

# LABOR AND EMPLOYMENT LAW UPDATE

Presented by:  
Dean L. Silverberg, Esq.

**ALANYC 14<sup>th</sup> Annual Educational Symposium & Exposition**  
**AMA Conference Center**  
**1601 Broadway at 48<sup>th</sup> Street**  
**October 18, 2019**

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## Presented by

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# Agenda

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## Employment Law Update

- i. Introduction: It's Been a Busy Year
- ii. New York State and New York City Expand Protections against Workplace Discrimination
- iii. Marijuana and the Workplace: The Stone-Cold Facts
- iv. The Resurgence of the Equal Pay Movement
- v. Paid Leave Law Update
- vi. Reasonable Accommodation Update



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## Introduction: It's Been a Busy Year!



# Just a Few 2019 Headlines

**Vox**  
RECODE EXPLAINERS THE HIGHLIGHT FUTURE PERFECT THE GOODS POLITICS & POLICY

## The House just passed a bill to close the gender pay gap

It has an uphill battle in the Senate.  
By Ella Nilsen | ella.nilsen@vox.com | Mar 27 2019, 5:43pm EDT

**NYC Bans Discrimination Based on Sexual and Reproductive Health Decisions**

MAGAZINE

## The Best Women's Soccer Team in the World Fights for Equal Pay

As the U.S. women's national soccer team defends its World Cup title in France, its members are preparing for a courtroom battle.  
By Lizzy Goodman

*The New York Times*

## **Sex Harassment Laws Toughened in New York: 'Finally, This Is Happening'**

*The New York Times*

## **Marijuana Decriminalization Is Expanded in N.Y., but Full Legalization Fails**

Possession of up to two ounces or less of marijuana in New York State will be treated as a violation instead of a crime, with fines dropping to as low as \$50.

**Wearing natural hair, braids now protected in New York**

**Cuomo Signs Pay Equity Bill, Bans Salary History Question**

**Pumping Up Protections: New York City Employers Must Comply with Strict New Lactation Room Laws**  
February 4, 2019

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## Trend: NYS and NYC Expand Protections against Workplace

**Discrimination**



# Protected Categories:

Anti-discrimination laws ban discrimination against individuals who are members of certain protected groups

## NYS/NYC

1. Race (including hair style)
2. Color
3. Religion/Creed
4. Sex/Gender
5. National Origin
6. Age
7. Physical or Mental Disability
8. Genetic Information
9. Military or Veteran Status
10. Alienage/Citizenship Status
11. Marital/Partnership Status
12. Sexual Orientation
13. Gender Identity
14. Pregnancy
15. Caregiver Status
16. Familial Status
17. Domestic Violence Victim
18. Current Unemployment Status
19. Arrest or Conviction Record
20. Credit or Salary History
21. Sexual and Reproductive Health Decisions
22. Immigration status (Aug. 15, 2019)
23. Status as victim of domestic violence (Nov. 18, 2019)

All employees deserve a workplace free from discrimination and harassment

## New Protected Classes in 2019

- **NYS, NYC (guidance): Definition of “race”** under anti-discrimination law now includes “traits historically associated with race, such as **hair texture and protective hairstyles,**” including “braids, locks, and twists”
- **NYS: Immigration status** – Employers may not threaten, discriminate or retaliate against immigrant employees, including threatening to report them or a family member to U.S. immigration authorities
- **NYS: Religious attire/practices (Oct. 8, 2019)** – Clarifies that an employer may not require a person to violate or forego the wearing of any attire, clothing, or facial hair in accordance with the requirements of his or her religion, unless accommodation would cause undue hardship
- **NYS: Status as victim of domestic violence (Nov. 18, 2019)** – discussed later
- **NYC: Sexual and reproductive health decisions** – “any decision by an individual to receive services, which are arranged for or offered or provided to individuals relating to sexual and reproductive health, including the reproductive system and its functions”





## Expansion of Other Worker Protections under State Anti-Discrimination Laws

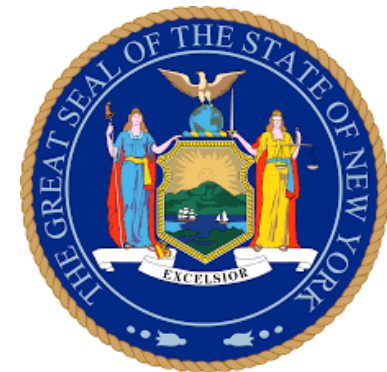
### Sweeping Changes Recently Enacted to NYS Human Rights Law (“HRL”)

