GIBSON DUNN

New York Enacts New Employment Laws and Others May Be on the Horizon

Client Alert | March 28, 2022

Click for PDF

On March 16, 2022, New York State Governor Kathy Hochul signed two new bills into law that expand non-discrimination protections in the workplace. As a result, New York now prohibits employers from releasing employee personnel files in retaliation for such employee's engagement in protected activity. Additionally, the state will be announcing a state-run sexual harassment hotline that will need to be referenced in anti-harassment policies and postings.

There are also several bills working their way through the State Legislature that, if enacted, would significantly impact employers in New York. We discuss those potential new laws below.

Newly Enacted Workplace Laws

New York recently enacted two new laws impacting employers.

The first makes it an unlawful retaliatory practice under the New York State Human Rights Law ("NYSHRL") for an employer to disclose an employee's "personnel files" because the employee has: (i) opposed any practices forbidden under the NYSHRL; ***or*** (ii) filed a complaint, testified, or assisted in any proceeding under the NYSHRL or any other judicial or administrative proceeding. According to the statute, this is necessary to address "retaliation [that] frequently appears in the form of a leaking of personnel files with the intent to disparage or discredit a victim or witness of discrimination in the workplace." This law is effective as of March 16, 2022. Significantly, the law expressly permits employers to disclose personnel files in the course of commencing or responding to a complaint in any judicial or administrative proceeding.

The second new law requires the State Division of Human Rights to work with the State Department of Labor to establish, by July 14, 2022, a toll-free, confidential hotline to provide counsel and assistance to individuals with concerns of workplace sexual harassment. Employers will be required to include the hotline number in any sexual harassment postings and policies. Once "live," the hotline will be staffed by *pro bono* attorneys experienced in providing sexual harassment-related counsel, who will be recruited by the Division of Human Rights and organizations representing attorneys, such as the New York State Bar Association.

Bills Under Consideration

Two additional bills, if passed, would have significant implications for employers in New York. Both of the following bills passed the New York State Senate on March 1, 2022, but have yet to pass the Assembly or be signed into law:

- **No Rehire Provisions** – Senate Bill S766 would render the release of claims in a settlement agreement between an employer and employee and/or independent

Related People

Harris M. Mufson

Danielle J. Moss

Alex Downie

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

contractor unenforceable if the agreement contains a no-rehire clause. No-rehire provisions are commonly included in separation and release agreements to prohibit the individual from applying for or accepting future employment with the employer and its related entities.Notably, under the proposed law, if a release is rendered unenforceable by the inclusion of a no-rehire provision, the employer would remain bound by all other provisions of the agreement, including the obligation to pay any agreed-upon settlement payment. The bill does not, however: (i) prohibit termination of the employee if mutually agreed upon as part of a settlement; ***or*** (ii) automatically require an employer to rehire an employee who had previously settled a case against the employer.If passed, this law would take effect on the 60th day after being signed and would apply to all agreements entered into on and after that date.

- **Nondisclosure Provisions in Settlement Agreements** – Senate Bill S738 would render unenforceable a release of any claim of discrimination, harassment, or retaliation if the release is included in a settlement agreement that: (i) requires the aggrieved worker to pay liquidated damages for violation of a nondisclosure clause; (ii) requires the aggrieved worker to forfeit all or part of the consideration for violation of a nondisclosure clause; ***or*** (iii) contains any statement or disclaimer that the aggrieved employee was not in fact subject to discrimination, harassment, or retaliation.Currently under New York law, any provision in an agreement between an employer and an employee is void if it prevents the disclosure of information related to discrimination *unless* the employee is notified that they are not prohibited from speaking with law enforcement, the EEOC, the state or local commission of human rights, or an attorney. If passed, this new law would also require employers to notify employees that nothing precludes them from speaking with the New York Attorney General. It would also expand coverage to independent contractors.The proposed law would also amend New York General Obligations Law Section 5-336, which prohibits employers from including nondisclosure provisions in agreements resolving claims involving unlawful discrimination unless: (i) the provision is the complainant's preference; (ii) the provision is set forth in writing; and (iii) the complainant is given twenty-one (21) days to consider and seven (7) days to revoke the agreement. If passed, the new law would clarify that these requirements apply to agreements settling claims involving harassment and retaliation. It would also clarify that the complainant may voluntarily agree to the confidentiality provision before the twenty-one (21) day waiting period has elapsed. This bill is similar to legislation that was recently enacted regarding settlement and separation agreements in California, but with a couple of notable differences – such as certain language that is required pursuant to California law and the amount of time complainants must be provided to consider the agreement. Additional information on the California legislation is available here. If passed, this law would take effect immediately upon singing and would apply to all agreements entered into on or after that date.

Governor Hochul has indicated that she is likely to sign these bills into law if they pass in the State Assembly. That said, by rendering key provisions of a settlement agreement (*i.e.*, the release itself) unenforceable, these bills may be subject to legal challenge if they are ultimately enacted.

Implications for Employers

In light of the newly enacted laws, New York employers should proceed with even greater caution when considering whether to release personnel file information, including when making public statements in response to an employee's claim to the extent that the statement discloses information contained in a personnel file. To that end, employers should consider counseling managers and updating their policies governing access to and disclosure of employee information to ensure compliance.

Employers should also plan to update their New York handbook policies, anti-harassment

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

trainings, and postings with New York State's anonymous hotline information once available.

We will continue to closely monitor the bills under consideration, which will impact the settlement of discrimination, harassment and retaliation claims.

The following Gibson Dunn attorneys assisted in preparing this client update: Harris Mufson, Gabrielle Levin, Danielle Moss, Meika Freeman, and Alex Downie.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Labor and Employment practice group, or the following:

Mylan Denerstein – New York (+1 212-351-3850, mdenerstein@gibsondunn.com)

Gabrielle Levin – New York (+1 212-351-3901, glevin@gibsondunn.com)

Danielle J. Moss – New York (+1 212-351-6338, dmoss@gibsondunn.com)

Harris M. Mufson – New York (+1 212-351-3805, hmufson@gibsondunn.com)

Jason C. Schwartz – Co-Chair, Labor & Employment Group, Washington, D.C. (+1 202-955-8242, jschwartz@gibsondunn.com)

Katherine V.A. Smith – Co-Chair, Labor & Employment Group, Los Angeles (+1 213-229-7107, ksmith@gibsondunn.com)

© 2022 Gibson, Dunn & Crutcher LLP Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.

Related Capabilities

Labor and Employment

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**