Mandatory and Recommended HR Policies

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POLICIES REQUIRED BY LAW TO BE PROVIDED TO EMPLOYEES IN WRITING

Some laws require that notices of a particular employment law and legal rights under such law be stated in writing to the employee, regardless of whether such writing is contained in an employee handbook or a standalone policy. Below, we outline common employment policies and laws establishing certain employment rights, and in the section titles we indicate whether the employer is required to provide notice of the policy in writing to the employees.

1. Paid Family Leave Policies – Mandatory

Per New York Paid Family Leave (PFL) Law, which took effect on January 1, 2018, an employer must either have a policy in its handbook or provide some other form of communication to each employee regarding their entitlement to paid family leave. Employers are encouraged to specify how PFL interacts with workers' compensation, the federal Family and Medical Leave Act (FMLA), short- and long-term disability insurance and PTO or sick leave. For example:

- Paid family leave can be taken by employees who are eligible for time off under the provisions of the FMLA. PFL will run concurrently with designated FMLA leave when the reason for leave qualifies under both PFL and FMLA. Eligible employees must then apply for both PFL and FMLA.
- You may not receive short-term disability and PFL benefits at the same time. You may not take more than 26 combined weeks of short-term disability and Paid Family Leave in a 52-week period.
- If you are unable to work and qualify for workers' compensation benefits, you may not use paid family leave benefits at the same time as you are receiving workers' compensation benefits. If you are receiving reduced earnings, you may be eligible for paid family leave.
- Time spent on paid vacation, sick or personal days can be counted toward an employee's eligibility determination.

Further, the federal Family and Medical Leave Act (FMLA) specifically requires an employer to include a particular policy in its employee handbook, which includes a statement concerning the employer's FMLA policy. Of course, this requirement only applies to employers who are covered under the FMLA (i.e., those that have 50 or more employees each working day during 20 or

more workweeks in the current or preceding calendar year). Special FMLA leave obligations also apply to situations involving family members of those in the US Armed Forces.

While the FMLA does not outline the specific language that employers should use in their FMLA policy, some important elements of an effective FMLA policy are as follows:

- Employee eligibility.
- Types of leave provided by the FMLA, including a general discussion of what constitutes a "serious health condition" under the FMLA.
- The employer's selected method of calculating the 12-month period.
- Use of paid leave — employer should state which types of paid leave (e.g., vacation, sick leave) may be used for which types of FMLA leave (birth/adoption, serious health condition) and whether employees must use all available paid leave first.
- Intermittent and reduced schedule leave.
- Notice and medical certification requirements.
- Compensation and benefits.
- Job restoration after FMLA leave.

It is particularly important for the FMLA policy to specify the method for calculating the 12-month period in which the 12 weeks of leave may be taken (26 weeks in the case of certain family members of those in the US Armed Forces). If the employer fails to specify which method is to be used, an employee may select the method that is most beneficial to him or her. From an employer's standpoint, the most restrictive policy is one that measures leave on a rolling 12-month basis looking back from the most recent leave.

2. Sexual Harassment Policies – Mandatory in New York

Under 2018 amendments to the New York Labor Law, all employers must adopt a sexual harassment prevention policy, including a complaint form, and provide annual sexual harassment training to all employees. The policy, at a minimum, must include:

- a prohibition of sexual harassment;
- examples of prohibited conduct that constitutes unlawful sexual harassment;
- information about federal and state statutory anti-sexual harassment provisions and remedies available under those laws;
- a statement that there may be local laws applicable to sexual harassment;
- a complaint form, or information about how to access a complaint form
- the employer's procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- information for employees about their rights of redress and all available forums (administrative and judicial) for adjudicating sexual harassment complaints;
- a clear statement that sexual harassment is a form of employee misconduct and that sanctions will be enforced against offending individuals and supervisors and managers who knowingly allow sexual harassment to continue; and
- a clear statement that retaliation is prohibited against individuals who complain of sexual harassment, or who testify or assist in a proceeding under the law.

3. Policies Regarding Fringe Benefits and Hours - Mandatory

Per New York Labor Law 195.5, every employer must notify its employees in writing or by publicly posting the employer's policy on sick leave, vacation, personal leave, holidays and hours. Employers must be able to affirmatively demonstrate that such written notification was provided to employees by company newspapers, handbooks, or a posting that is in a conspicuous workplace location.

