

October 12, 2022

New York State and City Employment Law Update

In this memorandum, we report on three upcoming legislative and regulatory changes that are relevant to employers in New York State and New York City: (i) the enactment of the Adult Survivors Act (the “ASA”); (ii) the lifting of the New York City COVID-19 vaccine mandate for private employers (the “NYC Employer Mandate”); and (iii) the requirement for New York City employers to include the minimum and maximum salary when advertising any job, promotion or transfer opportunity (the “NYC Salary Disclosure Law”).

In May 2022, New York State Governor Kathy Hochul signed the ASA into law, which provides adult victims of sexual assault with a one-year window to file civil claims for alleged sexual abuse that were not brought within their original statute of limitations periods.¹ The law revives claims based on a sexual offense within the purview of the New York State penal law, and may be brought against “any party” for injuries resulting from the abuse, including individual abusers and institutions. Thus, the law could potentially revive certain employment-related claims, including those brought under the state human rights law or state tort law. The one-year window begins on November 24, 2022.

New York City Mayor Eric Adams recently announced that starting November 1, 2022, private sector employees will no longer be required to be fully vaccinated against COVID-19 to work on-site within New York City. Employers may implement their own vaccination policies.²

In addition, as reported in our [May 12, 2022 Memorandum](#), beginning on November 1, 2022, New York City employers will be required to include the minimum and maximum salary when advertising any job, promotion or transfer opportunity.³

NYS Adult Survivors Act Renews Sexual Assault Claims

In 2019, New York State passed the Child Victims Act (the “CVA”), which created a one-year look-back window for victims of childhood sexual abuse to file civil claims otherwise barred by the statute of limitations against individuals and institutions.⁴ The

¹ N.Y. C.P.L.R. § 214-J, available at <https://www.nysenate.gov/legislation/laws/CVP/214-J>.

² NYC, *Vaccination Requirement: Workplaces*, available at <https://www1.nyc.gov/site/doh/covid/covid-19-vaccine-workplace-requirement.page>.

³ Act of Jan. 15, 2022, N.Y.C. Int. No. 1208-B, § 2, Enactment No. 2022/032, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3713951&GUID=E7B03ABA-8F42-4341-A0D2-50E2F95320CD>; N.Y.C. Int. No. 0134-2022, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5528005&GUID=4544EE38-4659-44F6-9092-19D965A680AE&Options=ID|Text|&Search=>; New York City, *Mayor Adams Signs Legislation to Form two new Business Improvement Districts and Promote Salary Transparency in New York City* (May 12, 2022), <https://www1.nyc.gov/office-of-the-mayor/news/294-22/mayor-adams-signs-legislation-form-two-new-business-improvement-districts-promote-salary>.

⁴ N.Y. C.P.L.R. § 214-G, available at <https://www.nysenate.gov/legislation/laws/CVP/214-G>.

“revival window” under the CVA, which was set to close by August 2020, was later extended by one additional year until August 2021,⁵ and during that period, more than 10,000 lawsuits were filed under that statute.⁶

The ASA is modeled after the CVA and temporarily extends New York State’s statute of limitations for civil actions concerning certain sexual offenses under the State’s penal law committed against a person 18 years of age or older.⁷ The law provides a one-year window to bring civil actions against individuals and institutions for negligent or intentional acts resulting in sexual abuse that would otherwise be time-barred. Notably, the ASA not only permits claims against the purported perpetrator of the sexual assault, but also against the “abuser’s enablers” for their acts or omissions.⁸ While the ASA does not revive claims that have been fully resolved, such as those settled or released, the ASA expressly covers claims that were previously dismissed on statute of limitations grounds.

Once the ASA takes effect, there could be an increase in the number of cases being filed, including against employers, for acts of negligence related to alleged sexual offenses going back many years, if not decades, similar to what occurred in the wake of the CVA. Claims that could be brought against institutions under the ASA may include common law claims for negligent hiring and supervision, as well as claims under the New York State Human Rights Law or state tort law. Damages may include compensatory and punitive damages and, in some instances, attorneys’ fees.

The ASA also requires the Chief Administrator of the Courts to promulgate rules for the timely adjudication of revived actions pursuant to the ASA.⁹ The one-year window is set to open on November 24, 2022 and close on November 24, 2023.

NYC Employer Mandate Becomes Optional

As we previously reported in our [December 21, 2021 Memorandum](#), the NYC Employer Mandate—which took effect last December—required employers to exclude from the workplace any worker who has not provided proof of vaccination, unless an exception due to a religious or medical accommodation applies, or a worker only enters the workplace for “a quick and limited purpose.”¹⁰ The NYC Employer Mandate also imposed certain recordkeeping obligations and required businesses to post a certificate affirming their compliance with the Mandate’s requirements.

On September 20, 2022, Mayor Adams announced that the vaccine requirement of the NYC Employer Mandate will be optional as of November 1, 2022, stating that it was time to usher in a new stage of flexibility for businesses.¹¹ At the time of his announcement, approximately 89% of the City’s residents had received at least one dose of the COVID-19 vaccine.¹²

⁵ New York State, *Extension of Child Victims Act “Revival Window,”* available at <https://opdv.ny.gov/extension-child-victims-act-revival-window>.

