

PUBLICATION UPDATE

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New York Employment Law

Publication 796 Release 22 September 2014

HIGHLIGHTS

New Topics

The following represents some of the new topics and recent developments in New York employment law that have been added to this release.

Text Revisions. Chapters 1, 2, 3, 4, 9, 10, 18, 19, 24, 25, 27, 35, and 36 have been revised and updated to incorporate the latest developments in New York employment law. Summarized below are some of the more significant issues covered in this release.

Chapter 2, *Employment and Similar Relationships*, discusses: Article 25-c of the New York Labor Law, the “Commercial Goods Transportation Industry Fair Play Act” which creates a presumption that any person performing commercial goods transportation services for a commercial goods transportation contractor is an employee and not an independent contractor unless statutory tests are met; and new section [7] *Employer Status of Corporate Officers, Corporate Parents.*

Chapter 4, *Employee Noncompetition Obligations During Employment and After*, discusses: An employee’s breach of duty of loyalty may continue after termination of the employment agreement. That duty may include the specific duty not to divert business in which a former employee has a “tangible expectancy” and the duty not to exploit the former employer’s confidential and proprietary information obtained during the course of employment which was either technically confidential or available only because of the employment. *Poller v. Bioscrip*, 974 F. Supp. 2d 204 (S.D.N.Y. 2013).

Chapter 10, *Preemployment Testing and Background Checks*, discusses: New York’s Court of Appeals has held there is no strict liability for disclosure of medical information by an employee of a medical corporation acting outside the scope of her employment. *Doe v. Guthrie Clinic, Ltd.*, 22 N.Y.3d 480, 982 N.Y.S.2d 431, 5 N.E.3d 578 (2014) [nurse texts her sister-in-law that boyfriend being treated for STD]. and *Landon v. Kroll Lab. Specialists, Inc.*, 22 N.Y.3d 1, 977 N.Y.S.2d 676, 999 N.E.2d 1121 (2013), where New

York's Court of Appeals has recognized a private right of action against a drug testing laboratory for negligence.

Chapter 19, *Employer Rules and Policies*, discusses sick leave Under the FMLA and New York City's Earned Sick Time Act. New York City's Earned Sick Time Act ("ESTA"), provides paid sick time to employees in New York City. N.Y.C. Admin Code § 20-911, et. seq. Under ESTA, employees of businesses with five or more workers are entitled to five paid sick days a year. Employees accrue a minimum of one hour of sick time for every 30 hours worked, but employers are not obligated to provide more than 40 hours of paid sick time in a calendar year. Sick time provided under ESTA begins to accrue at the commencement of employment and the employee will be entitled to begin using sick time on the 120th calendar day following the start of his or her employment. Employees may use sick time as it accrues.

Chapter 25, *New York Employment Discrimination Litigation*, discusses *University of Texas Southwestern Medical Center v. Nassar*, where the United States Supreme Court ruled that the causation

standard to establish retaliation under Title VII was "but-for" So doing, the Court relied on its earlier decision in *Gross v. FBL Financial Services* to conclude that where a statute defines a prohibited act using the term "because of" membership in a protected class or being engaged in protected activity, but-for causation is the standard.

Chapter 27, *New York City Human Rights Laws*, discusses: A non-resident of New York City cannot avail herself of the protections of the New York City Human Rights Law unless she can demonstrate that the alleged discriminatory act had an impact within the City's boundaries. *Hardwick v. Auriemma*, 983 N.Y.S.2d 509 (1st Dept. 2014) [even if decision to terminate made in New York City, Plaintiff's discharge took place in London]. and Plaintiff must plead discriminatory animus to sustain a claim of hostile work environment under both New York State Human Rights Law and New York City Human Rights Law. *Askin v. Department of Educ. of the City of N.Y.*, 110 A.D.3d 621, 973 N.Y.S.2d 629 (1st Dept. 2013)

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Publication 796 Release 22

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