- HRL covers **ALL private employers** (2/8/20)
- Extends **statute of limitations** for sexual harassment claims from 1 to 3 years (8/12/2020)
- HRL’s protections extend to certain **non-employees**, e.g., contractors, subcontractors, vendors (10/11/19)
- Eliminates the requirement that a complainant demonstrate that another individual, not in the same protected class, was treated more favorably (“**comparator**”) (10/11/19)
- Lowers the burden of proof and weakens employer defenses in harassment cases (10/11/19)



# Sweeping Changes Recently Enacted to NYS HRL (cont'd)

- Extends the current restrictions on **non-disclosure agreements** (“NDAs”) in sexual harassment settlements to settlements of all discrimination, harassment, and retaliation claims, plus new limitations (10/11/19)
- Requires notice of employees’ **disclosure rights** in employment contract NDAs (1/1/20)
- Extends the **ban on mandatory arbitration agreements** concerning sexual harassment claims to all HRL claims (10/11/19)
- Requires distribution of information relating to the employer’s **anti-harassment policy and training** to new hires and training program attendees (8/12/19)
- Authorizes an award of **punitive damages** in certain cases (10/11/19)



# Are Bans on Mandatory Pre-Dispute Arbitration Agreements Preempted by Federal Law?

- **Federal Arbitration Act (“FAA”)**

- Affirms enforceability of otherwise legal arbitration agreements
- Supreme Court: FAA reflects federal policy favoring arbitration



- **June 2019: Federal court holds that FAA preempts NY ban on mandatory arbitration agreements**  
(*Latif v. Morgan Stanley & Co. LLC*)

- May be appealed
- Not binding on other courts



- **BUT: Even if such agreements are lawful, employers should consider if they are best for their workforce in current climate:**

- Ban for just sexual harassment claims?
- Ban for individual but not class actions?

# NYS: Restrictions on NDAs in Sexual Harassment Settlements

- Employer cannot prevent disclosure of **“underlying facts and circumstances”** in settlement NDA unless complainant agrees

- **Three-step process and timeframe:**

- Complainant has **21 days** to consider it
- If the complainant wants NDA, parties must put in writing and sign
- The complainant has **7 days** to revoke the NDA, during which it is unenforceable
- Thus, **two separate agreements**: First the agreement as to preference of NDA and then the larger settlement agreement, which incorporates the NDA



- **New law extends prohibition to ALL discrimination claims (10/11/19)**

# New York: Required Notice of Disclosure Rights in Employment Contract NDAs

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- **Effective Jan. 1, 2020**

**An NDA in an employment contract or agreement that prevents an employee from disclosing “factual information related to any future claim of discrimination” is void and unenforceable, unless the agreement informs the employee or prospective employee “that it does not prohibit him or her from speaking with law enforcement, the [federal] equal employment opportunity commission, the state division of human rights, a local commission on human rights, or an attorney retained by the employee or potential employee.”**

# NYS & NYC Anti-Harassment Training Requirements: Pocket Summary

Jurisdiction	Covered Employers	2019 Training Deadline	Who Must Be Trained?	Training Requirements
New York State	All	Oct. 9, 2019 (In subsequent years, training date may be based on calendar year, anniversary of employee’s start date, or any date employer chooses)	<ul style="list-style-type: none"> <li>All “workers” – F/T &amp; P/T, temporary &amp; seasonal employees, regardless of immigration status</li> <li>Supervisors &amp; managers</li> <li>Individuals who work “a portion of their time” in NYS, even if based in another state</li> <li>Minors (simplify for minors under 14)</li> <li>Interns</li> <li>New hires: As soon as possible</li> <li>Note: Training is NOT required for non-employees who provide services in workplace pursuant to a contract (e.g., vendors, ICs) or their employees</li> </ul>	<ul style="list-style-type: none"> <li>Annual</li> <li>Interactive (some form of employee participation)</li> <li>Meet or exceed minimum content standards</li> <li>In language spoken by or accessible to employee</li> <li>No minimum number of hours</li> <li>No recordkeeping or employee acknowledge requirements, but recommended</li> </ul>
New York City	Employers with 15 or more employees (including ICs and interns)	Dec. 31, 2019 (In subsequent years, training date may be based on calendar year, anniversary of employee’s start date, or any date employer chooses)	<ul style="list-style-type: none"> <li>All F/T , P/T and short-term employees employed within the City, including interns and supervisors and managers who                             <ul style="list-style-type: none"> <li>(i) work more than 80 hours in a calendar year, AND</li> <li>(ii) work for at least 90 days</li> </ul> </li> <li>Training of ICs “strongly advised”</li> <li>Employees at other locations who “regularly interact” with NYC employees “should be trained”</li> <li>New hires: As soon as possible after hire (unless already received compliant training in applicable cycle)</li> </ul>	<ul style="list-style-type: none"> <li>Annual</li> <li>Interactive (some form of employee participation)</li> <li>Meet or exceed minimum content standards</li> <li>In language spoken by or accessible to employee</li> <li>No minimum number of hours</li> <li>Recordkeeping and employee acknowledgement requirements</li> </ul>

