New and Updated Employment Laws

Expanded Whistleblower Protection - Effective January 26, 2022

On October 28, 2021, New York State Governor Kathy Hochul signed legislation (S.4394A/A.5144A) amending Section 140 of the NYLL, which prohibits retaliation by employers against whistleblowers. The amendments, which go into effect on January 26, 2022, dramatically expand both who is protected by the law and what constitutes protected activity.

1. Expanded Scope of Protected Activity

Prior to these amendments, the types of activity protected by Section 140 of the NYLL were construed narrowly. Namely, Section 140 formerly prohibited retaliation against employees who reported an "activity, policy or practice that is in violation of law, rule or regulation" (i.e., reporting an actual violation was required to receive whistleblower protection) and only when such violation "create[d] and present[ed] a substantial and specific danger to the public health or safety" or concerned healthcare fraud.
Under the new law, the scope of protected activity is expanded in two (2) ways. First, an employee no longer must report conduct that "is in violation" of a law, rule, or regulation and need only disclose what they "reasonably believe" to be a violation of law, rule, or regulation to receive whistleblower protection. Second, the alleged violation does not need to pose "a substantial and specific danger to the public health or safety" or concern healthcare fraud to be protected.

2. Expanded Definitions

Additionally, the amendments to Section 140 of the NYLL expanded various definitions, thereby conveying whistleblower protection to additional individuals and activities that were not previously covered. Some of the more significant changes include:

- In addition to current employees, former employees and current and former independent contractors are now included under the definition of "employee" and will receive whistleblower protections under the law.
- The definition of "law, rule or regulation" is expanded to include executive orders and any judicial or administrative decision, ruling, or order.
- The definition of "retaliation" includes any action or threat that would adversely impact a current or former employee's current or future employment.

3. Additional Noteworthy Changes

The law also makes the following significant changes to Section 140 of the NYLL:

- The statute of limitations for a retaliation claim increases from one (1) year to two (2) years.
- Section 140 of the NYLL does not protect employees who report an alleged violation to a public body without first making a good faith effort to notify their employer and give the employer a reasonable opportunity to rectify the issue. The amendments now create certain exceptions to this rule when: (1) the employee reasonably believes that the supervisor is already aware of and will not correct the alleged wrongdoing or (2) if first reporting the alleged wrongdoing to the employer would result in (i) the destruction of evidence or concealment of the illegal activity, (ii) endangerment of a child, or (iii) physical harm to the employee or any other person.
- Whistleblower plaintiffs are now entitled to a jury trial under the law.
- The amendments contain new explicit remedies and penalties that include front pay, reinstatement, injunctive relief, compensation for lost wages and benefits, a civil penalty of $10,000, attorneys' fees, and punitive damages.
- Employers must now post a notice of employees' rights under the new law in a conspicuous, well-lighted, and easily accessible place that is customarily frequented by employees and applicants for employment.

Given the substantial and material nature of the changes to Section 140 of the NYLL, employers should begin taking steps to prepare for an increase in internal complaints and potential whistleblower claims by reviewing anti-retaliation policies and practices and providing training for supervisors in properly responding to employee complaints.

New and Updated Employment Laws

Expanded Paid Family Leave - Effective January 1, 2023

On November 1, 2021, Governor Hochul signed legislation (S.2928-A/A.06098-A) amending the New York Paid Family Leave Law to allow for leave to care for "siblings". Under the New York Paid Family Leave Law, eligible employees are provided with job-protected, paid leave to care for a "family member" with a serious health condition. Since January 1, 2021, eligible workers have been entitled to take up to twelve (12) weeks of leave at 67% of their pay, up to a cap set by the State.

Currently, "family members" include an employee's spouse, domestic partner, child (including a biological, adopted or foster child, step-child or child of a domestic partner, legal ward, or one whom the employee stands in loco parentis), parent (including a biological parent, adoptive or foster parent, step-parent, parent-in-law, legal guardian, or one who stood in loco parentis to the employee as a child), grandparent, or grandchild. Effective January 1, 2023, the amendment will expand the definition of a "family member" to include an employee's biological, adopted, step, and half-sibling(s).

Paid Vaccination Leave for Booster Shots - Effective Immediately

On October 12, 2021, the New York State Department of Labor ("NYDOL") updated its guidance (the "Vaccination Guidance") regarding paid leave time for COVID-19 vaccinations under Section 196-c of the New York Labor Law ("NYLL"), which requires New York employers to provide up to four (4) hours of paid leave per vaccine injection. Specifically, the Frequently Asked Questions portion of the Vaccination Guidance was updated to provide that, in addition to being entitled to up to four (4) hours of paid leave for each shot of the initial COVID-19 vaccination series, employees must also receive up to four (4) hours of paid leave for each vaccine booster shot. As a result, New York employers should immediately begin providing such paid leave to any employee who wishes to receive a COVID-19 booster shot.

Notice of Digital Workplace Monitoring - Effective May 2022

New York employers that monitor employees' telephone calls, e-mails or internet use must soon provide written notice to employees. The new law requires private employers to provide written notice upon hiring to all employees if they monitor or intercept employee electronic communications, effective May 6, 2022. This includes any monitoring or interception of telephone calls, e-mail communications and internet usage. The notice must be in writing or in an electronic form and must be acknowledged by the employee. Employers are also required to post the notice in the workplace.
This law does not prevent you from engaging in the monitoring of employees—employers retain the right to monitor computer usage, so long as employees are informed of the surveillance. The law does not apply to computer system maintenance/protection processes that employers go through to manage the type or volume of incoming or outgoing e-mail, telephone voice mail, or internet usage.

GTM is here to assist. We can update your handbook, train employees and managers to enforce expanded rules, and review all your leave policies and current procedures to ensure compliance.

Don't have an employee handbook? Get more information on how we can customize a handbook tailored to your business.