4. Employment At-Will Statement in Employee Handbook - Recommended

At the beginning of the handbook, most employers include an introductory statement that welcomes employees and explains the purpose and scope of the handbook. It is important that this introduction contain a clear statement of at-will employment explaining that the employee handbook does not create a contract of employment for a specified period of time between the employer and any employee and that nothing in the employee handbook alters the employment at-will status of the company's employees. New York courts have generally been unwilling to find that language in an employment handbook creates either an express or implied contract. Nonetheless, it is highly recommended that the employer reserve all rights to alter the terms and conditions of employment at any time, and terminate the employee at any time, with or without cause, and with or without advance paid notice.

5. Equal Employment Opportunity – Recommended

An equal employment opportunity statement is vital to enhance compliance with federal and state civil rights laws. Although not technically required to be in an employee handbook, given the litigious nature of today's workforce, it is critical to defending any claim of discrimination or unlawful employment practices that the employer have a policy of equal employment opportunity in every aspect of the employment relationship, from the hiring phase to termination.

As under federal law, New York law also prohibits retaliation against anyone who files a complaint or otherwise exercises rights under these statutes. However, unlike federal civil rights statutes, the New York law also provides for individual liability for persons who "aid, abet, compel or coerce" any act prohibited under the New York Human Rights Law.

In addition, employers in New York City with four or more employees also are subject to the New York City Human Rights Law (the NYCHRL), which expands workplace protections even further, prohibiting discrimination based on race, color, creed, actual or perceived age, national origin, alienage or citizenship status, gender (including gender identity or expression and sexual harassment), sexual orientation, disability, marital status, partnership status, actual or perceived status as a caregiver, and hairstyle. In addition, the NYCHRL affords protection against discrimination in employment based on arrest or conviction record and status as a victim of domestic violence, stalking and sex offenses. The scope of these protections is even broader than those provided under the state law.

6. Code of Conduct – Recommended

No law requires that an employee handbook contain a list of prohibited types of employee conduct, but this is one of the main reasons many employers develop employee handbooks in the first place. A typical code of conduct policy should list the common types of misconduct that will result in discipline, but it should also stress that the list is not exhaustive.

The policy should also state that misconduct will result in discipline, up to and including termination. Standards of conduct policies are often helpful in contesting unemployment compensation claims because they can demonstrate that the employee's actions violated company policy and that the employee knew or should have known that the conduct was prohibited. It is common to see multi-page lists of prohibited conduct, many items of which have no relevance to the particular workplace. Care should be taken not to make the list too long in relation to the rest of the handbook. Cutting and pasting a list from the internet may create the wrong impression about the kind of workplace the company has and the types of conduct that are considered most serious.

It is common to find a table of discipline for attendance violations to ensure that discipline is administered in a consistent manner. At the same time, at least for other offenses, it is usually best to retain some level of discretion so that conduct in violation of the company's policies can be evaluated in light of all of the facts and circumstances at the time.

7. Attendance and Punctuality – Recommended

Most attendance and punctuality policies contain a statement that employees are expected to be present and on time. Such policies generally should define excused and unexcused absences — stressing that failure to give proper notice of an absence is itself a violation even if the underlying reason for the absence is considered excused unless the lack of notice was itself excusable. Guidelines regarding the amount of notice an employee must give for the absence to be excused are also typical. Finally, many attendance and punctuality policies include a statement that an employee will be considered to have resigned for failing to show up for work for two or three consecutive days, unless the absence was excused, and the employee gave proper notice.

As a final warning, employers must be careful that their attendance and punctuality policies do not violate federal, state or local laws that permit employees to take leave for various purposes. For instance, the policy should probably include in the list of types of absences that are considered "excused" any absence required or permitted under applicable leave laws (e.g.,

earned sick and safe leave, jury service or military leave). In addition, an attendance and punctuality policy should not state that an employee will be disciplined for simply "excessive absences," but instead should state that the employee may be disciplined for "excessive, unexcused absences."

An employer's attendance policy is an important part of its written employment policies because it allows the employer to set fixed standards for attendance. Obviously, good employee attendance is critical to only business. A uniformly enforced no-fault policy can be a significant tool for the employer to maximize attendance and control individual problems with absenteeism. Additionally, such a policy may boost employee morale by minimizing resentment on the part of employees toward coworkers who suffer no consequences for being chronically absent.

