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New York School Bus Contractor's Association

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New York Legal Update

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What's New in New York?

- NYSDHR Sexual Harassment Hotline
- NYS Expanded Whistleblower Protections
- Ending Forced Arbitration of Sexual Assault & Sexual Harassment Act (EFASASH) of 2021
- NYS Paid Sick Leave Update
- Expanded NYS Paid Family Leave (2023)
- Expanded NYC Earned Sick and Safe Leave Act (Child Vaccinations)
- NYS Electronic Monitoring Law
- NYC Artificial Intelligence
- Restrictive Covenants
- Pay Transparency

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NYS DHR Sexual Harassment Hotline

Summary	Takeaway
<ul style="list-style-type: none"> In March 2022 Gov. Hochul signed legislation directing the NYSDHR to implement a toll-free confidential hotline to provide counsel and assistance to individuals experiencing workplace sexual harassment. Hotline is not up and running, and being advertised on the NYSDHR's website.  <p>The screenshot shows the NYSDHR website with a banner for the 'DHR's Toll-Free Sexual Harassment Hotline'. The banner features a group of people and the text 'Call 1-800-999-5233 for advice on issues of harassment or sexual harassment. Learn more about the hotline and how to use it.' Below the banner is a 'DEBRIEF' section with a small paragraph of text.</p>	<ul style="list-style-type: none"> Review/refresh sexual harassment policy as well as annual and new hire sexual harassment training programs.

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NYS Expanded Whistleblower Protections

Summary	Takeaway
<ul style="list-style-type: none"> Effective January 26, 2022, NYS Whistleblower Law expanded. Now protects individuals “who report or threaten to report any activity that they reasonably believe is in violation of law, rule or regulation.” “Law, rule or regulation” includes any state, local, and federal law, rule and regulation, as well as judicial and administrative decisions. “Employees” now includes former employees and independent contractors. Employee must “in good faith reasonably believe” that the activity has or will occur, and that he/she “in good faith reasonably believes” that the activity is illegal. Not required to put employer on notice of blowing the whistle. 	<ul style="list-style-type: none"> Retaliation: Expanded law prohibits actions or threats to take adverse action against employee’s employment, and contacting/threatening to contact immigration authorities, regardless of whether employee was acting within scope of their duties. Post model whistleblower notice at work site “conspicuously in easily accessible and well-lighted locations customarily frequented by employees and applicants.”

Ending Forced Arbitration of Sexual Assault & Sexual Harassment Act (EFASASH) of 2021

Summary	Takeaway
<ul style="list-style-type: none"> Amends the Federal Arbitration Act (“FAA”) to give employees who are parties to arbitration agreements with their employers the option of bringing their claims of sexual assault or harassment in arbitration <u>or</u> court. Applies to all claims that arise or accrue after March 3, 2022, regardless of date of agreement at issue. Not applicable to claims that arose or accrued before March 3rd. Does not affect otherwise valid arbitration agreements for claims that are not related to sexual assault or harassment. 	<p>General suggestion is no need to modify current agreements but employers should modify agreements used with new hires.</p> <p>Monitor similar legislation in other areas.</p>

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NYS Paid Sick Leave Update

Summary	Takeaway
<ul style="list-style-type: none"> Different from NYS COVID-19/Quarantine Leave Law. On 12/22/21, NYSDOL published final regulations about Paid Sick Leave Law (“PSSL”). Employers should count employees nationwide to determine employer size (for maximum number of sick leave hours employees can use). Option to receive payout for unused sick leave or carryover of unused sick leave (or only carryover). Employees must be able to use sick leave as soon as it is available upon accrual. Employers must not require employees to disclose confidential information regarding employee’s use for sick leave. Employers can request documentation for reason for sick leave but only after 3 consecutive days absent. Employees not required to provide advance notice for foreseeable leave (different from NYC Earned Sick and Safe Time Act). 	<p>Review PSSL/PTO policies to ensure compliance; ensure all PTO policies are working together to the maximum extent.</p>

Expanded NYS Paid Family Leave (2023)

Summary	Takeaway
<ul style="list-style-type: none"> NYS Paid Family Leave provides eligible employees with up to 12-weeks of job protected, paid time off to bond with a child, to assist with family situations when a family member is deployed on active military service, or to care for a close relative with a serious health condition. Funded through employee payroll deductions. On November 1, 2021, Governor Hochul announced that she signed legislation that expands the definition of “family member” to include “siblings” under the NYS Paid Family Act. Will be <u>effective January 1, 2023</u>. 	<p>Review PFL policies and procedures to ensure reference to siblings and grant leave requests for employees to care for their siblings starting 1/1/23.</p>

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Expanded NYC Earned Safe & Sick Leave Act (COVID-19 Child Vaccination Leave)