# Other Expansions of Sexual Harassment Laws

## Protections for Non-Employees

- **NY:** Law extends liability to any employer that permits sexual harassment of “non-employees” in its workplace

- “Non-employee:”

- A contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such an entity



- **Note:** In addition to potentiality liability for sex harassment of non-employees, employers may also be liable for sex harassment *committed by* non-employees

## More individuals covered

- **NYS & NYC** expressly protect unpaid interns against sexual harassment

## Longer Statute of Limitations

- **NYS & NYC:** Extended from one to three years

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## *Speaking of new trends...*





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# Marijuana and the Workplace: The Stone-Cold Facts



# 2019 Marijuana Laws: Drug Testing and Decriminalization

## ■ **NYC: Testing (effective May 10, 2020)**

- Employers may not require a prospective employee to submit to a marijuana or THC drug test as a condition of employment
- Exceptions for employees in safety-related positions, transport-related positions, caregivers, and certain federal contractors



## ■ **NYS: Decriminalization**

- Civil penalty for the possession or consumption of a “personal use quantity” of marijuana – less than 2 oz.
  - Still an arrestable offense, but will not result in a prison term or criminal record
- Most past convictions for marijuana possession of 25 grams (.88 of an ounce) or less will automatically be expunged
- Marijuana will be added to the definition of smoking in the Public Health Law, so smoking marijuana will be prohibited anywhere smoking tobacco is prohibited

# Medical Marijuana: Duty to Reasonably Accommodate?

## Differences in State Laws May Result in Different Outcomes for Employers

- Some states' laws expressly *exempt* employers from the obligation to accommodate, e.g.: **OK** (effective August 29, 2019) and **ND** (effective August 1, 2019)
- But, even if marijuana statute is silent, obligation to reasonably accommodate could arise under state's human rights law
  - E.g., **NY**: Being a certified patient qualifies as having a “disability” under NYS human rights and civil rights laws
    - *It is an unlawful discriminatory practice for an employer to refuse to provide reasonable accommodations to the known disabilities of an applicant or employee in connection with a job or occupation sought or held*



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# The Resurgence of the Equal Pay Movement



## Federal: Proposed Legislation

- **Paycheck Fairness Act (passed House 3/19) would:**
  - Narrow defenses, e.g., a factor(s) other than sex must account for the entire differential in pay
  - Protect wage transparency – employees may discuss/disclose wages
  - Prohibit inquiry into, or reliance on, an applicant's salary history
  - Authorize punitive damages in some cases
  - Direct EEOC to collect and make public wage data from employers with 100+ employees
  
- **Fair Pay Act (HR 2039) would:**
  - Prohibit wage discrimination based on sex, race, or national origin for work in "equivalent jobs"
    - Equivalent jobs are those whose composite of skill, effort, responsibility, and working conditions are equivalent in value, **even if the jobs are dissimilar**
  - Protect wage transparency/disclosure
  - Require employers with 25+ employees to report compensation data to EEOC

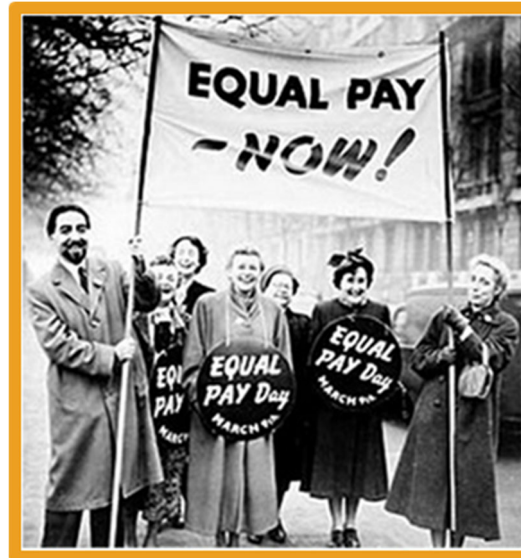


Rosa D. DeLauro (D-CT)