On a practical level, any attendance policy should be strict enough to allow the employer to discipline those employees whose absences cause problems, yet, to achieve the goal of uniform enforcement, lenient enough that the employer does not need to terminate good employees who are absent infrequently. Also, the employer may have different attendance policies for different departments so long as there is a legitimate business reason for doing so.

8. Classification of Employees - Recommended

If references are made in various policies to benefits, vacation or leave given to different classifications of employees, those classifications of employees need to be defined early on in the handbook. Employees are often classified by whether they are:

- exempt or nonexempt for purposes of overtime pay
- full-time or part-time (should specify different classes of part-time employees, if applicable and the designation of "part-time" should be defined. Consideration should be given to a potential conflict of the employer's meaning of "part-time" and the definitions in the Affordable Care Act)
- temporary/probationary/regular (avoid “permanent” because the phrase implies that these employees are not employees at-will)

9. Confidentiality and Trade Secrets – Recommended

Most companies have information that is important to the success of the business that needs to be kept confidential. This includes financial information, customer lists and contract information, sales figures and projections, marketing information, formulas, strategic plans, and the like. Sometimes this information can rise to the level of a trade secret. But even if it does not

rise to the level of a trade secret, an employer that wishes to keep proprietary and valuable business information confidential needs to take affirmative action to bind employees to contractual duties of confidentiality and nondisclosure. For these reasons, it is helpful to include in an employee handbook a reminder to employees that they are obligated to use confidential information only for the benefit of the company and not for their own benefit or the benefit of third parties. Employees who are entrusted with particularly sensitive information should also be asked to sign standalone confidentiality agreements.

10. Employee Benefit Plans – Recommended

One common mistake that employers make in drafting a policy regarding employee benefit plans is to include too much information about the nature of benefits and eligibility for benefits. The employee handbook should be drafted so that it does not (and will not in the future) conflict with any benefit plan documents or the summary plan descriptions. A better practice is that the handbook should simply list the different types of employee benefit plans that the company currently offers to employees and refer employees to the plan documents for more information. In addition, a general employee benefit plan policy should contain a statement that the company reserves the right to modify, add to or eliminate benefits at any time, and that the specific plan document will always govern and be dispositive as to the scope of any particular benefit.

11. Jury Duty - Mandatory

An employee's right to leave work for jury duty and/or subpoenaed witness duty is governed by state and federal law. Federal law prohibits employers from disciplining or terminating an employee for jury duty in federal courts. New York prohibits an employer from disciplining or terminating an employee or depriving an employee of seniority positions or benefits in retaliation for jury duty. All employers, regardless of size, are covered by the Jury Duty Leave Law, which provides job-protected leave for employees to serve on jury duty.

The law does not specify the minimum or maximum amount of jury duty leave. However, employees must be granted the leave required for them to satisfy their required jury service.

The law does not require that an employer inform employees of their right to jury duty leave. However, employers should provide notice of the leave entitlement as employers are required to provide notice to their employees, in writing, of the employer’s policies concerning leave.

In New York, an employer may lawfully withhold the wages of an employee serving jury duty, except that if the employer employs more than 10 persons, then the employer may not withhold the first $40 of the employee's regular pay for the first three days of jury service.

The Fair Labor Standards Act (FLSA) significantly limits an employer's ability to dock an exempt employee's pay for time spent on jury duty. In order to maintain an employee's status as exempt from the overtime requirements of the FLSA, the employee must be paid on a "salary basis." In other words, with few exceptions, exempt employees must receive their full salary for any week in which they perform any work, without regard to the number of hours or days worked. Improper deductions could result in the loss of exempt status for that employee. When serving on jury duty, the employee who is exempt must receive his/her full salary for the week when the employee is on jury duty, so long as that exempt employee performs some work during the week. If the exempt employee is on jury duty all week and does no work on behalf of his/her employer (regardless of the time when such work is performed), then the exempt employee is not eligible to receive his/her full salary for that week.

12. Military Leave - Recommended

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) allows employees to take job-protected leave due to military-related obligations. This leave is unpaid.

In New York, all employers, regardless of size, are covered by the New York Military Leave Law. All non-temporary employees are entitled to reemployment following military service, depending upon the circumstances. Employees are entitled to leave in order to fulfill their obligations to the armed forces, national guard and military reserves. This includes participation in drills and other equivalent training, reserve training, instruction, annual full-time training duty, active duty for training or other annual training.

