

A Legal Toolkit for Women's Economic Equality / New York Supplement

Last updated August 2022

This New York Supplement provides updates to the Legal Toolkit for Women's Economic Equality, identifying new or expanded protections and benefits based on recent legislative reforms. Please see the Toolkit for a comprehensive set of existing protections.

1 Sex & Gender Discrimination

You have the right not to be discriminated against at work on the basis of your sex or gender. This right is fundamental and encompasses many of the specific protections below. The law also protects you based on your gender identity, sexual orientation, and familial status.

- In New York State and New York City, sex discrimination is prohibited if it is based on your gender (including actual or perceived gender identity), familial status, or sexual orientation if you work for an employer or licensing agency with 4 or more employees. **As of February 8, 2020, this prohibition will apply to all employers regardless of the number of individuals employed.**¹
- As of October 11, 2019, the law extends protections to **non-employees such as contractors, vendors, and consultants.**²
- If you file a lawsuit in federal or state courts, there are various types of remedies you can obtain, including lost wages, future wages, out-of-pocket expenses, and compensatory damages for emotional distress. **As of October 11, 2019, you may also be eligible to obtain punitive damages (damages that exceed compensation and are intended to serve as a penalty) and attorney's fees in state court.**³
- **DOMESTIC WORKERS:** Anti-discrimination protections now cover domestic workers under New York State and New York City law.
- **NYC:** Under New York City's Human Rights Law, employers are now prohibited from retaliating against employees for requesting a reasonable accommodation.
- New York State law now makes clear that protections against discrimination in employment extend to all state and local government employees throughout the executive, judiciary, and legislative branches, including the staff of elected officials and judges.⁴
- **RETALIATION:** Employers are legally prohibited from engaging in "retaliation" (punishing you) if you address or challenge discrimination. **As of March 16, 2022, the law specifies that it is "retaliation" if your employer leaks your personnel file in response to you challenging discrimination.**⁵

2 Sexual Harassment

You have the right to a workplace free of sexual harassment and abuse. Sexual harassment is a form of sex discrimination.

- **As of October 11, 2019, the law in New York State protects against harassment not just based on your sex or gender but based on any protected characteristics such as race and**

national origin.⁶ **This also applies to domestic workers.**⁷

- Your employer and other actors (e.g., executives, managers, supervisors, co-workers, or clients) are prohibited from engaging in unwelcome sexual conduct that creates a hostile working environment. **Note that as of October 11, 2019**, conduct does not have to be “severe or pervasive.” While conduct must still be more than “petty slights or trivial inconveniences”, based on the new standard in New York State, your employer cannot subject you to inferior terms, conditions, or privileges of employment.⁸
- All employers in New York State must adopt a sexual harassment prevention policy and must conduct an annual interactive training on sexual harassment. **Your employer must provide you with a copy of its policy and training material in English and in your primary language when you are hired and annually during your training.**⁹
- To file a state complaint with the New York State Division of Human Rights, you generally must file your complaint within one year from the date of the harassment. **As of August 12, 2020, you will have three years from the date of harassment** to file any sexual harassment complaint at the state level.¹⁰
- **As of July 14, 2022**, the New York State Division of Human Rights will operate a toll-free confidential hotline for complaints of workplace sexual harassment, which can connect you with pro bono attorneys who can advise you of your legal rights.¹¹ You can reach the hotline at 1-800-HARASS-3.
- **As of March 3, 2022**, under federal law, you have the right to sue for sexual harassment or sexual assault in court even if you previously signed an arbitration agreement with your employer that requires you to resolve a dispute in arbitration.¹²

3 Equal Pay

The law prohibits employers from paying you less because of your sex or gender. This type of treatment is a form of sex discrimination. Your employer is also prohibited from punishing you for discussing or disclosing rates of pay with your colleagues, and, depending on where you work, an employer may be prohibited from asking about or relying on your prior salary to set your new salary.

