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**LABOR AND EMPLOYMENT  
LAW UPDATE**

**3-20-2025**

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**NEW YORK CHANGES**

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## INCREASE TO THE MINIMUM WAGE

- **For New York City, Westchester and Long Island:**
  - 2024 - \$16.00/hour
  - 2025 - \$16.50/hour
  - 2026 - \$17.00/hour
- **For the rest of New York:**
  - 2024 - \$15.00/hour
  - 2025 - \$15.50/hour
  - 2026 - \$16.00/hour

For 2027 and beyond, the New York Department of Labor (NYSDOL) will publish the minimum wage on October 1 each year for the rate to take effect on January 1.

Likely it will increase to the minimum weekly salary for exempt administrative and executive employees, too.

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## PRENATAL LEAVE

<https://www.ny.gov/new-york-state-paid-prenatal-leave/frequently-asked-questions>



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## WHAT IS IT?

- Went into effect January 1, 2025.
- 20 hours of leave for “prenatal” appointments.
- All private-sector employees are covered regardless of size.

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**WHAT ARE THE DETAILS?**

- In addition to Paid Sick Leave
- Is given to employees up front (they do not earn it)
- Only the employee seeking care may use it (not spouses or partners)
- Paid at Regular Rate or Minimum Wage, whichever is greater

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**WHAT IS COVERED?**

- Applies to appointments related to fertility, prenatal care, ending a pregnancy
- Does not apply to post-natal care
- Cannot require an employee to provide documentation of the need for leave (i.e. no doctor's note)
- Can't require the employee to use other leave first

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**HOW IS LEAVE CALCULATED?**



- Rolling year starting on the first date leave is taken
- Leave may be used for a second pregnancy within the year, but leave doesn't start over with a second pregnancy

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REMINDER: THIS IS IN ADDITION TO PAID SICK LEAVE AND PAID FAMILY LEAVE

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### COVID LEAVE

- Expires July 31, 2025
- Until then, it's still a thing:  
<https://paidfamilyleave.ny.gov/COVID19>

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### CLEAN SLATE ACT

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**CLEAN SLATE ACT**

- Automatically seal certain convictions
- Effective November 16, 2024
- Applies only to criminal convictions under New York state law—not other states or federal
- Can seal eligible crime even if have ineligible crime
- More Info: <https://www.lawny.org/> (type in Clean Slate Act)



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**Effect on Employers**

- Background Checks Won't Include the Information
- Corrections Law 23-A Still Applies



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**NEW YORK RETAIL WORKER SAFETY ACT**



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**WHAT'S IN THE LAW?**

- Who?
  - "a store that sells consumer commodities"
  - Not food for consumption on premises
  - 10 or more employees
- What?
  - Violence Prevention Policy
  - Training to employees
  - Notice to Employees on hire and annually at annual training

*Effective March 4, 2025*



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**WHAT'S IN THE POLICY/TRAINING?**

- Notice of factors or situations in the workplace that might place employees at risk of violence
- Identify preventative measures
- Federal, state, and/or local information concerning remedies available to victims of workplace violence
- No retaliation provision
- **NY DOL to issue model policy and model training program in early 2025**



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**WHAT ELSE?**

- Large Employers (over 500 employees) must provide panic buttons throughout the workplace
- Have until 2027
- Further guidance coming



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**NEW WORKER'S COMPENSATION  
MENTAL HEALTH LAW**

- Expands to all workers the ability to receive coverage for PTSD, acute stress disorder, major depressive disorder from a work-related stress
- Must have medical evidence based on the criteria in the DSM
- Disorder arose out of extraordinary work-related stress attributable to a distinct work-related event or events directly related to the employment and occurring during the performance of the employee's job duties.