The law does not require an employee to provide the employer with notice before taking leave for military service. However, an employee seeking reemployment must apply for reemployment within 90 days of being relieved from service. In certain circumstances, employees must apply for reemployment within 10 or 60 days of being relieved from service.

The law does not require that an employer inform employees of their right to military service leave. However, employers should provide notice of the leave entitlement as employers are required to provide notice to their employees, in writing, of the employer’s policies on personal leave.

13. Military Spouse Leave – Recommended for New York Employers

Employers with 20 or more employees at least one site are covered by the Military Spouse Leave Law, which allows an employee who works, on average, 20 or more hours per week, to take time off from work when their military spouse is on leave from military service. The employee must also be the spouse of a member of the armed forces of the United States, the National Guard or military reserves who has been deployed during a period of military conflict to a combat zone.

Eligible employees are entitled take up to 10 days of unpaid leave. Employees are not required to provide employers with advance notice of their need for such leave, but employment policies can certainly request that employees voluntarily provide such notice as a professional courtesy to the employer.

The law does not technically require employees to provide certification of their need for this leave.

The law does not require that an employer inform employees of their right to military service leave. However, employers should provide notice of the leave entitlement as employers are required to provide notice to their employees, in writing, of the employer's policies on personal leave.

14. No-Solicitation and No-Distribution Policy - Recommended

Employers generally are permitted to maintain policies to prevent nonemployees from entering company premises to solicit employees or distribute literature at any time. Likewise, employees can be prohibited from soliciting coworkers or distributing literature during working time and in working areas. Employers that suddenly adopt no-solicitation or no-distribution policies during a union organizational drive may face unfair labor practice charges before the National Labor Relations Board (NLRB). Therefore, it is important to have such a policy in place before union organizational efforts begin. Including this policy in the employee handbook offers a helpful way to prove that it was in effect before any such organizational campaign.

15. Errors in Pay – Mandatory

The US Department of Labor's rules on the "white collar" exemptions from federal overtime and minimum wage requirements under the Fair Labor Standards Act provide a "safe harbor" that may preserve an employee's exempt status in the event that impermissible deductions are made. The rules state that the salary basis component of the exemption test is not lost if the employer: (a) has a "clearly communicated" policy prohibiting improper deductions, including a complaint

mechanism; (b) reimburses employees for any improper deductions; and (c) makes a good faith commitment to comply in the future. This safe harbor is not available, however, if the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

16. Vacation Time Policy – Mandatory

Employers are not required by federal or state law to provide vacation benefits to their employees. However, if an employer does provide vacation benefits, as most do, the employer's vacation policy should clearly state the requirements for taking vacations and accruing vacation pay, and that policy should be communicated to all employees. In fact, New York law requires employers to notify their employees in writing or by a posting of the employer's policy on sick leave, vacation, personal leave, holidays and hours. Employers who do not do so may be subject to civil penalties.

In addition, under New York law, whether an employer is obligated to pay for unused vacation time depends upon the terms of the vacation and/or termination policy. The employer's policy can specify that employees forfeit accrued benefits under certain conditions. As noted previously, to be valid, the employer must have notified employees, in writing, of the conditions that nullify the benefit. If an employee has earned vacation time and there is no written forfeiture policy, the employer must pay the employee for the accrued vacation upon termination of employment. Thus, in order for there to be a “use it or lose it” policy on accumulated vacation time, the employer must specifically state so in writing.

17. Nursing Time – Mandatory

All New York public and private employers, regardless of the size or nature of their business, are required to provide reasonable unpaid break time or allow an employee to use paid break or meal time each day to express breast milk for her nursing child, up to 3 years after the child’s birth. The employer will make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy.

Employers must provide written notification of these requirements to employees who are returning to work following the birth of a child, and the employee’s rights to take unpaid leave for purposes of expressing breast milk. Such notice may be provided individually to affected employees or to all employees generally through publication of such notice in the handbook or posting of the notice in a central location in the workplace.