⁶ Grace Ashford, *New York Will Allow Adult Victims to Revive Decades-Old Sex Abuse Claims*, N.Y. Times (May 23, 2022), <https://www.nytimes.com/2022/05/23/nyregion/adult-survivors-act.html#:~:text=The%20Child%20Victims%20Act%2C%20which,operates%20the%20state%20court%20system>.

⁷ The ASA covers conduct that would constitute a “sexual offense” as defined in Article 130 or “incest” as defined in §§ 255.26 and 255.27 of the New York State Penal law. Sexual offenses include, but are not limited to, sexual misconduct, rape, criminal sexual acts, forcible touching, sexual abuse and sexual assault.

⁸ *Supra* note 1.

⁹ *Supra* note 1.

¹⁰ NYC, *Frequently Asked Questions for Covered Entities* (Dec. 15, 2021), <https://www1.nyc.gov/assets/counseltothemayor/downloads/Workplace-FAQ.pdf>.

¹¹ Sharon Otterman and Emma G. Fitzsimmons, *New York City Ends Private Employer Vaccine Mandate and Pushes Boosters*, N.Y. Times (Sept. 20, 2022), <https://www.nytimes.com/2022/09/20/nyregion/private-employer-vaccine-mandate.html>.

¹² *Id.*

Effective November 1, 2022, New York City employers may, but are not obligated to, require workers who perform in-person work, including employees, independent contractors and interns, to submit proof of vaccination. The NYC Employer Mandate’s recordkeeping and posting requirements will likewise be lifted as of November 1. New York City nevertheless “encourag[es] private businesses to put in place their own vaccine policies.”¹³

The Amended NYC Salary Disclosure Law Becomes Effective

As we previously [reported](#), the NYC Salary Disclosure Law which requires employers to include the minimum and maximum salary when advertising any job, promotion or transfer opportunity becomes effective on November 1, 2022. The NYC Salary Disclosure Law was originally scheduled to become effective on May 15, 2022, but was subsequently amended before its original effective date to provide clarifications.¹⁴ Among other things, the amended NYC Salary Disclosure Law (i) added a provision stating the law does not apply to “[p]ositions that cannot or will not be performed, at least in part, in the city of New York”;¹⁵ (ii) allows an employer to cure non-compliance before a monetary fine is issued for first-time violations;¹⁶ (iii) provides that “no person shall have a cause of action [under the NYC Salary Disclosure Law], except that an employee may bring such an action against their current employer for an alleged violation of the law with respect to an advertisement by their employer for a job, promotion or transfer opportunity;¹⁷ and (iv) maintains that all employers with four or more employees are subject to the NYC Salary Disclosure Law.

Implications for Employers

- **ASA:** Employers may wish to review prior complaints or claims involving sexual offenses to evaluate the extent of possible exposure from potential claims that could be brought pursuant to the ASA. Employers may also wish to consider preserving and collecting documents that might be relevant to any such potential claims.
- **ASA:** Employers may wish to collect and review their historical insurance policies to understand what, if any, insurance coverage might be available for claims arising from prior coverage periods.
- **NYC Employer Mandate:** Employers in New York City may want to consider implementing their own COVID-19 vaccine policy after November 1, 2022.
- **NYC Salary Disclosure Law:** Employers may want to take steps to ensure compliance with the amended pay transparency requirements before they go into effect on November 1, 2022, such as reviewing existing job posting templates—including internal postings for promotions and transfers—and creating new templates, as necessary, that include the salary information required under the NYC Salary Disclosure Law as amended, and informing managers, human resources personnel, and legal and compliance departments of the changes in the amended bill.
- **NYC Salary Disclosure Law:** Covered employers may want to continue to monitor the implementation of the NYC Salary Disclosure Law for any further updates and guidance.
 - The text of the ASA can be found [here](#).

¹³ *Supra* note 2.

¹⁴ New York City Council, *Council’s Civil and Human Rights Committee Chair Nantasha Williams, Co-Sponsor of Original Salary Transparency Law Council Member Justin Brannan, and Women’s Caucus Co-Chair Amanda Farias Announce Amended Legislation Supported by Advocates & Small Business Community* (Apr. 15, 2022), <https://council.nyc.gov/press/2022/04/15/2167/>.

¹⁵ N.Y.C. Int. No. 0134-2022 § 1(b)(2), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5528005&GUID=4544EE38-4659-44F6-9092-19D965A680AE&Options=ID|Text|&Search=->.

¹⁶ *Id.* § 1(d).

¹⁷ *Id.* § 1(c).

- New York City’s updated guidance on the NYC Employer Mandate can be found [here](#).
- The New York City Commissioner of Health and Mental Hygiene’s Order on the NYC Employer Mandate can be found [here](#).
- The original version of the NYC Pay Disclosure Law can be found [here](#).
- The amended NYC Pay Disclosure Law can be found [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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