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Client Memorandum

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# New York State and City Employment Law Update (January 2026)

This memorandum provides an update on recent employment law developments in New York State and New York City. At the State level, the New York Human Rights Law ("NYSHRL") has been amended to codify disparate impact employment discrimination claims. In addition, the New York Fair Credit Reporting Act ("NYFCRA") has been amended to restrict employers' use of potential and current employees' credit histories in making employment-related decisions, which will take effect in April 2026. At the City level, the Earned Safe and Sick Time Act ("ESSTA") has been amended to mandate the provision of unpaid safe/sick and paid prenatal time off for employees, which takes effect in February 2026.

## NYSHRL Amended to Explicitly Recognize Disparate Impact Employment Discrimination Claims

The NYSHRL has been amended to explicitly prohibit facially neutral employment practices that have a discriminatory impact on a protected group regardless of discriminatory intent (the "NYSHRL Amendment").[1] The NYSHRL Amendment codifies federal and New York state courts' prior recognition of disparate impact employment discrimination claims under state law despite the absence of an explicit statutory directive.[2] The NYSHRL Amendment applies to all cases alleging unlawful discriminatory practices constituting employment discrimination occurring on and after December 19, 2025.

Under the NYSHRL Amendment, a claimant may establish that an employment practice is unlawful by showing the practice's discriminatory effect, even if such practice was not motivated by a discriminatory intent. The law's statutory burden-shifting framework initially requires a claimant to show "that a challenged practice caused or predictably will cause a discriminatory effect."[3]

A practice or policy has a "discriminatory effect where it actually or predictably results in a disparate impact on a group of persons, because of their membership in a class protected" under the NYSHRL.[4] Notably, the NYSHRL Amendment allows a presumption of a discriminatory effect based on either an employment practice that "*predictably will* cause" a disparate impact or one that has already caused it.[5]

[1] N.Y. Exec. Law § 296(5-a)(c), available at https://www.nysenate.gov/legislation/laws/EXC/296; S. 8338, N.Y. Leg. (2025), available at https://www.nysenate.gov/legislation/bills/2025/S8338.

[2] *See, e.g.*, *Broomer* v. *Huntington Union Free Sch. Dist.*, No. 12 CV 574, 2013 WL 4094924, at *9 (E.D.N.Y. Aug. 13, 2013), *aff'd,* 566 F. App'x 91 (2d Cir. 2014); *Cannizzaro* v. *City of New York*, 206 N.Y.S.3d 868, 885–87 (N.Y. Sup. Ct. 2023).

[3] N.Y. Exec. Law § 296(5-a)(d)(1).

[4] *Id.* § 296(5-a)(b). The protected classes under the NYSHRL include: age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence. *Id.* § 296(1)(a).

[5] *Id.* § 296(5-a)(b), (d) (emphasis added).

The burden then shifts to the employer to show a legally sufficient justification for the practice.[6] Specifically, the employer must show that the challenged practice "is job related for the position in question and consistent with business necessity" and that "the business necessity could not be served by another practice that has a less discriminatory effect."[7] This showing "may not be hypothetical or speculative" and must be "supported by evidence."[8]

Even where an employer successfully shows a legally sufficient justification, however, the claimant "may still prevail upon proving that the business necessity could be served by another practice that has a less discriminatory effect."[9]

The NYSHRL Amendment comes amid an evolving landscape as to disparate impact liability at both the federal and state levels.

At the federal level, the 1991 amendments to Title VII of the Civil Rights Act of 1964 codified the prohibition against any "particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin" where an employer "fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity."[10] For decades, including prior to the 1991 amendments, courts have recognized disparate impact as a cognizable theory of employment discrimination under Title VII.[11]

At the New York City level, the NYCHRL also prohibits use of an employment policy or practice that results in a disparate impact on a protected group unless the employer proves as an affirmative defense that (i) such policy or practice bears a significant relationship to a significant business objective or (ii) there is no alternative policy or practice that would serve the employer equally well.[12]

Notably, the NYSHRL Amendment follows President Donald Trump's April 23, 2025 executive order announcing the federal government's policy "to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible."[13] New York is not alone in codifying disparate impact liability in the wake of the federal government's actions. On December 17, 2025, New Jersey's Attorney General, Matthew Platkin, announced that the New Jersey Division of Civil Rights had adopted a similar new rule codifying "the prohibition against disparate impact discrimination under the New Jersey Law Against Discrimination."[14]

## NYFCRA Amended to Prevent Employers' Consideration of Credit History

The NYFCRA has been amended to restrict employers from considering current or potential employees' credit history in employment decisions (the "NYFCRA Amendment"). Specifically, employers may not "request or [] use for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee."[15] "Consumer credit history" refers to "an individual's credit worthiness, credit standing, credit capacity or payment history" based on consumer credit reports, credit scores, or other information obtained from an individual "regarding (i) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit or prior credit report inquiries, or (ii) bankruptcies, judgments or liens."[16]

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[6] *Id.* § 296(5-a)(a), (d)(ii).

[7] *Id.* § 296(5-a)(c)(i)(A)-(B).

[8] *Id.* § 296(5-a)(c)(ii).