Summary	Takeaway
<ul style="list-style-type: none"> NYC expanded its Earned Safe & Sick Leave Act (ESSTA) to mandate employers to provide employees extra 4 hours of paid time off per injection for vaccination of each child, whether for the vaccination itself or side effects. Separate and apart from/in addition to COVID-19 paid vaccine leave for the employees to get themselves vaccinated against COVID-19. Retroactive to November 2, 2021. 	<p>Employers may require reasonable notice before employees use COVID-19 child vaccination leave if foreseeable, but cannot require more than 7 days of advance notice.</p>

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NYS Electronic Monitoring Law

Summary	Takeaway
<ul style="list-style-type: none"> • Effective May 7, 2022, employees must be notified of electronic monitoring of employee communications in the workplace. • Written notice to employee that employer is electronically monitoring phone and email communications and/or internet usage. • Covers <u>all</u> private sector NYS employers • Written or electronic acknowledgment of the notice from employee • Applies to <u>new employees</u> upon hiring • Posting in a conspicuous location in the workplace • Civil penalties up to \$500 for first offense and up to \$3,000 for a third and for each subsequent offense • No guidance issued 	<ul style="list-style-type: none"> • Revise electronic communications policy to include specified language <i>or</i> consider implementing a standalone policy. • Prepare written notice to be posted <u>and</u> distributed upon hire.

NYC Artificial Intelligence Usage (2023)

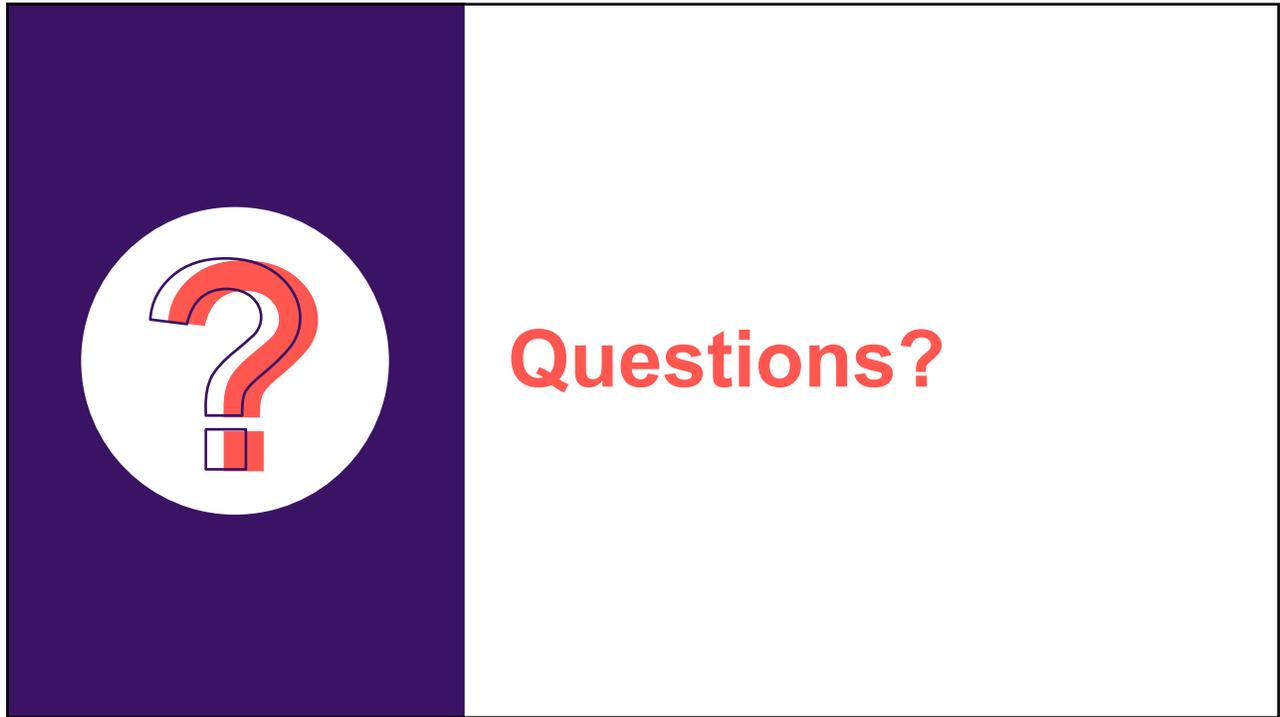
Summary	Takeaway
<ul style="list-style-type: none"> • Effective January 1, 2023, NYC must do the following before using “automated employment decision tools” (AEDT) to make hiring and promotion decisions: <ul style="list-style-type: none"> • Bias audit conducted within 1 year before implementation (<i>i.e.</i>, an impartial evaluation by an independent auditor); and • Make publicly available on employer’s website a summary of the results of the most recent bias audit. • Provide advance notice to candidates/employees residing in NYC of AEDT usage. • Civil penalties available. 	<p>If a NYC employer wish to use an AEDT by at least September 29, 2023, it must conduct the bias audit immediately.</p>