- New York State law prohibits employers from engaging in pay discrimination based on gender. **As of October 8, 2019, the law will also prohibit pay discrimination based on any other protected characteristic.**¹³
- Covered employers are prohibited from paying you a different rate of pay than a male colleague if you are doing substantially equal work (under federal law). **As of October 8, 2019**, this standard will be revised in New York State and employers will be prohibited from paying you less for doing equal work or “substantially similar work” taking into account skill, effort, and responsibility on jobs performed under similar working conditions.¹⁴
- **As of January 6, 2020**, if you are applying for a job in New York State (as a new applicant or current employee), regardless of the size of your employer, it is illegal for an employer to ask you how much you were paid in your prior positions during the hiring process or to rely upon your salary history to determine your salary during the hiring process.¹⁵ Keep in mind that certain exceptions may apply based on your employment status, contract, or collective bargaining agreement.
- **As of November 2022**, employers in New York City with four or more employees, or one or more domestic workers, must disclose the minimum and maximum salary in any advertisement for a job, transfer, or promotion opportunity. Failure to do so constitutes discrimination under New York City Human Rights Law, and you can file a complaint about employers that fail to post their salary range with the NYC Commission on Human Rights.¹⁶

4 Minimum Wage & Fair Wage Practices

You have the right to be paid for your work. It is illegal for your employer to steal your wages, pay you below the state minimum wage, or force you to work for no wages.

- **FARMWORKERS:** As of **January 1, 2020**, farmworkers who work more than 60 hours per week must get paid overtime (1.5 times your regular rate of pay) for each hour worked beyond 60.¹⁷
- **HOME CARE WORKERS:** As of **October 1, 2022**, the hourly minimum wage for home care aides will increase by \$2 and will increase by an additional dollar beginning on October 1, 2023.

5 Economic Opportunity

It is unlawful for a lender or financial institution to deny you a loan or financing based on your sex or gender. Resources are available to help you find a job; improve your finances; start a business; and obtain education, language, and skills trainings to get a job, including jobs in higher paying fields.

- No updates.

6 A Safe Workplace & Fair Working Conditions

You have the right to a safe workplace free from hazards that could cause you serious harm and free from coercive working conditions. Depending on your circumstances, you may also be entitled to certain fair work practices such as breaks, days of rest, sick time, leave, and fair scheduling.

- **SICK TIME:** As of September 30, 2020, you are entitled to unpaid or paid sick time in New York State, which you can accrue at a rate of 1 hour for every 30 hours worked and which you can use as of January 1, 2021. If you work for a small employer with less than five employees, you are entitled to receive 40 hours of unpaid sick time per year. However, if your employer's net income was more than \$1 million in the previous year or your employer has more than 5 employees, you are entitled to 40 hours of paid sick leave. If you work for an employer with more than 100 employees, you are entitled to 56 hours of paid sick leave per year.

Leave can be used for mental illness, injury, diagnosis, care, and preventative care for you or a covered family member or for absences related to domestic violence, a family or sexual offense, stalking, or human trafficking.

If your employer is violating state law or your contract or company policy, you can file a complaint with the NYS Department of Labor.

- **FARMWORKERS:** In New York State, as of **January 1, 2020**, farmworkers are **legally entitled to at least 24 consecutive hours of rest every week**.¹⁸ 24 hours spent at rest because of weather or other circumstances counts as a day of rest. If you voluntarily decide not to take your day of rest, you are entitled to overtime pay (1.5 times your regular rate of pay) for the hours worked that day. As of **January 1, 2020**, all farmworkers are also **eligible for workers' compensation**.¹⁹ As of January 1, 2020, if you are a migrant worker living in employer housing, your employer is required to maintain your home in compliance with all sanitary, health, and safety requirements.²⁰
- **NYC FAST FOOD WORKERS:** As of **July 4, 2021**, covered fast food employers cannot, following a 30-day probationary period, terminate, lay off, or reduce the hours of employees by more than 15% without "just cause"²¹ and must provide written notices explaining the reason for termination.²²
- **WHISTLEBLOWER PROTECTIONS:** Employees, former employees, and independent contractors are now considered whistleblowers when they **reasonably believe** that their

employer is violating a law, rule, or regulation, or is creating a substantial and specific danger to public health and safety and they raise this concern with the employer or a government body. As of January 26, 2022, an employer is prohibited from retaliating against these whistleblowers.²³

- **ELECTRONIC MONITORING:** As of May 7, 2022, your employer must inform you if it monitors or otherwise intercepts your telephone calls, e-mail, or internet use.²⁴

7 Domestic Violence, Sexual Assault, & Stalking

It is unlawful for an employer to discriminate against you in the workplace based on your status as a victim of domestic violence. Depending on where you live, additional protections may exist, including protections for victims of sexual assault or stalking that can help you keep or leave your job while addressing the abuse.

■ CAN I TAKE TIME OFF?

