orders upon 7 days advance notice if violations found
- Steep penalties for working during stop work order
- The penalty for failing to comply with the posting requirement, or retaliating against any individual includes:
 - A disorderly persons offense and fines ranging from \$100 to \$1,000
 - Company required to reinstate any misclassified employee with backpay or correct any discriminatory action and pay all wages and benefits lost as a result of the discriminatory act
 - Employees will be entitled to punitive damages equal to two times lost wages and benefits and reasonable legal costs associated with any action

NJ WAGE STATEMENTS

May 2020

- Applies to companies with 10 or more employees
- In addition to the required statement of deductions the following information must be provided:
 - Gross wages
 - Net wages
 - Rate of pay
 - If relevant to the wage calculation, the number of hours worked by the employee during the pay period
- The law allows employers to provide the statement to employees electronically, unless the employee requests the statement be provided in paper format

NJ COMMUTER BENEFITS

- Effective March 1, 2020, New Jersey employers are required to offer pre-tax commuter benefits to employees not subject to a collective bargaining agreement
- Applies to employers with 20 or more employees
- For purposes of this law, an "employee" means anyone hired or employed by the employer and who reports to the employer's work location (this follows the definition under the state's unemployment compensation law).
- A pre-tax transportation fringe benefit is a benefit that allows an employee to set aside wages on a pre-tax basis, which is then only made available to the employee for the purchase of certain eligible transportation services, including transit passes and commuter highway vehicle travel.
- NJ DOL was to establish regulations and guidance

NJ: LEAVE LAWS

NJ PAID SICK LEAVE

October 2018

- All employees working in NJ are covered
- Accrue one (1) hour of paid sick leave for every 30 hours worked, up to 40 hours in benefit year
- Alternatively, employers may fulfill their obligation under the law by providing the full amount of sick leave in a lump sum at the beginning of each year.
- Up to 40 hours of unused sick leave can be carried over to the next calendar year. However, employers are only required to allow employees to use up to 40 hours of safe and sick leave per calendar year.
- An employer is not required to pay the employee for unused safe and sick leave at termination.
- Rebuttable presumption that an employee who is terminated within 90 days of taking leave has been retaliated against
- Recordkeeping Requirement – 5 years

NJ FAMILY LEAVE ACT & INSURANCE

As of February 19, 2019

- **Expanded definition of "family member"**
- **Job protection**
 - Employers with 30 or more employees can't dismiss, demote, or otherwise retaliate against workers for claiming Family Leave Insurance benefits.
- **No entitlement reduction**
 - Employers can no longer reduce the number of days or weeks you can take off from work and claim Family Leave Insurance benefits to care for a family member or bond with a child. Now, you can take available paid time off in addition to claiming the maximum allowed Family Leave benefits to which you are entitled.
- **Including foster children for bonding leave**
- **Change to bonding increment requirements**
 - Under the old law, you had to claim benefits for bonding in one consecutive 6-week period, or in separate week-long increments. Now, you can take it one or more days at a time, up to the maximum days available.
- **Expanding coverage to victims of domestic or sexual violence**
- **No more waiting week**
 - Although it still applies for Temporary Disability, workers who are approved for Family Leave Insurance benefits will not have to wait to be paid for the first week of their leave.

NJ FAMILY LEAVE ACT & INSURANCE

As of July 1, 2019

NJ will pay short, intermittent Family Leave Insurance claims

- Workers who only claim a few days at a time for caregiving or bonding will be paid for those days after a week, even if they don't claim additional days

As of January 1, 2020

- Increased employee contributions

As of March 25, 2020

Eligible employees may now take protected unpaid leave for up to 12 weeks during a 24-month period where:

- A state of emergency is declared by the Governor or Public Health Authority;
- Relating to an “epidemic,” a “known or suspected exposure to a communicable disease,”
- Requiring a covered employee to care for a family member because:
 - A child’s school or place of care has been closed due to epidemic or public emergency;
 - A family member is subject to a mandatory quarantine order as a result of illness cause by an epidemic or where the family member’s exposure would jeopardize the health of others; or
 - A family member is in voluntary self-quarantine as recommended by a health care provider or public authority as a result of suspected exposure to a communicable disease.

