

DEVELOPMENTS IN NEW YORK CITY LABOR LAWS

Two pieces of legislation from the New York City Council are poised to affect New York City employers in 2013. The first is a requirement enacted by the Council that prohibits discrimination against the unemployed. The second, expected to be enacted shortly after a legislative compromise was reached at the end of March, would mandate that employers provide employees with paid sick days. Both measures are strongly opposed by Mayor Bloomberg, who vetoed the unemployment discrimination measure and whose veto was overridden by the Council on March 13. Similarly the mayor is expected to veto the paid sick days legislation, but the Council is believed to have enough votes to override his veto. Consequently, employers must prepare for the eventuality that these two onerous pieces of legislation will become law in 2013.

Unemployment Discrimination

The new law (Bill 814-A) prohibits employers from making employment decisions based upon an applicant's unemployed status. The legislation also forbids employers from publishing advertisements for vacant positions which state that current employment is a requirement for the position or that the employer will not consider those currently unemployed. Employers may, however, delve into an applicant's past job experience and inquire as to the reasons for separation from previous jobs or consider an applicant's unemployed status where the employer has a "substantially job-related reason." The law will become effective on June 11, 2013.

The penalties for non-compliance are severe. Any person who believes that he or she is the victim of such discrimination may file a lawsuit for money damages or equitable relief and/or file a complaint with the New York City Commission on Human Rights. If the Commission determines the employer unlawfully discriminated against the employee, it has a wide array of penalties it can impose on the employer. It could issue a cease and desist letter, require the employer to provide front and back pay, pay money damages or even mandate the hiring of the prospective employee. An employer that does not comply with an order from the Commission could face civil penalties of up to \$50,000 - or up to \$250,000 if the conduct is "willful, wanton, or malicious" - plus an additional penalty of up to \$100 per day for a continuing violation.

Paid Sick Days

The Council's pending enactment of paid sick days will be a major burden on employers. However, the cost of non-compliance will be far greater. Because the final legislation has not been enacted, the exact requirements are not yet known. However, the compromise reached by the Council would eventually require employers with at least 15 employees to provide full-time employees with 5 paid days a year for absences due to illness.

It is believed that for the initial 18 months after enactment, only employers of 20 or more employees will have to comply. The proposed measure would also be linked to the performance of the city's economy, which if it falters would delay implementation. Additionally, the proposed legislation contains a prohibition on retaliating against employees who use their paid sick days. This private right of action would likely permit an aggrieved employee to sue an employer for money damages.





Please visit our blog, *Transitions in Employment*, in coming weeks for an update after the legislation is passed. At that time, we will be able to offer a deeper insight into the legislation and tips for compliance.

This *Labor & Employment Law Alert* was written by **David T. Harmon** and **David B. Cronheim**. We are available to help employers navigate the maze of requirements created by this new statute. For further information and assistance, or if you have questions on any other matters, please do not hesitate to contact the authors at dtharmon@nmmlaw.com and dbcronheim@nmmlaw.com, respectively.

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