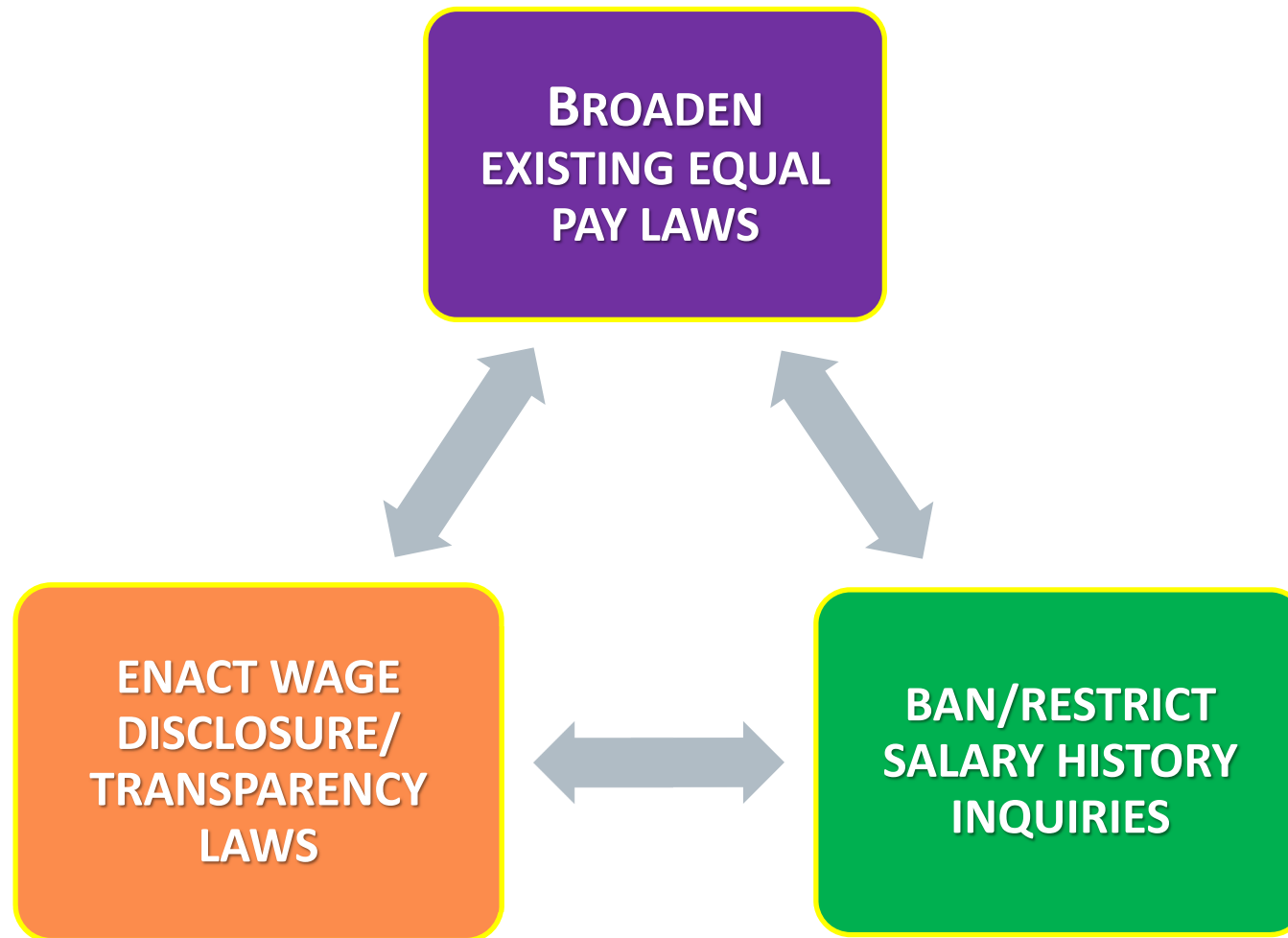


Eleanor Holmes Norton (D-DC)

## Trend: States/Cities Expand Pay Equity Laws



## The Three Major Components to Recent Pay Equity Laws



# New York State 2019 Amendments to Equal Pay Law

## Effective October 8, 2019

- Broadens categories protected against wage discrimination from just sex to **all protected categories** under NYS Human Rights Law, e.g., race, religion, marital status, etc.
- Significantly lowers the burden of proof for establishing an equal pay claim from the current “equal pay for equal work” standard to **“equal pay for substantially similar work.”**