Pursuant to laws that took effect in New York City in March 2019, employers in the City are now required to provide a lactation room and refrigerator suitable for breast milk storage in reasonable proximity to such employee's work area. Employers must also implement a written policy regarding the provision of a lactation room, to be distributed to all employees upon hiring, that includes a statement that employees have a right to request a lactation room and identify a process by which employees may request such a room. The process must:

- specify the means by which an employee may submit a request for a lactation room;
- require that the employer respond to a request for a lactation room within a reasonable amount of time not to exceed five business days;
- provide a procedure to follow when two or more individuals need to use the lactation room at the same time, including contact information for any follow-up information;
- state that the employer will provide reasonable break time for an employee to express breast milk; and
- state that if the request for a lactation room poses an undue hardship on the employer, the employer must engage in a cooperative dialogue with the employee.
- The law also requires the employer's lactation policy to be provided at the time of hire.

18. Blood Donation Leave – Mandatory

Employers with 20 or more employees working in at least one site are required to either: (a) grant an employee three hours of leave in any 12-month period to donate blood off of the employer's premises or (b) allow employees to donate blood during work hours at least twice each year at a convenient time and place set by the employer, which includes a blood drive at the employee's place of employment. Employees who work an average of 20 or more hours per week are eligible for this leave.

Employers may require employees to give notice of their intent to take blood donation leave: (a) three days in advance if the leave is for off-premises blood donation; or (b) two days in advance if the leave is for blood donation at a convenient time and place set by the employer. The employer may require longer notice, up to 10 working days, as necessary to fill the position if the

employee taking blood donation leave is in a job that is essential to the operation of the employer or necessary to comply with legal requirements.

In the case of an emergency where the employee needs to donate blood for his own surgery or the surgery of a family member, employers must provide reasonable accommodations for a shorter notice period.

If an employee donates blood off premises, the employer may require the employee to provide proof of blood donation.

Leave for blood donation off the employer's premises need not be paid. If the employee donates blood during work hours on the employer's premises, the time is compensable. Employers cannot retaliate against employees for requesting or obtaining leave in order to donate blood.

Employers must notify employees in writing of their right to take blood donation leave. Such notice must be made in a manner to ensure that all employees see it, such as by posting it in a prominent location where employees congregate, including it in an employee handbook or including it with an employee's paycheck. If an employer provides the notice directly to an employee, the notice must be distributed by January 15 annually.

19. Blood Marrow Donation Leave – Optional

Employers with 20 or more employees working in at least one site are required to provide employees with leave in order to donate bone marrow as well as to recover from the procedure and for resulting medical care. Employers may require medical documentation detailing the purpose and length of the requested bone marrow donation leave. The employee's physician will determine the amount of leave required by the employee. However, the leave need not exceed 24 work hours unless additional leave is agreed to by the employer. There is no limitation on how frequently an employee may take such leave.

The foregoing protections and rights apply to employees who work an average of 20 or more hours per week.

This law does not require employees to give notice of their need to take bone marrow donation leave. However, the New York State Department of Labor (NYSDOL) has advised that employees should provide at least 24 hours' notice to an employer of a scheduled bone marrow donation and, in the case of an unscheduled bone marrow donation, as soon as possible upon receiving the request for donation.

Employers are permitted to require physician verification of the purpose and length of each bone marrow donation leave requested by an employee.

Leave to donate bone marrow may be unpaid. Employers cannot retaliate against employees for requesting or obtaining leave in order to donate bone marrow.

The law does not require that an employer inform employees of their right to bone marrow donation leave. However, employers should provide notice of the leave entitlement as employers are required to provide notice to their employees, in writing, of the employer's policies on personal leave.

20. Crime Victims Leave – Optional

All employers, regardless of size, are required to provide employees who are victims of a crime or who are subpoenaed as a witness in a criminal proceeding with time off, per New York Penal Law. For purposes of this leave, "victim" is defined to mean the aggrieved party, the aggrieved party's next of kin (if the aggrieved party died because of the crime), the victim's representative (e.g., attorney, guardian or parent of a minor), good Samaritans, and any person applying for or seeking to enforce an order of protection under the Criminal Procedure Law. Eligible employees are eligible for leave to appear as witnesses, consult with the district attorney, and exercise other rights under the law.

The law does not specify the minimum or maximum amount of leave that an employee can take.

Employees who are crime victims or subpoenaed as a witness at a criminal proceeding must provide at least one day of notice to their employer before taking the leave.

An employer may request proof that the employee attended or testified at a criminal proceeding.