SICK/VACATION/PERSONAL TIME: As of September 30, 2020, in New York State, you are entitled to unpaid or paid time off for absences related to domestic violence, a family or sexual offense, stalking, or human trafficking. Time is accrued at a rate of 1 hour for every 30 hours worked and can be used as of January 1, 2021. If you work for a small employer with less than five employees, you are entitled to receive 40 hours of unpaid leave per year. However, if your employer's net income was more than \$1 million in the previous year or your employer has more than 5 employees, you are entitled to 40 hours of paid leave. If you work for an employer with more than 100 employees, you are entitled to 56 hours of paid leave per year.

- **REASONABLE ACCOMMODATIONS:** As of **November 18, 2019**, employers in NYS must allow reasonable time off as an accommodation in order to:²⁵
 - Seek medical attention for injuries caused by domestic violence.
 - Obtain services from a domestic violence shelter, program or rape crisis center.
 - Obtain psychological counseling related to an incident of domestic violence.
 - Participate in safety planning or to take other actions to increase safety from future incidents of domestic violence.
 - Obtain legal services, assist in the prosecution of the offense or appear in court in relation to the incident of domestic violence.
- **PUBLIC ACCOMMODATIONS & HOUSING:** As of **May 13, 2022**, New York State Human Rights Law specifically protects against discrimination in public accommodation and housing on the basis of status as a victim of domestic violence.²⁶

8 Reproductive & Maternal Health

You have the right to a safe and confidential abortion until your 24th week of pregnancy or at any point medically necessary to protect your life or health. If you receive Medicaid or have health insurance, your provider must cover critical family planning services, including contraception and abortion services at no additional cost.

- **DISCRIMINATION:** As of **November 8, 2019**, employers are prohibited from discriminating based on an employee's or a dependent's reproductive health decision making. The law prohibits an employer from:²⁷
 - Accessing an employee's personal information regarding the employee's (or the employee's dependent's) reproductive health decisions, without the employee's prior informed affirmative written consent;
 - Discriminating or taking any retaliatory personnel action against an employee with respect to compensation, terms, conditions or privileges of employment because of or based on the employee's (or the employee's dependent's) reproductive health decisions; or
 - Requiring an employee to sign a waiver or other document that purports to deny employees the right to make their own reproductive health care decisions.

- **ABORTION:** Abortion is legal in New York. While the full legal ramifications of the U.S. Supreme Court decision eliminating the constitutional right to an abortion and the resulting legislation in various states are still unknown, New York has taken steps to protect abortion access by passing laws that:
 - Prohibit law enforcement in New York from cooperating with an out-of-state investigation into an abortion legally procured under New York law.²⁸
 - Allow you to bring a lawsuit for “unlawful interference with protected rights” against someone who sues you in another state for obtaining a legal abortion in New York.²⁹
 - Protect providers who perform abortion on patients from outside of New York.³⁰

New York law strictly protects the confidentiality of all records related to an abortion, and your provider cannot disclose records related to abortion to anyone without your permission—including to a parent or guardian if you are a minor.³¹

If you need help paying for your abortion or with travel or lodging costs related to your appointment, there are organizations dedicated to helping with those costs. For a list, visit: <https://abortionfunds.org>.

For the most up to date information on abortion law in New York State, visit: <https://www.ny.gov/programs/abortion-new-york-state-know-your-rights>.

9 Pregnancy, Childbirth & Breastfeeding

It is unlawful for an employer to treat you less favorably in the workplace on the basis of pregnancy, childbirth, or a related medical condition. This type of treatment is a form of sex discrimination. An employer is also prohibited from discriminating against workers for pumping breast milk at work and you have the right to take breaks to do so. Depending on your situation, you may have the right to additional workplace protections to adjust your working conditions or to take paid or unpaid leave if needed.

- Your employer, regardless of size, is prohibited from discriminating against you or penalizing you for pumping breast milk at work. Additionally, New York State law now makes clear that **lactation is a pregnancy-related condition, which means that covered employers must provide reasonable accommodations for lactation needs.**
- In New York City, additional protections and requirements apply regarding lactation rooms and your employer must have a written lactation accommodation policy in place.³²
- **FARMWORKERS:** As of **January 1, 2020**, farmworkers who meet program requirements are **eligible for disability benefits** in New York State.³³

10 Paid Family Leave

If you have worked enough days and hours, you have the right to paid, job-protected leave to care for a newborn, a newly adopted child, or a sick family member, or to address certain family needs that result from military deployment. You may also have the right to other forms of leave to assist you with caring for yourself and your family.