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**Warehouse Worker Injury Reduction Act**

- Will go into effect June 1, 2025
- 100 employees at a single warehouse distribution center or at least 1,000 employees at one or more warehouse distribution centers
- Reduce musculoskeletal injuries

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**What's Required?**

- Engage a qualified ergonomist to provide evaluation
- Develop formal injury reduction program
- Train employees on ways to reduce injuries

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**FASHION WORKERS ACT**

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### Fashion Workers Act

- Effective June 19, 2025
- Regulates Model Management Companies and their clients who use Models
- Affects contracts with models, pay and overtime, breaks, insurance, safety and digital rights

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### Construction Industry Registration Requirements

- contractors and subcontractors who submit bids or perform construction work:
  - public work projects
  - private projects covered by Article 8 of the Labor Law
- Required to register with the New York State Department of Labor (NYSDOL) by Monday, Dec. 30, 2024

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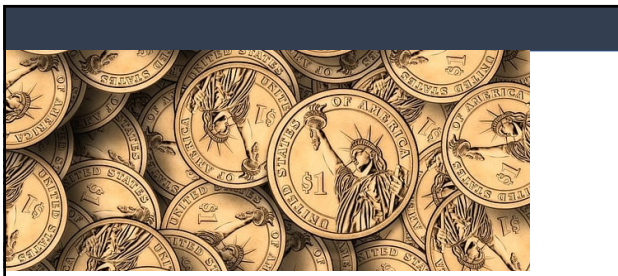
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### WHAT ABOUT WEEKLY PAY?

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### Conflicting Decisions

- Labor Law 191 requires weekly pay for “manual workers”
- First Department (*Vega*)—There is a Private Right of Action
- Second Department (*Grant*)—There is no Private Right of Action
- Current Status—Thousands of Lawsuits; Waiting on Court of Appeals
- Proposal in Hochul’s budget to end the lawsuits



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### CORPORATE TRANSPARENCY ACT AND BENEFICIAL OWNERSHIP REPORTING



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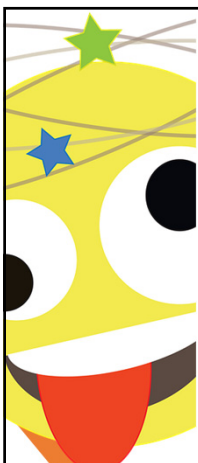
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### Where Are We At Now?

- One injunction lifted by Supreme Court; another injunction remains in place
- Bill in Congress to extend reporting deadline to January 2026 to give Courts time to consider the issues
- Voluntarily report; not required at this time



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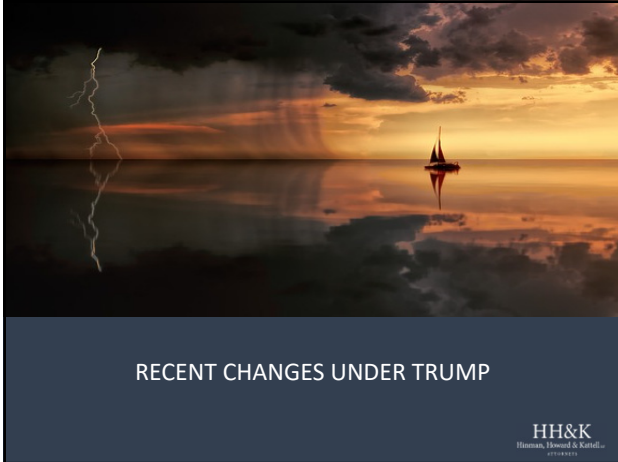
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### ICE RAID

- For ICE to enter **non-public** areas of a workplace, must have employer consent or judicial warrant
- No obligation to answer questions, but cannot require non-supervisory employees to not answer questions

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### ICE RAID-CONT.

- Subpoena sets the scope of what ICE can do
  - Take Documents—Make a Copy
  - Enter an Area—Only that Area
- Do Not Escalate. BUT, review the warrant, get the information for the person in charge.
- Do not lie.

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### WHAT TO DO NOW?



- Develop a Plan and Make Sure Supervisors Are Prepared
- Who will contact counsel?
- Who will be the point of contact with ICE?
- Will they be allowed in without a warrant?

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**CHANGES AT THE EEOC**

- **Statement on Gender Identity**
  - "defend the biological and binary reality of sex"



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**What About DEI Programs?**

- Federal Grant Money Should Not Be Used to Support
- Consider the Battle of the Words
- Injunction currently in Place
  - Unconstitutionally Vague
  - Violates First Amendment
- Certification Provision Currently Enjoined, BUT plan to meet its requirements
- Affirmative Action Programs (in place since 1965) revoked. Contractors must wind down by 4-21-2025

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**EEOC Investigations of DEI Practices and Programs**

- Letters to Universities and Law Firms re: Investigations into DEI Programs
- Is This Beyond the Scope?
  - Review Programs
  - Be Prepared for Information Requests if Charges are Filed on Any Basis



