

# Employment Law Summary

## Fair Employment Laws – Overview



*Because You're Different*

In addition to the workplace discrimination protections provided to employees under federal law, New York State (NYS) affords broad workplace discrimination protections under the [New York Human Rights Law \(NYHRL\)](#) and other laws relating to employment.

This Employment Law Summary provides an overview of the NYHRL and information about related provisions under other state laws.

### COVERED EMPLOYMENT

The NYHRL applies to all employers with one or more employees in the state. It also applies to employment agencies, labor organizations, and apprenticeship and other occupational training programs.

The NYHRL's protections extend to all employees, applicants, interns and even some nonemployees. Specifically, an employer may be held liable to any nonemployee providing services pursuant to a contract in the workplace if the employer knew or should have known the nonemployee was subjected to an unlawful practice in the employer's workplace and the employer failed to take immediate and appropriate corrective action.

However, the NYHRA does not protect individuals employed by their own parents, spouse or child.

### PROTECTED TRAITS

The NYHRL protects against discrimination that is based on certain characteristics, which are known as protected traits, as described in the table below.

Protected Trait	Definition/Additional Information
<b>Age</b>	Eighteen years of age or older.
<b>Race</b>	Includes traits historically associated with race, including but not limited to hair texture and protective hairstyles (such as braids, locks and twists).
<b>Creed</b>	Religious employers may still limit hiring based on religion.
<b>Color</b>	Not specifically defined in the NYHRL.
<b>National Origin</b>	Includes ancestry.
<b>Citizenship or immigration status</b>	Status of a person who is not a citizen of the United States. Added to the NYHRL list of protected traits as of Dec. 22, 2022. Employers may still verify citizenship or immigration status or take adverse action based on verification where required by law.
<b>Sexual Orientation</b>	Actual or perceived heterosexuality, homosexuality, bisexuality or asexuality.

Protected Trait	Definition/Additional Information
<b>Gender identity or expression</b>	Actual or perceived gender-related identity, appearance, behavior, expression or other gender-related characteristics (including the status of being transgender), regardless of the sex assigned at birth.
<b>Military status</b>	Participation in federal or state military service.
<b>Sex</b>	Includes pregnancy and lactation.
<b>Disability</b>	<ul style="list-style-type: none"> <li>• A physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions that prevents exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques;</li> <li>• A record of an impairment described above; or</li> <li>• A condition regarded by others as an impairment described above.</li> </ul>
<b>Predisposing genetic characteristics</b>	Genetic information that is scientifically or medically believed to predispose an individual to a disease or disability or to be associated with a statistically significant increased risk of developing one.
<b>Familial status</b>	<ul style="list-style-type: none"> <li>• Any person who is pregnant or has a child or is in the process of securing legal custody of any individual who is under age 18; or</li> <li>• One or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of the individual or the parent or custodian's designee.</li> </ul>
<b>Marital status</b>	Status of being single, married or divorced.
<b>Status as a victim of domestic violence</b>	<p>Any person over age 16, any married person or any parent accompanied by a minor child or children in situations in which they are a victim of an act that:</p> <ul style="list-style-type: none"> <li>• Constitutes a violation of the penal law;</li> <li>• Has resulted in actual physical or emotional injury or created a substantial risk of physical or emotional harm to the individual or child; and</li> <li>• Was or is alleged to have been committed by a family or household member.</li> </ul>

## PROHIBITED PRACTICES

Under the NYHRA, it is unlawful for an employer to take any of the following actions based on a protected trait:

- Refuse to consider, hire or employ an individual;
- Refuse to consider or accept an individual into an occupational training program;
- Bar or discharge an individual from employment or an apprenticeship program;
- Discriminate against an individual in compensation or in terms, conditions or privileges of employment;
- Harass or allow others to harass an individual; and
- Print any advertisement or use any application that directly or indirectly expresses any limitation, specification or discrimination (unless an exception applies).

The NYHRA also makes it unlawful for an employer to:

- Discriminate against an individual based on an individual's previous criminal history (except where there is a direct relationship between the job and previous offenses or an unreasonable risk to property or public safety);
- Fail to provide reasonable accommodations for a disability, pregnancy or pregnancy-related conditions, domestic violence or religion (except where an employer can show undue hardship);
- Solicit, require or administer a genetic test or genetic information (except under certain circumstances, such as where an employee or applicant with a particular genetic anomaly might be at an increased risk of disease from working in a particular environment); or
- Retaliate against any individual because the individual:
  - Opposed any practices forbidden under the NYHRL; or
  - Filed a complaint, testified or assisted in any proceeding under the NYHRL.

## REASONABLE ACCOMMODATION REQUIREMENTS

The NYHRA requires employers to provide reasonable accommodations, as summarized below, unless an employer can prove that no accommodations are possible without causing undue hardship on its business. Determining undue hardship generally involves consideration of several factors, such as the overall size of the business and the type of operation. Additional factors vary depending on the type of accommodation at issue.

### DISABILITY AND PREGNANCY ACCOMMODATIONS

For an individual with a disability or a pregnancy-related condition, reasonable accommodations may be any action that permits the individual to perform the activities involved in a job in a reasonable manner. Some examples include:

- Accessible worksites;
- Modified equipment;
- Support services for persons with impaired hearing or vision;
- Job restructuring; and
- Modified work schedules.

