

WEBINAR

Northeast Employment Labor Law Update

Thursday, November 9, 2023

Jonathan Meer

Partner - New York, NY

212.915.5639

jonathan.meer@wilsonelser.com

Yusha Hiranman

Associate - New York, NY

212.915.5252

yusha.hiranman@wilsonelser.com

Greg Kahn

Partner - Madison, NJ

973.735.6031

gregg.kahn@wilsonelser.com

Tracy Waugh

Of Counsel - Boston, MA

617.422.5325

tracy.waugh@wilsonelser.com

Kathleen Wilkinson

Partner - Philadelphia, PA

215.606.3905

kathleen.wilkinson@wilsonelser.com

2023 VIRTUAL EMPLOYMENT & LABOR LAW SUMMIT

November 9, 2023

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Northeast Employment Labor Law Update

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Panelists



Jonathan Meer



Gregg Kahn



Yusha Hiranman



Kathleen Wilkinson



Tracy Waugh

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Salary Transparency Laws

- Law that requires companies to disclose salary information to employees, applicants, or state agencies
- What is required of employers
 - Provide applicants the salary range for a posted position at a specified point during the hiring process
 - Provide employees salary range upon request, when changing jobs, or upon hire
 - Include salary range in job postings
- How this can impact our current employment landscape?
 - Pay transparency laws in other jurisdictions apply if the position can or will be performed remotely from the applicable jurisdiction.

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Salary Transparency Laws (Cont'd)

- States: As of May 1, 2023, eight US states (including Colorado, Connecticut, Maryland, Nevada, Rhode Island, Illinois, California, and Washington).
- If hire outside of the state will want to be aware of whether candidates for employment reside in a state with such a law and ensure compliance
 - MA: has not enacted a pay transparency law, proposed in the Spring 2023, but many nearby jurisdictions do have such laws in effect
 - NJ: Temporary Worker Pay Transparency Law in effect as of Aug 5, 2023
 - NY: Nothing state wide, but there is for NYC.
 - PA: Proposed Law in the Spring 2023.

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ESG Initiatives and Challenges

- Federal issues: – Nasdaq Board Diversity Rule, separate voluntary initiative on ESG Reporting
- #MeToo litigations and Diversity litigations pending - L Brands, Activision Blizzard, Michigan State University.
- Understanding Challenges to DEI Policies and understanding risk while work to promote inclusivity and fairness in the workplace.
- State specific legislative issues:
 - California Board Racial Diversity Rule struck down as improper
 - Proposed Florida statute - Individual Freedom Act, or H.B. 7 — otherwise known as the Stop WOKE Act — inter alia, bans private employers from requiring diversity training on race-related topic

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ESG Initiatives and Challenges (Cont'd)

- State Law
 - Nat'l Ctr. for Pub. Policy Research v. Schultz, 22-2-02945-32, (Spokane Cnty. Sup. Ct. Wash. Aug. 30, 2022). Dismissed Aug. 11, 2023.
 - America First Kellogg Investigation Request to the U.S. Equal Employment Opportunity Commission, America First Legal (Aug. 9, 2023).
 - Moses v. Comcast Cable Commc'ns Mgmt. , 1:22-cv-00665-JPH-MJD, (S.D. Ind. Jun. 7, 2022).
 - American Alliance for Equal Rights v. Perkins Coie LLP, No. 3:23-cv-01877-L (N.D. Tex. Aug. 22, 2023); American Alliance for Equal Rights v. Morrison & Foerster LLP, No. 1:23-cv-23189 (S.D. Fla. Aug. 22, 2023).
 - Students for Fair Admissions v. President & Fellows of Harvard College, No. 20-1199, 600 U.S. -- (2023).