[9] *Id.* § 296(5-a)(c)(iii).

[10] 42 U.S.C. § 2000e–2(k)(1)(A)(i).

[11] *See Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).

[12] N.Y.C. Admin. Code § 8-107(17).

[13] Exec. Order No. 14281, 90 Fed. Reg. 17537 (Apr. 23, 2025), available at https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/.

[14] *AG Platkin Announces Division on Civil Rights Adopts Landmark Rules on Disparate Impact Discrimination Under New Jersey Law*, New Jersey Office of the Attorney General (Dec. 15, 2025), https://www.njoag.gov/ag-platkin-announces-division-on-civil-rights-adopts-landmark-rules-on-disparate-impact-discrimination-under-new-jersey-law/.

[15] S. 3072 § 2, 2025–2026 Leg., Reg. Sess. (N.Y. 2025), available at https://www.nysenate.gov/legislation/bills/2025/S3072.

[16] *Id.* § 1.

The NYFCRA Amendment provides for several exceptions to the foregoing prohibition, including for: (i) employers required by Securities Exchange Act of 1934 § 3(a)(26) to use an individual's consumer credit history for employment purposes; (ii) persons applying for law enforcement positions or employed in such roles; (iii) "persons in a position that is subject to background investigation by a state agency" and is "an appointed position in which a high degree of public trust . . . has been reposed"; (iv) positions for which an employee is required by law to be bonded; (v) positions requiring security clearances under federal or state law; (vi) positions with regular access to trade secrets, intelligence information, or national security information; (vii) "persons in a position: (A) having signatory authority over third party funds or assets valued at ten thousand dollars or more; or (B) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at ten thousand dollars or more on behalf of the employer"; and (viii) "persons in a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases."[17]

New York City has had a nearly identical prohibition on employers' use of credit history for employment decisions since the Stop Credit Discrimination in Employment Act took effect in 2015.[18]

The NYFCRA Amendment will take effect on April 18, 2026.[19]

## ESSTA Amended to Mandate Unpaid Safe/Sick Leave and Paid Prenatal Leave

The New York City Council recently enacted Int. 780-A, which amends the City's ESSTA to mandate that employers provide employees, upon their hiring and on the first day of each calendar year, a minimum of 32 hours of "unpaid safe/sick time that is immediately available for use," in addition to the safe/sick leave currently available under ESSTA.[20] Employers are not required to carry over unused unpaid safe/sick time to the following year.[21]

The expanded scope of permissible reasons for using "sick time" now includes public disasters and "restricted in-person operations" while the expanded use of "safe time" now includes absences due to an employee or an employee's family member being a victim of "workplace violence," an employee who qualifies as a care giver providing care to a minor child or care recipient, and, as to the employee or for the benefit of a family member or care recipient, initiating, attending or preparing for a legal proceeding or hearing related to subsistence benefits or housing or taking action necessary to apply for, maintain or restore subsistence benefits or shelter.[22]

This unpaid safe/sick time is in addition to the existing requirement that employers with five or more employees provide one hour of paid safe/sick time for every 30 hours worked (up to 40 hours in a calendar year for employers with 99 or fewer employees and up to 56 hours in a calendar year for employers with more than 100 employees).[23]

Additionally, employers must now provide employees with 20 hours of paid prenatal leave during any 52-week period.[24] This leave may be used for purposes of "health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy."[25]

While "employers may set a reasonable minimum increment" for employees' use of safe/sick time and paid prenatal leave, such minimum increments may not exceed four hours per day and one hour per day, respectively.[26]

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[17] *Id.* § 2.

[18] NYC Admin. Code § 8-107(24).

[19] *See* S. 3072 § 5.

[20] N.Y.C. Int. 780-2024-A § 2, available at https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6632607&GUID=97634BF6-0EAD-455B-8440-A50F25DABD61.

[21] *Id.* § 2.

[22] *Id.* § 3.

[23] N.Y.C. Admin. Code § 20-913(2)(b).

[24] Int. 780-A § 2.

[25] N.Y. Lab. Law § 196-b(4)(a).

[26] Int. 780-A § 2.

The ESSTA continues to provide employees with a private right of action for alleged violations by employers.[27] Employees may file a lawsuit within two years of the alleged violation for compensatory damages, injunctive and declaratory relief, and attorneys' fees and costs.[28] Employees may do so without exhausting administrative remedies.[29]

The amendment will take effect on February 22, 2026.[30]

## Implications for Employers

- Employers may wish to keep abreast of state legislative and regulatory changes addressing disparate impact liability given the evolving landscape.
- New York employers may wish to evaluate existing employment practices and policies to assess potential disparate impact on protected groups and to modify such practices and policies as appropriate to ensure compliance with the NYSHRL Amendment.
- New York employers may wish to review their use of credit history in employment decisions to ensure compliance with the NYFCRA Amendment.
- New York employers may wish to review and update their existing time off policies to ensure compliance with the unpaid sick/safe time off and paid prenatal leave requirements established by the amended ESSTA.

[27] N.Y.C. Admin. Code § 20-924(f).

[28] *Id.*

[29] *Id.* § 20-924(g).

[30] Int. 780-A § 12.

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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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