



2024 Non-Profit Update:  
Legal & Governance  
Employment Law Update

By: Douglas E. Rowe, Esq.

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# Complying with the Wage & Hour Laws in New York

## A. Pay Regulations - General

1. Overtime rate – 1.5 times regular rate
  - What is “regular rate”
2. Minimum wage
  - NYC - \$16.00
  - Nassau, Suffolk and Westchester - \$16.00
  - Remainder of NYS - \$15.00
3. Spread of Hours Pay – New York
4. Notice of pay rates for new hires – NY Labor Law 195.
5. Wage Statements
6. Frequency of Pay
7. The Importance of Recordkeeping
8. Beware of Rounding

## B. Overtime Pay Under federal Fair Labor Standards Act

1. Enterprise Coverage
  - \$500,000 annual revenues
  - In ordinary commercial activities, such as operating a business, like a gift shop.
  - Does not include contributions, membership fees, and donations
2. Individual Coverage
  - Interstate commerce
  - Individual analysis

# **Complying with the Wage & Hour Laws in New York**

## C. New York Regulations

1. Minimum Wage Order
2. FAQ's for Non-Profits
3. Election to be Exempt
4. Regulations for Exemption

# **Complying with the Wage & Hour Laws in New York**

## D. White Collar Exemptions Typically Applicable

### 1. Executive Exemption

- Primary duty of managing the enterprise or a recognized department
- Customarily and regularly direct the work of at least two other full-time employees and have right to hire and fire

### 2. Administrative Exemption

- Primary duty performance of office or non-manual work directly related to the management or general business operations of the employee
- Must include the exercise of discretion and independent judgment with respect to matters of significance.

### 3. Professional Exemption

- Learned professionals – doctors and lawyers
- Creative professionals in field of artistic or creative endeavors

### 4. Outside Sales Exemption

- Primary duty is making sales
- Customarily and regularly away from the employer's business location

### 5. Computer Related Occupations Exemption

# **Complying with the Wage & Hour Laws in New York**

- E. New York State – Salary Thresholds for Overtime Exemptions
  - 1. NYC - \$1,200/week (\$62,400/year)
  - 2. Nassau, Suffolk and Westchester - \$1,200/week (\$62,400/year)
  - 3. Remainder of NYS - \$1,124.20/week (\$58,458.40/year)
  - 4. Effective July 1, 2024, federal threshold is increasing from \$684/week to \$844/week and then, effective January 1, 2025, to \$1,128/week.

# Complying with the Wage & Hour Laws in New York

- E. Conduct a Self Audit
  1. Review salary information
  2. Review exemptions
  
- F. Potential Claims
  1. United States Department of Labor Audit
  2. New York State Department of Labor Audit
  3. Private Action
  4. Class or collective action
    - Liquidated Damages
    - Attorneys' Fees
  
- G. Independent Contractors
  1. IRS 20 factors
  2. NYS – right to control test
  3. DOL's Independent Contractor Rule
  
- H. Volunteers – Caution
  1. Cannot displace regular employed worker or perform such work
  2. Cannot volunteer in commercial activities run by non-profit such as gift shop
  3. Beware of consolidating employment policies in a single handbook for employees and volunteers
  4. Beware of the non-exempt employee who “volunteers” after regular hours
  5. Train supervisors not to coerce employees to “volunteer”

# **Complying with the Wage & Hour Laws in New York**

- I. Working from Home: Minefields for Employers
  1. Tracking Time (require employees to certify time daily)
  2. Set schedules
  3. Establish Boundaries
  4. Remember meal periods
  5. Off the clock time
  6. Pay attention to expenses-be careful of minimum wage violations
  7. Posters – Physical and electronic notice required by NYS
  8. Working from Home Policy – Train Supervisors to be vigilant

# **Complying with the Wage & Hour Laws in New York**

- J. Salary Transparency Laws
  - 1. NYC – Effective 11/1/22
  - 2. NYS – Effective 9/17/23
  - 3. Include, in advertisements, the compensation or range of compensation and the job descriptions
  - 4. Fines and penalties for non-compliance.