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Massachusetts

- Minimum Wage
 - Minimum wage increased from \$14.25 an hour to \$15.00 an hour (applies to non-agricultural workers and workers that do not receive tips).
 - The Retail Premium Pay mandate for Sundays and holidays (Massachusetts Blue Laws) was eliminated. (Employers are still required to pay the overtime premium rate of 1.5 times their employees' regular hourly rate, where applicable).
 - <https://www.mass.gov/service-details/minimum-wage-and-overtime-information>

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Massachusetts Cont'd

- Paid Family Medical Leave (PFML)
 - In order to be eligible for PFML benefits, a worker must have earned at least \$6,000 during last four completed calendar quarters.
 - Maximum weekly benefit increased from \$1,084.31 to \$1,129.82.
 - The contribution rates have been reduced as follows:
 - Employers with 25 or more covered individuals – the contribution rate is now .63% of the eligible employee wages (the employer's share of that 0.63% is 0.312%, and the employee's share is the remaining 0.318%).
 - Employers with fewer than 25 covered individuals – the contribution rate is now .318% of eligible employee wages (no contribution by the employer is required).
 - Massachusetts employers are required to distribute certain information to their employees regarding PFML.

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Massachusetts Cont'd

- Massachusetts Parent Leave Guidelines Issued by MCAD
 - In May of 2023, the Massachusetts Commission Against Discrimination issued guidelines on the Massachusetts Parental Leave Act that went into effect in 2015. The guidelines provide clarification about the application of the Parental Leave Act and cover a number of topics, including: eligibility, types of leave, when leave may be taken, the interrelationship between parental leave and other leave, and notice and posting requirements.
 - The new guidelines can be found on the MCAD's website at <https://www.mass.gov/doc/mcad-guidelines-on-parental-leave/download>
 - The updated Brief Guide to the Massachusetts Parental Leave Act can be found on the MCAD's website at <https://www.mass.gov/doc/mcad-brief-guide-to-parental-leave-law/download>

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Massachusetts Cont'd

- Case law Updates
- **Mark A. Adams v. Schneider Electric USA, Inc. decision by Massachusetts Supreme Judicial Court, June 21, 2023**
 - In this decision relating to an age discrimination claim brought by a plaintiff after his employment was terminated in conjunction with a reduction in force, the court addressed two important doctrines that impact liability in discrimination cases: the stray remarks doctrine and the innocent pawn doctrine.
 - The SJC's decision clarifies that "stray remarks" by employees not involved in the relevant employment decision, but who had the power to make employment decisions, may be considered on summary judgment as evidence of discriminatory animus within the employer corporation.
 - Regarding the innocent pawn theory of liability, the SJC's decision explains that an employer is not insulated from liability just because person making the employment decision (in this case a midlevel manager directed to lay off employees in his division) had no discriminatory animus and was unaware that they were being used as a pawn by the employer to implement a discriminatory policy.
 - The decision also provides helpful clarification of the standard for summary judgment in employment discrimination cases

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Massachusetts Cont'd

- Non-Competes
 - A non-compete agreement is an agreement between an employer and an employee which prohibits the employee from working for a competitor or establishing a rival business within a certain timeframe after they stop working for that employer. Massachusetts employment law currently dictates which non-competes are enforceable. And any non-competes that went into effect after October of 2018 must adhere to stringent requirements.
 - In early 2023, the Federal Trade Commission proposed a rule that would ban employers nation-wide from initiating and enforcing non-compete provisions in employment agreements.

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New Jersey

- New Jersey Department of Labor and Workforce Development (NJDOL) and the “Temporary Workers’ Bill of Rights,” which went into effect, in part, on May 7; the remainder of the law goes into effect on August 5, 2023.
 - It significantly expands the rights and protections afforded to temporary laborers, allowing for greater oversight of temporary help service firms and third-party clients by NJDOL and the Division of Consumer Affairs (DCA) within the Department of Law and Public Safety. Temporary help service firms must provide an “Assignment Notification” form to a temporary laborer when they are dispatched to work for a third-party client, which is to include, among other things, information regarding the temporary help service firm and third-party client, as well as a description of the work to be performed, the wages that are being offered to the worker, the terms of transportation offered to the worker, and notice of their right to Earned Sick Leave.

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New Jersey Cont'd

- Other notifications required involve changes in the schedule, shift, or work location, requested confirmation for seeking work, and a statement informing of a strike, lockout, or other labor dispute at a place of work and the temporary laborer’s right to refuse the assignment because of the labor dispute.
- Failing to provide the notification may result in a civil penalty of between \$500 and \$1,000 per violation.