Employers may not discharge or penalize employees for exercising their right to take such leave.

The law does not require that an employer inform employees of their right to crime victims leave. However, employers should provide notice of the leave entitlement as employers are required to provide notice to their employees, in writing, of the employer's policies on personal leave.

21. Voting Time Off – Mandatory

New York State employees are eligible for up to two hours of paid time off to vote if they do not have "sufficient time to vote." An employee is deemed to have "sufficient time to vote" if an

employee has four consecutive hours to vote either from the opening of the polls to the beginning of their work shift, or four consecutive hours between the end of a working shift and the closing of the polls.

For example, if an employee is scheduled from 9 am to 5 pm, and the polls are opened from 6 AM to 9 PM, the employee is not eligible for paid time off to vote, because the polls are open for four consecutive hours after the employee's shift ends at 5 PM. However, if an employee is scheduled to work from 9 AM to 6 PM, then the employee is eligible for paid time off to vote, because the employee only has three consecutive hours off in the beginning of their shift and end of their shift.

An employee must notify an employer at least two working days prior to their intention to take paid time off to vote, but not more than ten working days.

Not less than ten working days before every election, every employer shall post conspicuously in the place of work where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of this section. Such notice shall be kept posted until the close of the polls on Election Day. The notice is available online.

22. Volunteer Emergency Responder Leave – Optional

All employers, regardless of size, are required to provide time off to employees who are performing duties as a volunteer firefighter or ambulance service provider who is engaged in such duties during a declared state of emergency. However, an employer is not required to grant such leave if the employee's absence would impose an undue hardship on the conduct of the employer's business.

The law does not provide a minimum or maximum amount of time that an employee may take. However, such leave may only be taken during a declared state of emergency.

An employee must provide the employer with written notice from the head of the employee's volunteer fire department or volunteer ambulance service notifying the employer of the employee's status as a volunteer firefighter or member of a volunteer ambulance service.

An employer may, upon the employee's return to work, request a notarized statement from the head of the employee's volunteer fire department or volunteer ambulance service certifying the period of time that the employee responded to an emergency.

Employees may elect to apply any paid leave to which they are entitled to their time away from work serving as an emergency responder.

The law does not require that an employer inform employees of their right to volunteer emergency responder leave. However, employers should provide notice of the leave entitlement as employers are required to provide notice to their employees, in writing, of the employer's policies on personal leave.

23. Open Door Policy – Recommended

Employers should consider maintaining an open door policy or some dispute resolution mechanism by which employees understand how and where they go in order to complain about workplace issues. Although not technically required by any law, such a policy, and especially the practice of encouraging employees to come forward with concerns and complaints, could mitigate exposure to expensive employment litigation down the line.

Employers with particularly sensitive wage and hour concerns, such as those in the health care or hospitality industries, should also consider adopting a mandatory arbitration procedure with a class action waiver. Such a waiver, if properly drafted and executed, could bar the employee from suing the employer on a class action basis for workplace-related alleged violations.

24. Employees with Disabilities - Optional

The Americans with Disabilities Act and the New York Human Rights Law require employers to provide reasonable accommodations to employees, trainees, and job applicants. To ensure employees are aware of the employer's commitment to compliance with these laws, and that they understand how and when to seek accommodations, employers are strongly encourage to maintain policies confirming the employer's adherence to these laws, the employer's process for requesting an accommodation, and the employee's obligations as a participant in that process. Employers may request documentation to confirm an employee's need for a requested accommodation.

In 2018, the New York City Human Rights Law (NYCHRL) was amended to require employers to provide reasonable accommodations to employees with disabilities as well as those who are pregnant, victims of domestic violence, or have religious reasons and needs. The duty to provide reasonable accommodations to such individuals also applies to applicants for employment.

New York City employers must engage in a "cooperative dialogue" with an employee who requests a reasonable accommodation for religious reasons, related to a disability, or concerning

pregnancy, childbirth, or a related medical condition, or for their needs as a victim of domestic violence, stalking, or sexual offenses.