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**EEOC Guidance on “Illegal” DEI**

- “if it involves an employer or other covered entity taking an employment action motivated—in whole or in part—by race, sex, or another protected characteristic”
- “prohibits employers from limiting, segregating, or classifying employees or applicants based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities”
- Disparate Impact

• [https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work?utm\\_source=pocket\\_shared](https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work?utm_source=pocket_shared)



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**Harassment from Training?**

- “[A]n employee may be able to plausibly allege or prove that a diversity or other DEI-related training created a hostile work environment by pleading or showing that the training was discriminatory in content, application, or context.”
- opposition to DEI-related training, “such as unconscious bias training, may constitute protected activity where the plaintiff provides a fact-specific basis for his belief that the training violated Title VII”



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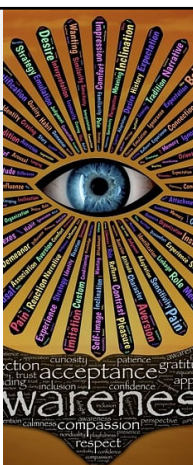
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**TO DO**

- Review Your Training Programs and Watch for any Updates from NYS in Response
- Use a variety of examples in training
- Consider Including Some Majority Victim Examples (Man harassed by Woman)
- Unconscious Bias –How You Word It Matters



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## US Stops Offensive Cyberoperations Against Russia

- Russian State Responsible for many attacks, including Solar Winds cisa.gov
- Many criminal gangs operate inside of Russia (protected by Russia)—LockBit Ransomware; Darkside Ransomware (Colonial Pipeline)
- Russia #1 for cybercrime activity origination



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### WHAT DO BUSINESSES DO?

- Make Sure You Have Good Cyber Policy, Training, Controls, Insurance
- TRAIN YOUR PEOPLE
- TEST YOUR PEOPLE
- TRAIN AGAIN
- KNOW WHAT TO DO FOR A BREACH
- Maintain Vigilance



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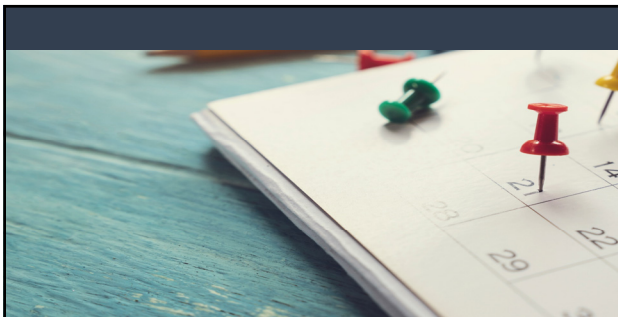
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### OTHER UPDATES

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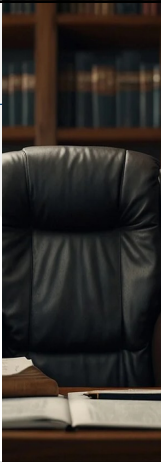
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**IRS UPDATED GUIDANCE ON MISCLASSIFICATION**

- Rev. Rul. 2025-3
- Only applies to IRS, not other agencies
- Provides a “safe-harbor” for misclassified employees, for purposes of employment taxes, that would limit penalties (but back taxes would still need to be paid)



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**DOL Opinion Letter on FMLA Substitution Rule**

- Employer cannot require the concurrent use of employer-provided paid leave during the portion of the leave that is compensated by the state or local program
- Employer and the employee may agree, where state law permits, to use the employee’s employer-provided accrued paid leave to supplement the payments under a state or local leave program.

[https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FMLA/2025\\_1\\_14\\_1\\_FMLA.pdf](https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FMLA/2025_1_14_1_FMLA.pdf)



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**OSHA FINAL REGULATIONS ON PROPER FIT FOR PPE IN CONSTRUCTION**

- Published Today <https://public-inspection.federalregister.gov/2024-29220.pdf>
- Explicitly require that PPE fit properly
- Concern over gender/size fit



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### OTHER DOL OPINION LETTERS

- Use of FMLA leave for the treatment of a serious health condition as part of a clinical trial  
[https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FMLA/2024\\_11\\_08\\_01\\_A.pdf](https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FMLA/2024_11_08_01_A.pdf)
  - Answer: Yes
- Can expense payments for tools and equipment excluded from regular rate when calculation overtime?  
[https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/2024\\_11\\_08\\_01.pdf](https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/2024_11_08_01.pdf)
  - Answer: Yes, IF the expenses are real.