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New Jersey Cont'd

- **NJ-WARN Act Amendments:** Amendments to the New Jersey WARN Act took effect on April 10, 2023, after a multi-year delay due to COVID-19.
 - The amended New Jersey WARN Act imposes significant additional requirements for employers, including mandatory notice and severance if a layoff impacts 50 or more employees in New Jersey.
- **Child Labor Law:** Effective June 1, 2023, New Jersey's child labor law was amended to require that minors register with the New Jersey Department of Labor and Workforce Development.
 - Additionally, the amendment repealed the parental consent requirements for most exemptions from restrictions on working time.

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New York

- **Changes in New York Paid Family Leave Law –**
 - the NYPFL provides eligible employees with up to 12 weeks of partially paid leave in a 52-week period for covered reasons including caring for a covered family member with a serious health condition; bonding with a new child following birth, adoption or placement; or reasons related to an employee's family member being deployed abroad on active military service.
 - Employees taking leave under the NYPFL receive 67% of their average weekly wage, up to a cap of 67% of the current New York State Average Weekly Wage ("NYSAWW"). For 2024, the NYSAWW will be \$1,718.15, which means the maximum weekly benefit will be \$1,151.16. This is \$20.08 more than the maximum weekly benefit for 2023.

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New York

- New York State Paid Vaccination Leave Extended
 - While this measure, which provides employees with four hours of paid leave per vaccine dose (including boosters) was originally scheduled to expire at the end of 2022, it was extended last summer and will now expire at the end of this year.

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New York Cont'd

- AI regulation in employment in NYC New York City –
 - Regulating employers' use of automated employment decision tools (AEDTs) in hiring and promotions entered its enforcement phase July 5 after months of delays.
 - AEDTs include tools used for screening, interviewing, assessing and scoring potential hires and employees for promotion. Covered technologies include those that use algorithms to analyze resumes, chatbots that conduct interviews, and assessment platforms that evaluate job seekers on skill sets, traits or aptitude.
 - The law requires that bias audits to assess AI tools' potential disparate impact on sex, race and ethnicity be conducted by a third party that has no vested financial or other interest in the employer, which has led to the creation of a cottage industry of AI consulting firms and third-party auditors ready to assist New York City employers.

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New York Cont'd

- Height and weight issues for NYCHRL –
 - Effective November 22, 2023, the amended NYCHRL will prohibit discrimination on the basis of an individual's height or weight.
 - Both New Jersey and New York state are considering similar legislation.
 - New York City joins one state, Michigan, and several cities prohibiting size discrimination.
 - Employers have an affirmative defense available if they can demonstrate either an individual's height or weight prevents them from performing the essential functions of a particular job with or without an accommodation; or The employer's consideration of height or weight criteria is reasonably necessary for the normal operation of the business.

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Pennsylvania

- Pregnancy Worker's Fairness Act –
 - Address issues as to accommodation
 - EEOC beginning to accept claims on June 27, 2023
 - Employers should also exercise caution in not assuming that a pregnant worker needs accommodations such as removing job responsibilities or restructuring an employee's workload where a limitation either does not truly exist or has not been identified by the employee to the employer.
 - Such actions could in fact be discriminatory and an interactive process between the employer and employee should be undertaken

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Pennsylvania Cont'd

- Latest federal & state case law in Pennsylvania:
 - One of the cases involves knowing harassment by lawyers in the *Greenberg v. Lehockey* case decided by the 3rd Circuit, No. 22-1733 which prohibits knowing harassment or discrimination in the practice of law.
 - Held that an attorney with a non-profit had not shown that the professional conduct rule threatened his free speech rights.
 - The Pennsylvania rule, which is modeled after an American Bar Association rule, prohibits lawyers from knowingly engaging "in conduct constituting harassment or discrimination" based on race, sex, religion and other grounds.

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Concluding Thoughts and Questions

Thank you! Please feel free to contact us directly:

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| <ul style="list-style-type: none"> ▪ Jonathan Meer
Partner – New York, NY
jonathan.meer@wilsonelser.com ▪ Yusha Hiranman
Associate — New York, NY
yusha.hiranman@wilsonelser.com ▪ Gregg Kahn
Partner — Madison, NJ
gregg.kahn@wilsonelser.com | <ul style="list-style-type: none"> ▪ Kathleen Wilkinson
Partner — Philadelphia, PA
kathleen.wilkinson@wilsonelser.com ▪ Tracy Waugh
Of Counsel – Boston, MA
tracy.waugh@wilsonelser.com |
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