The "cooperative dialogue" requires employers to engage in a good faith conversation with the employee (or applicant for employment) concerning the individual's accommodation needs, potential accommodations (including alternatives to the accommodation proposed by the employee), and any difficulties that the proposed accommodation could pose for the employer. This cooperative dialogue continues until an accommodation is ultimately granted or denied. At the conclusion of the cooperative dialogue, the employer must provide the employee with a written final determination of the accommodation that was either granted or denied. Without providing a written final determination, the employer's actions could be deemed as a failure to engage in the required cooperative dialogue. Because such a failure violates the NYCHRL, employers could face compensatory damages, punitive damages, attorneys' fees, and additional costs.

To assist employers with the cooperative dialogue process, the New York Commission on Human Rights has published its Legal Enforcement Guidance on Discrimination on the Basis of Disability. Among other things, this document contains a sample Reasonable Accommodation Request form, a sample Grant or Denial of Reasonable Accommodation Request form, and a sample letter to send to employees who are taking leave as a reasonable accommodation.

Second, employers should keep a log of every reasonable accommodation that they provide to employees. While significant accommodations will require employers to engage in a cooperative dialogue, many accommodations that employers provide are routinely granted without any issues and thus remain undocumented. For example, an employer may permit a pregnant employee to have additional bathroom breaks, or a Jewish employee to change his schedule so that he can observe Yom Kippur, or an employee with an illness to take an unpaid sick day. While these accommodations are often nonissues, the employer should mitigate legal risks by documenting evidence that it routinely provides reasonable accommodations to employees. A log detailing all such reasonable accommodations would be helpful to employers facing potential disputes or litigation.

25. Religious Accommodations - Optional

Title VII of the Civil Rights Act of 1964 and the New York Human Rights Law prohibit discrimination against employees and job applicants on the basis of such individuals' religious beliefs. Employers are required to provide reasonable accommodations for their employees' religious needs. To ensure that employees understand their rights and obligations towards their employers, it is recommended that employers adopt policies and procedures that explain the

employer's commitment to complying with the law and working with employees in the interactive process to determine the best and reasonable accommodation when requested. Or employers in New York City, the preceding section addressed some nuanced obligations that apply to employees working in the city.

BINDING THE HANDBOOK

Once the text of the handbook has been finalized, the employer needs to decide on the binding of the handbook. There are two principal ways to bind an employee handbook —as a single booklet or in a folder or binder with removable pages. A single booklet is usually cheaper to produce and easier to distribute. The single booklet approach also makes it easy to tell which policies were in force at a particular time (as long as the handbook is clearly marked with an effective date). A handbook or policies and procedures manual that is contained in a binder with removable pages will be more expensive, but it will be easier to update. A company that chooses to issue a handbook and replace particular pages/policies from time to time may find it more difficult to keep track of which versions of policies were in effect on a particular date (i.e., when an employee went out on leave or when a policy infraction occurred that later became the focus of a lawsuit). If such a method is used, each page of each policy should be labeled with the effective date of that policy. Copies of the old policies should be archived for future reference.

Alternatively, for companies that have their own intranet, the handbook can be made available to employees in electronic form online. The intranet can also be used to keep track of which employees have acknowledged receipt of the handbook.

ROLLING OUT A NEW HANDBOOK OR REVISIONS

When the employer is ready to present the handbook to employees, it should be rolled out with some degree of fanfare to ensure that all employees are aware of the new policies. Often, the president/CEO of the company will issue a formal announcement and/or draft a welcome letter to be included with the handbook. If the handbook represents significant changes from the company's previous policies, training sessions should be held for supervisors and managers who will have to implement and enforce the policies. The human resources department also should be prepared to receive a large number of questions during the initial weeks and months the new handbook is in effect. New employees should receive and acknowledge receipt of the handbook during the sign-up and orientation period.

ACKNOWLEDGMENT FORMS

The most important part of the implementation process is having employees sign and return the acknowledgment forms found at the end of an employee handbook and filing them as part of each employee's permanent file. The handbook will not provide the employer with much protection in the event of a lawsuit or other dispute if the company cannot demonstrate that the employee received and agreed to its terms. The human resources department may want to keep a list of all employees and check each employee's name off as it receives a signed acknowledgment form from that employee. Managers will also need to be educated in the importance of such acknowledgment forms, and the processing of such forms may need to be added to the new-hire process.

The signed acknowledgment forms should be kept in the employees' individual personnel files. As referenced previously, employers using electronic verification of handbooks available online should also utilize online acknowledgment forms. When new policies are issued to supplement or update the handbook, some form of acknowledgment also should be obtained to establish receipt.

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