NJ TEMPORARY DISABILITY

As of February 19, 2019

Job protection

- Employers with 30 or more employees can't dismiss, demote, or otherwise retaliate against workers who take time off and claim Temporary Disability Insurance benefits to recover from a non-work-related illness or injury.

As of January 1, 2020

- Increased employee contributions

As of March 25, 2020

In event of a state of emergency declared by the Governor or Health Authority, disability now includes “an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent the spread of the communicable disease,” which requires in-home care or treatment of an employee where:

- A health provider, the Commissioner, or other Health Official determines that the presence of the employee in the community may jeopardize the health of others; and
- A health care provider or health authority recommends or orders the employee be isolated or self-quarantined as a result of a suspected exposure to a communicable disease.

NJ FAMILY INSURANCE & TEMPORARY DISABILITY

NJ FLI as of July 1, 2020

1. Increased maximum benefit period
 - Workers will be able to claim up to 12 consecutive weeks of Family Leave Insurance benefits during a 12-month period
2. Ability to continue some part-time work
 - Workers with more than one job will have the option to take leave from one employer while continuing to work for another

Both NJ FLI & NJ TDI as of July 1, 2020

Increased weekly benefit rate percentage and maximum benefit

- 85% of employee's average weekly wage
- Maximum weekly benefit increases to \$881 per week

NJ: WARN ACT

NJ WARN ACT

Effective 90 Days following termination of the current state of emergency declaration in New Jersey

- **Reduced Trigger Requirements:** A WARN notice will be required upon a layoff of 50 employees.
- **Coverage Beyond a Single Place of Employment:** The amendments also provide that, in deciding whether a WARN notice is warranted, a company is to consider all terminations that it is making in the state.
- **Expanded Notice Period:** The amendments increase the notice period from 60 days to 90 days.
- **Severance Guaranteed:** Severance pay is now guaranteed. All employees are entitled to one week of severance pay for each year they have worked with the company. The severance pay obligation is increased to four weeks of severance pay if the employer fails to provide timely notice of the layoff.
- Effective April 14, 2020, the mini WARN Act was retro-actively amended to exclude from the definition of “mass layoff” any layoff resulting from the COVID-19 pandemic by providing that a mass layoff shall not include a mass layoff made necessary because of, among other reasons, a national emergency. Also excluded from the mini WARN Act are mass layoffs due to fire, flood, natural disaster, act of war, civil disorder, or industrial sabotage.
- **Increased Employer Coverage:** All employers with 100 or more employees will be subject to the NJ WARN Act, regardless of how long those employees have been with the company or how many hours those employees work per week.
- **Claims Are More Difficult to Waive:** Employees may not waive their rights to severance under NJ WARN Act without state or court approval.

NJ: HIRING CONSIDERATIONS

RESTRICTIONS ON PRE-EMPLOYMENT INQUIRIES:

- Ban the box – a reminder you cannot inquire about criminal history in the first interview
- Salary history ban
- Marijuana – if an employee tests positive for marijuana – must provide an opportunity for medical explanation or retest at the employee's request
 - If medical marijuana participant, cannot refuse to hire on this basis alone unless employer fits within the exceptions (law enforcement, federal contractor, etc,)
 - Accommodation required for medical use
 - No accommodation for use at work or under the influence
 - Best practices – recommend reasonable suspicion guidelines be enacted and managers/supervisors trained on under the influence, etc.

NJ: CONFIDENTIALITY AND ARBITRATION AGREEMENTS

RESTRICTIONS ON USE OF CONFIDENTIALITY PROVISIONS AND ARBITRATION AGREEMENTS:

- Cannot require mandatory use of arbitration agreements for discrimination claims
 - May run afoul of Federal Arbitration Act
- Settlement Agreements
 - Can require amount of settlement to be confidential
 - May not require that the circumstances surrounding the claim be confidential
 - BUT – if the employee makes statements that reasonably disclose the name of the employer, the employer can respond

QUESTIONS?



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THANK YOU

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