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### MANDATORY CAPTIVE AUDIENCE MEETINGS ARE NO MORE

- Employers cannot compel employees to attend meetings where an employer expresses its opinion regarding unionization
- Employer can still express its opinion and can hold meetings BUT
  - Must be careful that there isn't "threat or reprisal or promise of a benefit"
- Safe harbor:
  1. The employer intends to express its views on unionization at a meeting at which attendance is voluntary;
  2. Employees will not be subject to discipline, discharge, or other adverse consequences for failing to attend the meeting or for leaving the meeting; and
  3. The employer will not keep records of which employees attend, fail to attend, or leave the meeting.



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**LIMITS ON EMPLOYER SPEECH  
DURING A UNION CAMPAIGN**

- Old rule: Statements that unionization would eliminate employees' ability to address workplace issues individually with the employer
- New rule: "if they select a union to represent them, the relationship that existed between the employees and the employer will not be as before"

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WHAT ELSE?  
**No quorum for NLRB**



NATIONAL LABOR RELATIONS BOARD

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SUPREME COURT UPDATE

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**Muldrow v. City of St. Louis**

- QUESTION: Can a “neutral” action be a fo. of “adverse action” for discrimination purposes?
- FACTS: Lateral Transfer of an Employee for a Discriminatory or Retaliatory Reason
- ANSWER: Employee need only show “some harm”
- Practical Effect--No Decisions Should Be Made with a Discriminatory or Retaliatory Motive

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**Loper Bright Enterprises v. Raimondo**

- What is *Chevron Deference*? Courts defer to an administrative agency’s reasonable interpretation of an ambiguous statute
- *Loper* overruled this
- Effect? More lawsuits. Less deferral to Administrative Agencies. Lots of chaos.



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**2024-2025 TERM**

- 4 Cases So Far:
  - *Stanley v. City of Sanford*—ADA and Retiree Benefits
  - *E.M.D. Sales v. Carrera*—outside sales employee exemption
  - *Ames v. Ohio Department of Youth Services*—Standard for certain discrimination cases
  - *Waetzig v. Halliburton*—Arbitration and Discrimination

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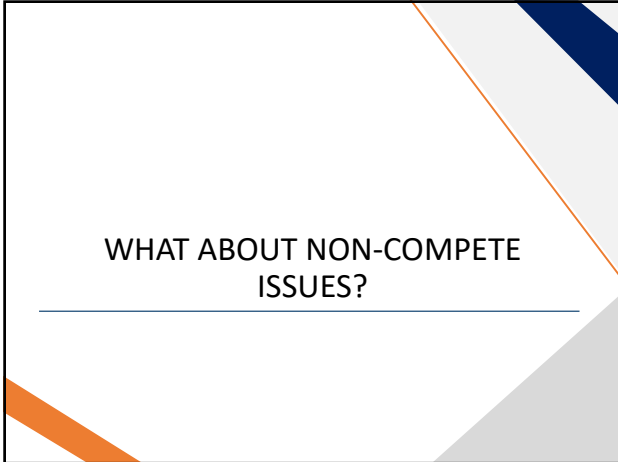
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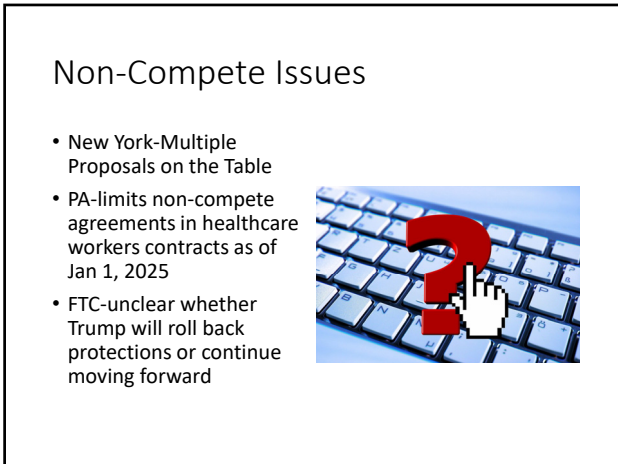
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