# **NEW EMPLOYMENT LAWS FOR 2024**

# **NON-COMPETE BAN**

1. New York State – Gov. Hochul vetoed
2. New York City – pending bill
3. FTC – voted to ban, effective 9/4/24; injunction motion will be decided by July 3, 2024

# **FREELANCE ISN'T FREE ACT**

1. Effective 5/20/24, for independent contractors
2. Requires written contracts, timely payment of compensation, complaint procedures

# CLEAN SLATE ACT

1. Effective 11/16/24
2. Automatically seals certain convictions after passage of time
3. Reminder of employer obligations not to discriminate on basis of criminal conviction history

# **REQUESTING ACCESS TO ELECTRONIC PERSONAL ACCOUNTS**

1. Effective 3/12/24 - New York prohibits employers from requesting that employees/applicants provide access to electronic personal accounts

# **NYS DIVISION OF HUMAN RIGHTS STATUTE OF LIMITATION**

1. Effective 2/24 - New York extends statute of limitations to file employment discrimination claims with Division of Human Rights from one year to three years.

# **Employer Regulation of Employee Political Conduct In and Outside of the Office**

1. Activity “In” the workplace
  - a. “At Will” employment
  - b. Have clear policies that address political expression, social media use, and other “on duty” conduct
2. Activity “Outside” the workplace
  - a. New York Labor Law §201-d prohibits termination or discrimination of such activities “outside” of work hours, off the employer’s premises
  - b. Employer’s Safe Harbor – if such conduct creates a material conflict of interest related to the employer’s business interest
3. Employers should set clear expectations through employee handbooks, policies, training to minimize political conflicts

# **Penal Law Amendment**

1. Effective 2024 - New York amends Penal Law to increase penalties for employee wage theft



# **Expanded Protections for Pregnant and Breastfeeding Workers**

- Federal Law Passed the Pregnancy Workers Fairness Act and the PUMP Act.
- The PWFA requires employers with 15 or more employees to provide reasonable workplace accommodations whose ability to perform the functions of a job are limited by pregnancy, childbirth or a related medical condition.
  - This is an expansion of the ADA.
  - New York Law already provided similar protections to pregnant workers.

# **PUMP Act (Federal)**

- Federal PUMP Act expands the FLSA protections for employees who wish to express milk at work.
- This federal statute requires employers to provide employees:
  - Reasonable break time to express milk for 2 years following birth of a child;
  - Provide employees a place, other than a bathroom, that is shielded from view and intrusion from a coworker;  
and
  - Compensate employees if they are working during this break.

# **New York Expands Protections for Breastfeeding Employees**

- Amends Labor Law 206-c
- Employers must permit employees to use a meal break or paid break time to express breast milk for up to 3 years following birth.
- Provides that the location provided to express breast milk:
  - (i) in close proximity to the work area; (ii) well lit; (iii) shielded from view; and (iv) free from intrusion from other persons in the workplace or the public.
- Such room or other location shall provide, at minimum, a chair, a working surface, nearby access to clean running water and, if the workplace is supplied with electricity, an electrical outlet.
- The room or location provided by the employer for this purpose shall not be a restroom or toilet stall.
- Takes effect June 7, 2023

# New York City Bias Audits

Due to increasing concerns about the risks of using automated tools to make employment decisions, the New York City Council took decisive action, passing a [landmark piece of legislation](#) in 2021 known as the [Bias Audit Law](#). Starting July 5, 2023, under this law – Local Law 144 – companies are prohibited from using automated tools to hire candidates or promote employees unless the tools have been independently audited for bias. These regulations will likely affect hundreds of organizations within the city and may include your own.