Employers may require an individual who requests accommodations for a disability or pregnancy-related condition to provide medical or other information to verify the condition and consider the accommodation. Employers that receive this type of information must keep it confidential.

### DOMESTIC VIOLENCE ACCOMMODATIONS

For an employee who is a victim of domestic violence, an employer must allow the employee to take time off work for a reasonable time, as necessary for the employee to do any of the following related to domestic violence:

- Seek medical attention for injuries;
- Obtain services from a domestic violence shelter, program or rape crisis center;
- Obtain psychological counseling;
- Participate in safety planning and other actions to increase safety, including temporary or permanent relocation; or
- Obtain legal services, assist in prosecution or appear in court.

Employers may require advance notice of an absence for reasons related to domestic violence where feasible. Where advanced notice is not feasible, employers may require certification within a reasonable amount of time in the form of a police report, court order or similar document.

### RELIGIOUS ACCOMMODATIONS

In general, employers must provide accommodations as necessary to avoid:

- Requiring an individual to violate or forego a sincerely held practice of the individual's religion (such as observing a Sabbath day) as a condition of employment;
- Requiring an individual to remain at work during any day or portion of a day that the individual observes as the Sabbath or other holy day;
- Refuse to permit an employee to utilize leave solely because the leave will be used to accommodate the employee's sincerely held religious observance or practice.

## NOTICE POSTING REQUIREMENT

Employers must post a [notice](#) regarding the NYHRL's protections. This notice must be displayed in conspicuous, easily accessible and well-lighted places that are customarily frequented by employees and applicants.

## ENFORCEMENT

The NYHRL is enforced by the NYS Division of Human Rights ([Division](#)). Individuals who believe an employer has violated the NYHRL may file a complaint with the Division or a lawsuit in a state court against the employer. The Division itself, along with the state's attorney general, may also file NYHRL complaints or lawsuits against employers.

Until Feb. 14, 2024, most types of unlawful discrimination claims must be filed with the Division within one year after an allegedly unlawful discriminatory practice. For claims of workplace sexual harassment, individuals have up to three years to file. **Effective Feb. 14, 2024**, however, **any type of claim discrimination claim** may be filed against an employer for **up to three years** after an allegedly unlawful action.

If the Division or a court determines that the employer violated the NYHRL, the employer may be ordered to:

- Cease and desist from the unlawful practice;
- Hire, reinstate or upgrade an employee, with or without back pay;
- Pay compensatory damages, punitive damages, any profits obtained through unlawful discrimination and attorneys' fees;
- Pay civil fines and penalties of up to \$50,000 (or up to \$100,000 for willful, wanton or malicious violations); and
- Submit regular compliance reports.

Employers that commit willful, wanton or malicious violations may also be subject to criminal misdemeanor charges punishable by imprisonment for up to a year, fines of up to \$500 or both.

## OTHER FAIR EMPLOYMENT PROVISIONS

In addition to the NYHRL, several state laws impose other requirements and restrictions related to fair employment on employers. The following are some examples.

### SEXUAL HARASSMENT PREVENTION AND TRAINING REQUIREMENTS

Under amendments made to NYS labor laws in 2019, all employers in the state must:

- Adopt a written sexual harassment prevention policy (which must include information about a [sexual harassment hotline](#));
- Distribute the written policy to employees; and
- Conduct annual sexual harassment prevention training for employees.

These laws also prohibit employers from including any:

- Nondisclosure requirements within any settlement or other agreement to resolve a sexual harassment claim, unless the complainant prefers to include one; or
- Mandatory arbitration requirements for sexual harassment claims within any written contract.

### SALARY HISTORY PROHIBITIONS

As of Jan. 6, 2020, NYS labor laws prohibit employers from:

- Relying on an applicant's wage or salary history in determining whether to offer a job to the applicant or how much to pay the applicant;
- Seeking, requesting or requiring wage or salary history from an applicant or employee as a condition of employment or consideration for employment;
- Retaliating against or refusing to interview, hire, promote or otherwise employ an individual based on the individual's past wage or salary or because the individual has either refused to provide past wage or salary information or filed a complaint with the NYS Department of Labor against the employer; and
- Seeking, requesting or requiring an applicant or employee's wage or salary history from a current or former employer (or its employees or agents), except under specific circumstances.

### LACTATION ROOM REQUIREMENTS

New York labor laws require all employers to allow an employee to use paid breaks or mealtimes to express breast milk for her nursing child for up to three years after childbirth. As of **June 7, 2023**, [Senate Bill 4844B](#) also requires employers to:

- Designate a room or other location—other than a restroom or toilet stall and that meets certain requirements—for an employee to express breast milk upon the employee's request; and
- Provide a copy of a written policy regarding the rights of nursing employees to express breast milk in the workplace (to be published by the [NYS Department of Labor](#)) to every employee upon hire, every year and upon any return to work following childbirth.

### PAY TRANSPARENCY REQUIREMENTS

As of **Sept. 17, 2023**, [Senate Bill 9427A](#) requires employers that have four more employees and seek additional workers in the state to include the pay or range of pay for a position within any job advertisements or announcements for the position. Employers that have four or more employees and seek additional workers in New York City are already subject to a similar requirement under a [local ordinance](#) that went into effect on Nov. 1, 2022.

## MORE INFORMATION

For more information about NYS fair employment laws, contact Heffernan Insurance Brokers or visit the [Division's website](#).

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