# New York State Wage Disclosure/Transparency Laws

- **Employer cannot prohibit employees from inquiring about or discussing their wages or those of another employee**
  - Exceptions for certain employees, e.g., HR personnel with access to employee wage info as part of job duties
- **An employer may prohibit an employee from disclosing another employee's wages unless that employee consents**
  - An employee is not required to disclose his or her wages
- **2016 Amendment**
  - Allows written policy that puts reasonable limitations on the time, place and manner for discussion of wages at workplace during working hours
- **NYDOL: 2017 Rule**
  - Any limitations must be “narrowly tailored” and ensure channels for the communication of information



# NYS and NYC Salary History Inquiry Bans



## **NYS:** Effective Jan. 6, 2020

### **Employers may not:**

- Require an applicant's or employee's salary history as a condition to being interviewed, hired or promoted
- Rely on salary history in determining whether to offer employment or what salary to offer
- Refuse to interview, hire, or promote an applicant or employee: (i) based upon salary history, (ii) because the individual refused to provide salary history, or (iii) because the individual filed a complaint with the Department of Labor

### **Employers may:**

- Consider salary history if voluntarily disclosed
- Verify salary history after conditional job offer, if voluntarily disclosed
- Inquire/verify if required by law

## **NYC:** Effective Oct. 31, 2017

### **Employers may not:**

- Inquire about salary history
- Rely on salary history during the hiring process
- Ask current/former employers about applicants' earnings
- Search public records for applicants' earnings

### **Employers may consider salary history if:**

- Without prompting, applicant volunteers information
- Employee is seeking internal transfer or promotion

### **Employers may:**

- Ask about salary/benefits expectations
- State anticipated salary/salary range
- Ask about forfeited deferred comp
- Ask about details of a competing offer

# Pay Equity Best Practices

- **Ensure Compliance with All Pay Equity Laws**

- E.g., may be broader than just gender-based; is there a local law banning salary history inquiries?

- **Review Hiring Practices**

- Revise applications; train interviewers
- Recruitment: Consider wider applicant pool
- Evaluate outside recruiter's practices
- Create/review salary bands

- **Consider Pay Audits**

- Evaluate pros and cons
- If you find problems, fix them!



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## Paid Leave Law Update

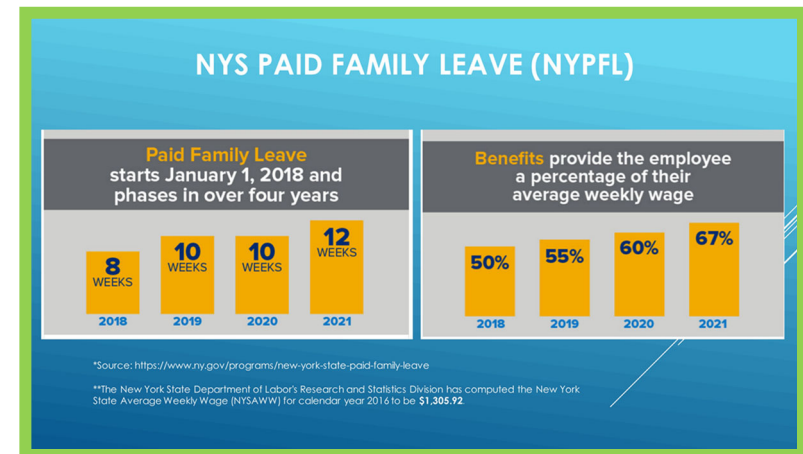


# New York State

## Paid Family Leave Benefits Law (“PFLBL”)

**F/T employees who have worked for a covered employer for 26 consecutive weeks (and P/T employees who have worked at least 175 days for the employer) are eligible for 10 weeks of protected and partially paid family leave to:**

- Bond with a newly born, adopted or foster child
- Care for a close relative with a serious health condition
- Assist loved ones when a family member is deployed abroad on active military service



**Note: Leave increases to 12 weeks in 2021**

## NYS PFLBL: Maternity Leave

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- For maternity leave, PFLBL starts **after** the disability period
- This presents a major shift in how much protected maternity leave NY employees have



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## Paid Sick (and Safe) Time



# NYC Earned Safe and Sick Time Act (“ESSTA”)

- **Covers employers with 5 or more employees (if fewer than 5, must provide unpaid leave)**
- Covers employees who work 80+ hours in calendar year in NYC
- Employees accrue one hour of ESSTA leave for every 30 hours worked in NYC, up to 40 hours per year
- Employees can carry over up to 40 hours of ESSTA time (unless frontloaded)
  