Restrictive Covenants

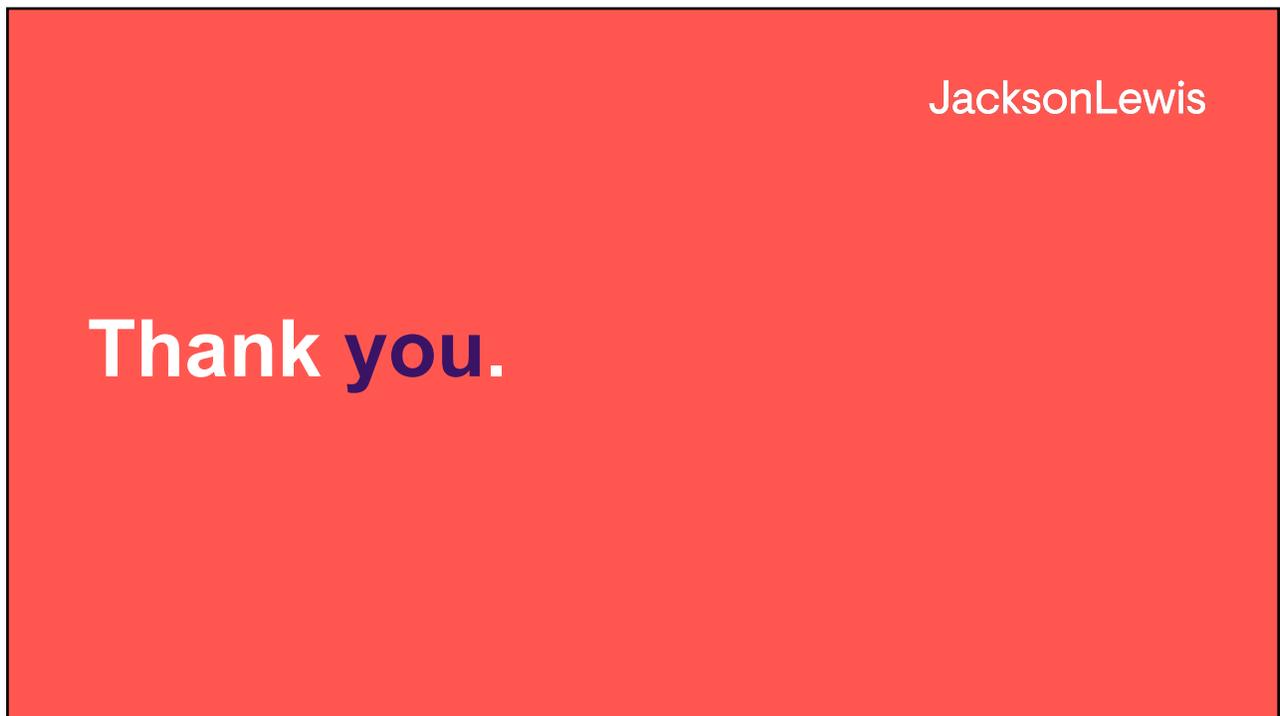
Summary	Takeaway
<ul style="list-style-type: none"> Restrictive covenants are contractual in nature. They protect the employer’s competitive interests; confidential, proprietary, and trade secret information; and customer, client, and employee relationships. Restrictive covenants must balance employer’s interests against employee’s right to pursue employment. Gov. Hochul proposed in FY 2023 budget to prohibit or limit the use of non-compete and non-solicitation agreements by NYS employers. Proposal died. However, new bill introduced (NY A9591) on March 17, 2022 to ban non-compete agreements. Employees would have private right of action for violation; max \$10,000 liquidated damages per employee. 	<p>Monitor proposed legislation; assess its potential impact, alternative methods of protecting the employer’s competitive interests.</p>

Pay Transparency

Summary	Takeaway
<ul style="list-style-type: none"> NYC – Pay transparency law effective 11/1/22. Westchester County – Pay transparency law effective 11/6/22. Ithaca – Pay transparency law effective 9/1/22 Albany County – legislation proposed in May 2022 that mirrors the Ithaca law. New York State – S9427A passed by NYS legislature on June 3, 2022. Not yet sent to Governor. 	<ul style="list-style-type: none"> Assess applicability of any local pay transparency laws. Monitor state-wide pay transparency law (could become effective in Q1 or Q2 2023). Assess process for drafting and publishing job listings (including reliance on templates, third parties, etc.) to ensure compliance with applicable laws. Set salary ranges for positions. Consider pay equity audit to determine whether your organization has any potential exposure in this area. Train supervisory/managerial employees on the dos and don’ts.



Questions?



Thank you.

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