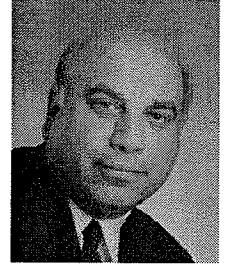


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Developments in NYS Labor and Employment Laws

Listed below are several recent developments in the New York Labor and Employment Laws.



Lou DiLorenzo

Commissioned Salespersons

Effective October 16, 2007, the New York Wage Payment Law requires that the terms of a commissioned salesperson be in writing, signed by the employer and employee, maintained for 3 years by the employer and available to the Commissioner of Labor upon request. N.Y. Lab. Law §191(c). The agreement must describe how wages, salary, draws and commissions are calculated during employment and upon termination. A failure to produce the writing upon request by the Commissioner results in a presumption that the arrangement is as claimed by the salesperson.

Salary Threshold for Wage Payment Exemptions

As of January 14, 2008, the threshold amount excluding executive, administrative or professional employees from certain wage payment provisions, will increase from \$600 per week to \$900 under NY Lab. Law 190(7). Employees earning less will have to be paid at least semi-monthly and the employer will have to obtain written consent in order to pay them by direct deposit. The legislature's stated purpose in raising the threshold is to produce more effective enforcement by the Department of Labor by expanding its jurisdiction over more individuals. This, however, does not raise the amount an executive, administrative or professional employee must be paid to qualify for exemption from New York state overtime requirements (that remains at \$536.10 per week).

Social Security Number Protection

Effective January 1, 2008, New York General Business Law §399-dd forbids employers from publishing social security numbers in their possession and requires certain steps be taken to help protect their confidentiality. The law prohibits:

- publishing or making a person's social security number available to the public;
- printing the number on a card or tag required for the individual to access products, services or benefits;
- requiring a person to use his number over the internet unless connection is secure and the number is encrypted;
- requiring a person to use number to access a website unless a password or unique personal identification number is also required to access the site;

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- printing a person's number on any materials mailed to the individual unless state or federal law requires the number to be on the document mailed.

New York's Nursing Mothers in the Workplace

Effective August 15, 2007, New York joined several other states in requiring a reasonable amount of unpaid break time each day to a nursing mother to express breast milk or permit a nursing mother to use paid break time or meal time to express milk for up to 3 years following childbirth. Employers are required to make "reasonable efforts" to provide a room or other location, in close proximity to the employee's work area so milk can be expressed in private. If an employer can prove that providing the break time would seriously disrupt operations, the employer need not provide the break time.

Joint Task Force on Employee Misclassification

Governor Spitzer signed an Executive Order establishing the "Joint Task Force on Employee Misclassification." The purpose is to stop employers from misclassifying employees as independent contractors. Such results impact minimum wage, overtime, Workers' Compensation, payroll taxes, unemployment insurance, etc. The task force includes representatives of the various agencies (Department of Labor, Attorney General, Department of Taxation, Workers' Compensation Board, and New York City Comptroller's Office). The task force is to coordinate the investigation and enforcement of misclassification by soliciting complaints through a hotline and referring cases to district attorneys. On February 1st of each year they are to issue a report to the Governor.

New York Human Rights Law

Effective January 1, 2008, the New York Human Rights Law was amended to clarify the scope of the law with respect to prohibiting disability discrimination in public accommodations. There are three new provisions defining discriminatory practices:

- refuse to make reasonable modifications in policies, practices, or procedures necessary to afford facilities, privileges, advantages, or accommodations to individuals with disabilities unless making modifications would fundamentally alter the nature of the facilities, privileges, advantages, or accommodations;
- refuse to take steps necessary to ensure that no individual with a disability is excluded or denied services because of the absence of auxiliary aids and services, unless taking those steps would fundamentally alter the nature of the facility or would result in an *undue burden*; or
- refuse to remove structural architectural or communication barriers in existing facilities and transportation barriers in existing vehicles and passenger rail cars if *the removal is readily achievable*.

Inquiries into Conviction Records

Effective November 1, 2007, under 296(16) of the Executive Law, New York employers may no longer inquire about or make an adverse employment decision based on an applicant's or employee's youthful offender adjudication under 720.35(1) of the Criminal Procedure Law or criminal conviction record which has been sealed under 160.55 of the Criminal Procedure Law. Under the current law, employers are prohibited from making adverse employment decisions based on past convictions unless the offense has a direct relationship to the employment or would involve an unreasonable risk to property or the safety or welfare of specific individuals or the general public.

Leave of Absence for Military Spouses

Labor Law Section 202-i, requiring an employer to allow up to ten days unpaid leave to the spouse of a member of the armed forces, national guard or reserves who has been deployed during a period of military conflict, was amended effective August 15, 2007 and deemed effective August 16, 2006, to include the State of New York as an "employer" under the Statute. The law applies where the employer works an average of 20 or more hours per week and the employer employs twenty or more workers.

Leave of Absence for Blood Donation

Effective August 15, 2007, a new section 202-j was added to the Labor Law to require employers with 20 or more employees to grant 3 hours of leave in any 12 month period to donate blood. Further, employers may not retaliate against any employee who exercises this right.

Leave of Absence for Cancer Tests

Effective August 2, 2007, public officers and state, municipal and county employees, and employees of any school district shall be entitled to a leave of absence for up to 4 hours to undertake a screening for breast cancer (Civil Service Law 159-b) or a screening for prostate cancer (Civil Service Law 159-c). The leave is considered "excused leave" and "shall not be charged against any other leave." The provisions do not apply to an employee of a city with a population of one million or more. (It is not specified in the law whether the leave is with or without pay).

Unemployment Insurance Law and Continuation of Benefit Rights for Strikers

Section 592 of the Unemployment Insurance Law, which deals with the suspension of the accumulation of benefit rights for a period of seven consecutive weeks for lost employment due to strike, lockout or other industrial controversy, was amended to provide that this waiting period will not apply when temporary or permanent replacement workers are hired by the employer. This amendment became effective August 15, 2007.

MACNY would also like to point out the following legislative changes.

New York Wage and Hour Provisions

- Minimum Wage increased to \$7.15 per hour for non-exempt employees (Jan 2007).
- Minimum salaried amount for exempt executive and administrative employees increased to \$536.10 per week (Jan 2007).

NYS Workers Compensation Reform

Workers' Compensation Reform initiative was signed on March 2007. The reform aims to benefit both injured workers and employers by increasing benefits while lowering workers' compensation costs. Here are some of the major changes:

- Weekly maximum pay for workers injured on the job will increase from \$400 to \$600 over a three year period.
- Reduction on the number of years of benefits paid for permanent partial disability
- Second Injury fund to be closed
- Anti-discrimination provision added to cover injured veterans

In addition, the workers' compensation reform strengthens penalties for fraud and abuse, encourages return-to-work programs and paves the way for rate reductions for employers.