- **ESSTA leave may be used for:**
  - Employee's or family member's mental or physical illness or condition, or for preventative care
    - Per NYC Dept. of Consumer Affairs: elective surgery, including organ donations, of an employee or covered relation
  - Closure of workplace or child's school/care facility due to public health emergency
  - Safe time for domestic violence or sexual assault victims
  
- **New written policy rules:** include method of calculation/carryover, PTO policy, confidentiality; “single writing” requirement; distribute upon hire





## On the Horizon for NYC? Earned Paid Time Off to Use *for Any Reason*

- **NY City Council bill: Would require employers with 5 or more employees to provide up to 10 days off per year to use *for any reason***
- **Similar to ESSTA in structure:**
  - Employees would earn one hour of paid personal time (“PPT”) for every 30 hours worked, up to a maximum of 80 hours of PPT in any calendar year
  - Employee must work 80 hours per year in NYC (may be entitled to unpaid personal time if they work fewer hours)
  - Employees could carry over accrued, unused PPT, but usage per year may be capped at 80 hours
- PPT would be **IN ADDITION TO ESSTA**, and any other time off required by law, e.g., temporary schedule change for personal events (discussed next)
- **BUT:** Employers with PTO policies that meet or exceed the bill’s requirements would not need to provide additional time off



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# Reasonable Accommodation Update



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## Reasonable Accommodation: Disability



# Reasonable Accommodation

## The Americans With Disabilities Act



**Disability:** A physical or mental impairment that substantially impairs a major life activity

**Qualified Individual:** Can perform essential functions of the job, with or without a reasonable accommodation

If employee is a qualified individual with a disability, they are:

- Protected by law and
- Entitled to a **reasonable accommodation**, unless it would cause the employer “undue hardship”

## Reasonable Accommodation:

### Federal vs. State/Local Law

- **Accommodation obligations under local law may be greater than obligations under state law, which may be greater than obligations under federal law, e.g.,**
  - **NY** and **NJ**: The definition of disability does not require that an individual be substantially limited in a major life activity
  - In **NYC**, there is no requested accommodation that is per se unreasonable, including a request for indefinite leave
- **NYC**: Effective Nov. 15, 2019: Employers may not retaliate against individuals who make a request for a reasonable accommodation on the basis of a disability or for other specified reasons



# ADA Reasonable Accommodation

## The Interactive Process

### EEOC Regulations:

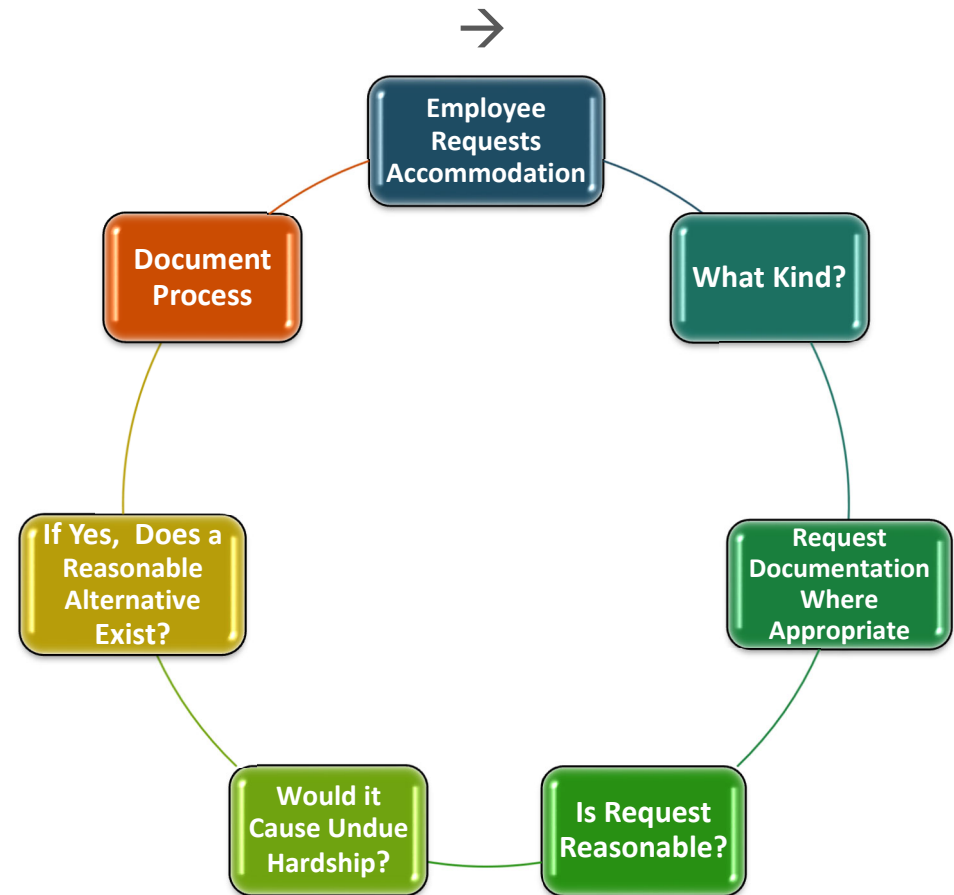
- Employers must focus their efforts on reasonably accommodating employees with disabilities so long as the worker can perform the essential functions of the job

