

EMPLOYER ALERT: AMENDMENT TO NEW YORK CITY HUMAN RIGHTS LAW EXPANDS RIGHTS FOR DOMESTIC WORKERS

KD ALERT | DECEMBER 10, 2021

Effective March 12, 2022, the employment protections afforded by the New York City Human Rights Law (NYCHRL) will apply to all domestic workers who perform work in New York City, regardless of the total number of workers employed by the employer. While the law previously applied only to places of employment with 4 or more workers, New York City's new legislation, Int. No. 339-B, eliminates that requirement and now affords additional protections against discrimination, harassment, and retaliation to domestic workers, including entitlements to certain reasonable accommodations under the law.

Companies, individual employers, employment agencies, and any person who helps workers find jobs should note the significant change in the NYC Human Rights Law and prepare accordingly. This change is even more noteworthy as the law may now apply to parents in a private home who hire a single nanny or housekeeper.

Importantly, the NYC Commission on Human Rights launched a public campaign to educate and advise domestic workers about these expanded workplace protections. The campaign includes messages on social media (Twitter, Instagram, and Facebook), LINKNYC Kiosks, bus shelters, and in local businesses. Educational materials will also be distributed at various access points throughout the city, including through neighborhood associations, community boards, schools, and other institutions. It is therefore vital that all employers understand the scope of the expansion and their obligation under the NYC Human Rights Law.

What types of domestic workers are covered under the NYC Human Rights Law?

Domestic workers include nannies, au pairs, maids, cooks, housecleaners, butlers, companions, home care workers, and any other employee hired to work inside a home to provide childcare, eldercare, companionship, or housekeeping services. There are only three specific categories of domestic workers who are not covered under the law: (1) employees who work "on a casual basis" or those whose work is intermittent or irregular; (2) workers who are related to the employer, or related to the person receiving care; and (3) workers who provide companionship service and are also simultaneously employed by an outside agency.

Important requirements employers of domestic workers should keep in mind with the expansion of the law:

- Employers cannot discriminate against a domestic worker based on his or her membership in a protected class, such as age, race, religion, national origin, actual or perceived gender, immigration status, and other categories. This means that employers cannot refuse to hire, fire, pay less, harass, or treat a domestic worker less well because of their membership in a protected class.
- During the hiring process, employers cannot inquire into a prospective domestic worker's salary or credit history. Employers also cannot ask a prospective employee to take a pre-hire drug test to detect marijuana or THC.
- Employers must provide domestic workers with reasonable accommodations, including for needs related to disability, pregnancy, religious practices, and other needs. Accommodations are determined on a case-by-case basis and may include changes to work schedules or job duties. Remember, the burden is on the employer to initiate a cooperative dialogue about an employee's potential need

for an accommodation as soon as the employer has actual or perceived notice of a disability, pregnancy, religious practice, or other need. Employers do not have to provide accommodations that would impose an undue hardship.

- Employers must provide domestic workers with a notice of their rights regarding sexual harassment, post a notice regarding sexual harassment protections, and ensure that they receive annual training on the NYC Human Rights Law's protections against gender-based harassment.

As a reminder, in addition to the expanded rights under the NYC Human Rights Law, employers of domestic workers should also be mindful of their obligations under other existing laws, including:

- Minimum wage and overtime pay requirements;
- Wage notice and wage statement requirements;
- Providing at least one day of rest per week;
- Providing at least three paid days off per year;
- Paid Safe and Sick Leave benefits;
- Worker's compensation and disability benefits insurance (for fulltime domestic workers);
- Paid Family Leave benefits (for some domestic workers); and
- Providing sexual harassment prevention trainings.

Protections that are not extended to domestic workers:

Employers of domestic workers are not required to maintain a designated lactation room or policy in their home. However, if the domestic worker needs an accommodation related to pregnancy, including to express milk at work, employers must engage in a cooperative dialogue and provide an accommodation unless doing so would impose an undue burden.

KD IS HERE TO HELP

The experienced labor and employment law attorneys at Kaufman Dolowich & Voluck, LLP are available to assist you, your family, and your business in navigating the New York City Human Rights Law, and in preparing for the upcoming expansion of rights under the law. For more information, please contact Keith Gutstein at kgutstein@kaufmandolowich.com, Solomon Abramov at sabramov@kaufmandolowich.com, or any other experienced member of KD's Labor and Employment Law Practice Group.