**\*\*\*Note – this includes current employees and external candidates for open positions and promotions.\*\*\***

**NYC’s Local Law 144 prohibits an employer or employment agency from using AEDTs (“Automated Employment Decision Tool Law”) to make job candidate hiring or employee promotion decisions in New York City unless all three of the following conditions have been met:**

1. The AEDT has been subject to a “bias audit” within one year before its use.
2. A summary of the bias audit results and the date the employer or employment agency began using the AEDT has been posted to the employer or employment agency’s website.
3. Notices are provided to employees or job candidates using AEDTs, and an alternative solution is in place.

Local Law 144 also requires covered employers or employment agencies to provide specific notices to employees or job candidates, including at least 10 days prior notice that the AEDT will be used, and that the candidate or employee may request an alternative selection process or accommodation. Below is an example of language to be added to job postings.

## **Example language for job postings:**

**Local Law 144 Notice for New York City Resident Applicants:** For some requisitions, automated employment decision tools ('AEDTs') may be used as part of the assessment process to assist our recruiters in the initial evaluation of your application. If your application is submitted according to New York City Local Law 144, you may request an alternative assessment from the recruiter. Please visit (**Your company’s website**) to learn how we may collect, process, or retain your professional and employment information for recruiting purposes.

# **Notice of Electronic Monitoring to Employees**

Private-sector employers that “monitor[] or otherwise intercept[] [employee] telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage” must post a notice of electronic monitoring in a “conspicuous place which is readily available for viewing” by affected employees. Employers also must furnish new employees with written notice when they are hired. The law requires that newly hired employees acknowledge receipt of the notice, “either in writing or electronically.

# **Update EEOC Poster**

The Pregnant Workers Fairness Act (PWFA) goes into effect on June 27, 2023. The PWFA requires employers to post a notice describing the various protections under the new law. On June 27<sup>th</sup>, employers should remove their old EEOC “Know Your Rights” posters and replace them with the updated version.

# **Artificial Intelligence**

EEOC Issues Guidance on Use of Artificial Intelligence Tools in Employment Selection Procedures Under Title VII.

# **Discrimination Ordinance**

NYC Enacts Height and Weight Anti-Discrimination Ordinance.





## Douglas E. Rowe

Partner

Douglas E. Rowe is a Partner in our Labor and Employment Group.

His broad range of expertise includes claims alleging discrimination based upon race, sex, religion, national origin, age and disability, as well as sexual harassment, wage and hour issues, labor arbitrations, and defense of employment-related claims under federal and state statutes. He is frequently quoted in the media about the #MeToo movement and legislation affecting employers and employees.

He counsels on and litigates issues relating to restrictive covenants and trade secrets. By initiating preventive counseling on company policies and other personnel matters, Mr. Rowe helps clients keep costs down and avoid litigation. He also prepares and negotiates employment agreements.

A seasoned litigator at the state and federal level, Mr. Rowe has significant appellate experience. He is admitted to practice in the State of New York, United States District Court, Eastern and Southern Districts, and the U.S. Court of Appeals, Second Circuit.

Mr. Rowe was first named to the New York Metro Super Lawyers list in 2011 and has earned the distinction consecutively from 2013 until 2020. Only five percent of lawyers in the New York Metro are honored each year.

He was awarded a "Legal Eagle" by Long Island Pulse Magazine.

He serves on the Board of Directors at Rock and Wrap it Up, an anti-poverty think tank based in New York.

He graduated from Brooklyn Law School and earned his Bachelor of Science in Accounting from the University of Maryland. He is a member of the New York and Nassau County Bar Associations.

### Practice Areas

Labor and Employment

### Contact

[drowe@certilmanbalin.com](mailto:drowe@certilmanbalin.com)

516.296.7102

[LinkedIn](#)

•90 Merrick Avenue  
•East Meadow, NY 11554  
•Phone: 516.296.7000  
•Fax: 516.296.7111

•[certilmanbalin.com](http://certilmanbalin.com)