### Triggering the Interactive Process:

- Typically (but not always) under ADA, the employee must request an accommodation
- But, e.g., NYC: Process is triggered if employer knew or should have known about disability

### Interactive Process:

- ADA always requires an individualized inquiry into the ability of a particular person to meet the requirements of a particular
  - Fact-sensitive
  - Case-by-case determination



# Reasonable Accommodation

## NYC's "Cooperative Dialogue" Law

- **Effective Oct. 15, 2018:** Employers must engage in a "cooperative dialogue" with individuals who may be entitled to a reasonable accommodation under NYC Human Rights Law
- **Applies to accommodation requests concerning:**
  - Religious needs
  - A disability
  - Pregnancy, childbirth, or a related medical condition
  - Needs of a victim of domestic violence, a sex offense or stalking
- **"Cooperative dialogue"**
  - Analogous to interactive process under ADA
  - Precondition to denying an accommodation
  - **Requires WRITTEN final determination identifying accommodation granted or denied**



# Reasonable Accommodation

## NYC's "Cooperative Dialogue" Law (cont'd)

### ■ **Initiating a Cooperative Dialogue:**

Duty imposed when an individual's disability is known AND when the employer should have known

### ■ **Engaging in a Cooperative Dialogue:**

Employer must communicate with an individual in good faith and in a transparent and expeditious manner

- **Is there a policy informing employees how to request accommodation?**
- **Is employer's response to the request timely** in light of the urgency and reasonableness of the request?
- **Did the employer seek to obstruct or delay the cooperative dialogue** or in any way to intimidate or deter the individual from requesting the accommodation?

### ■ **Concluding the Cooperative Dialogue:**

Such dialogue is ongoing until a reasonable accommodation is granted or the employer concludes that:

- There is no accommodation available that will not cause undue hardship;
- Only one reasonable accommodation was identified, but the individual did not accept it; or
- No accommodation exists that will allow the employee to perform the essential requisites of the job.
- **DOCUMENT!!**





# Interactive Dialogue: Tips

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- Initiate interactive process expeditiously
- Do not immediately reject accommodation request, no matter how unreasonable it may appear
- Where appropriate, ask for details on how individual's proposal would work
- If the accommodation appears to be unreasonable (e.g., would cause undue hardship), try to respond with a reasonable alternative, or tell employee you will consider it and get back to him/her promptly
- Try to get "buy-in" from individual with respect to employer's alternative accommodation



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# Reasonable Accommodation Based on Other Protected Statuses



**NEW**

**Pregnancy  
Accommodations  
at Work**

Notice and Factsheet

# Accommodation is NOT only about Disability...

- **Accommodation could also be based on:**
  - Religion
  - Pregnancy/Childbirth/Lactation
  - Status as the Victim of Domestic Violence



**Keep records during all steps in the process.**

## Reasonable Accommodation:

### Pregnancy, Childbirth & Related Medical Conditions

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#### Federal: Pregnancy Discrimination Act:

- Requires employers with 15 or more employees to treat disabilities related to pregnancy, childbirth, or related medical conditions the same as disabilities related to other medical conditions under an employer's health or disability insurance, or sick leave plan
- **EEOC Guidance: An employer may not:**
  - Compel a pregnant employee to take leave, as long as she is able to perform her job;
  - Require an employee to remain on leave until she gives birth once recovered from pregnancy-related disability; or
  - Prohibit an employee from returning to work for a set length of time after childbirth.
- **Undue hardship standard:** “significant difficulty or expense”
- **FMLA:** A period of incapacity due to pregnancy or for prenatal care is considered a “serious health condition”



# State/Local Pregnancy Accommodation Laws

## Some state/local laws:

- Cover many more employers, e.g., **NJ, NY**
- Do not require that pregnancy/related condition be a “disability” to be entitled to accommodation, e.g., **NYC**
- Do not require medical certification, e.g., **NYC**
- Require written notice of rights to employees, e.g., **NYC**

**NOTICE**  
**Pregnancy Accommodations at Work**

The FMLA leaves rights law applies to employers with 50 or more employees to provide reasonable accommodations to employees related to pregnancy, childbirth, and related medical conditions to enable them to continue working, unless leave is your generally usable entitlement to family leave. Employers are required to provide written notice of employees' rights under the law, and can use this document to satisfy that requirement. As such, it should be posted in the workplace.

**EMPLOYERS**

Provide a clear (PDF) and printed for employees to request a reasonable accommodation. Read your posted notices to promptly alert all to reasonable accommodations.

- Notify your employer's contribution to the workplace
- Keep your workplace safe, and ensure facilities fit for use
- Keep them in the workplace for as long as they are able to continue working
- It is right for your employer and does not cause undue hardship to your business

Ignoring a request for a reasonable accommodation, failing to request leave, providing at most your standard after they request and take a leave could be illegal and may result in penalties. Employees are protected from being fired or discriminated against because they request leave and are not on leave. The accommodations requested by the employee should be based on the employee's own needs and abilities, and not on any other factor.

**EMPLOYEES**

If you have a reasonable accommodation to continue working or remain employed, you can request one. Examples include, but are not limited to:

- Flexible job or work arrangements, and so forth to provide accommodations
- Changes to your work environment such as a desk or a chair
- Accommodate with physically demanding tasks
- Some other workplace adjustments
- A change in your work environment such as a desk or a chair
- Light duty or a temporary transfer to a different position
- Time off or leave from children

The FMLA of reasonable accommodations applies to all employees covered by the law. It is not a requirement and the law does not require you to request for a reasonable accommodation. You can file a complaint with the EEOC if you believe your employer is violating the law. Call the EEOC Department of Human Rights at 1-800-368-1024 for more information.

NYC Department of Human Rights  
NYC Department of Social Services

# Reasonable Accommodation

## Pregnancy, Childbirth & Related Medical Conditions

### New York State

#### The Protect Women from Pregnancy Discrimination Law:

- Defines a “pregnancy-related condition” as a disability
- Requires employers to provide reasonable accommodations for pregnancy-related medical conditions, unless the accommodation would place an undue burden on the employer

### New York City

- Employers must provide reasonable accommodations for an employee’s pregnancy or childbirth, **regardless of whether the employee has a pregnancy-related medical condition**
- Reasonable accommodation may include:
  - Bathroom breaks
  - Breaks to facilitate increased water intake
  - Periodic rest for those who stand for long periods of time
  - Assistance with manual labor
  - Leave for a period of disability arising from childbirth
- Cooperative Dialogue Law applies



# Lactation Accommodation

## New York City

- **Effective March 17, 2019: Employers with 4 or more employees in NYC must provide:**
  - **Lactation room:**
    - A sanitary place “free from intrusion” -- NOT a restroom
    - Must include: electrical outlet; chair; surface for a breast pump and other items; sink; and refrigerator near room
    - Need not be exclusively for lactation purposes, but lactation has priority
  - **Written policy – distributed at time of hire (e.g., handbook) – must state:**
    - Employees have a right to request the use of a lactation room
    - Process for requesting use of lactation room
    - Employer will respond to request within 5 days
    - Procedure for when 2 or more employees need use of the room
    - Right to “reasonable” break time (e.g., NYS law – minimum 20 minutes)
    - Right to pump at work station (NYCCHR)
    - **Policy will be re-sent to employee on parental leave**
    - **Employer will engage in “cooperative dialogue” if compliance causes undue hardship**
      - Temporary accommodation during period of cooperative dialogue



# Accommodation:

## Victims of Domestic Abuse/Violence

### NYS

- Effective Nov. 18, 2019: Absent undue hardship, an employer is required to reasonably accommodate victims of domestic violence who must be absent from work “for a reasonable amount of time” to:
  - Seek medical attention for injuries caused by domestic violence;
  - Obtain services from a domestic violence shelter, program, or rape crisis center;
  - Obtain psychological counseling related to domestic violence, including for a child who is a victim of domestic violence;
  - Participate in safety planning relating to domestic violence; and
  - Obtain legal services or participate in legal processes relating to domestic violence.

### NYC:

- Earned Safe and Sick Time Act
- Temporary Change of Schedule for Personal Events Law
- “Cooperative dialogue” law

### NJ:

- SAFE Act allows 20 days of unpaid leave within 12 months of an act of violence for the victim of the violence





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**Presented by**

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**THANK YOU FOR COMING AND  
ENJOY THE COCKTAIL HOUR**