- **FARMWORKERS:** As of **January 1, 2020**, farmworkers who meet program requirements are **eligible to receive paid family leave and disability benefits** in New York State.³⁴
- As of **2022**, the wage replacement benefit cap increases to \$1,068.36/week.³⁵
- **DOMESTIC WORKERS:** As of **January 1, 2022**, paid leave benefits have been extended to domestic workers hired directly by a private homeowner who work **20 or more hours a week** for the private homeowner.³⁶ These workers are eligible to take Paid Family Leave once they have been in employment for 26 consecutive weeks.³⁷
- **COVERAGE:** Effective as of **January 1, 2023**, the definition of family member will expand to include siblings.³⁸ Therefore, employees will be able to use Paid Family Leave to care for siblings with a serious health condition.

- **VACCINATION LEAVE:** Effective from **March 12, 2021 through December 31, 2022**, employers must provide their employees with up to four hours (per injection) of paid leave to receive the COVID-19 vaccine.³⁹
 - **NYC:** Effective from **November 2, 2021 through December 31, 2022** parents are granted sick leave to accompany their child to receive a COVID-19 vaccine injection or to care for the child if experiencing side effects from the injection.⁴⁰ Parents are entitled to four hours of paid leave per child, per vaccine injection, including booster shots.⁴¹

11 Child Care Assistance & Protections for Caregivers

It is unlawful for an employer to discriminate against you because you have children. Based on your income, you may be eligible for child care assistance to help you get or keep a job.

- No updates.

12 Public Benefits

Based on your income, you may be eligible for critical public benefits, including cash assistance, food assistance, free healthcare, and housing assistance. If your benefits are denied or terminated, you must be informed in advance and have an opportunity to contest the determination. If you do not speak English and need assistance, you can request language assistance (translation and interpretation).

- **FARMWORKERS:** As of **January 1, 2020**, farmworkers who meet program requirements are **eligible to receive unemployment insurance**.⁴²
- In New York City, the Free Summer Meals program provides children and young adults (18 years old and younger) with free breakfast and lunch at select schools, parks, pools, libraries, and food trucks in all 5 boroughs. To find a location visit: http://www.schoolfoodnyc.org/sch_search/summerNew.aspx.

13 Protecting Our Rights Together

You may have certain rights and opportunities to organize, join a union, and take action with other workers to improve your pay and working conditions without being punished by your employer.

- **FARMWORKERS:** As of January 1, 2020, farmworkers have the right to organize with co-workers or join unions to seek better working conditions. If employers attempt to punish workers for exercising these rights, workers may file complaints with the NYS Public Employment Relations Board.⁴³ Employers may file complaints against workers however if they strike or engage in work stoppages or slow-downs.⁴⁴
- **As of November 1, 2021**, employers with at least 10 employees are required to allow their employees to establish joint employer-employee workplace committees, even if the workplace is not unionized. This committee can serve as a forum for employees to collectively assert their shared health and safety concerns. The law also protects employees who establish or participate in a committee from retaliation.⁴⁵

¹ N.Y. Exec. Law § 292, as amended by S6577.

² N.Y. Exec. Law § 296-d, as amended by S6577.

³ N.Y. Exec. Law § 297, as amended by S6577.

⁴ N.Y. Exec. Law § 292(5), as amended by A2483-B.

⁵ N.Y. Exec. Law § 296(7), as amended by S5870.

⁶ N.Y. Exec. Law § 296(h), as added by S6577.

⁷ N.Y. Exec. Law § 296-b, as amended by S6577.

⁸ N.Y. Exec. Law § 296(h), as added by S6577.

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- ⁹ N.Y. Lab. Law § 201-g, as amended by S6577.
- ¹⁰ N.Y. Exec. Law § 297(5), as amended by S6577.
- ¹¹ N.Y. Exec. Law § 295(18), as amended by A2035-B.
- ¹² 9 U.S.C. § 402, as added by H.R. 4445.
- ¹³ N.Y. Lab. Law § 194, as amended by S5248-B.
- ¹⁴ N.Y. Lab. Law § 194, as amended by S5248-B.
- ¹⁵ N.Y. Lab. Law 194-a, as added by S6549.
- ¹⁶ *Salary Transparency in Job Advertisements*, NYC COMM'N ON HUM. RTS. (May 12, 2022), <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Salary-Transparency-Factsheet.pdf>.
- ¹⁷ N.Y. Lab. Law § 163-a, as amended by S6578.
- ¹⁸ N.Y. Lab. Law § 161, as amended by S6578.
- ¹⁹ N.Y. Work. Comp. Law, Groups 14-a, 14-b as amended by S6578.
- ²⁰ N.Y. Pub. Health Law § 225.
- ²¹ “Just cause” is defined as the fast food employee’s failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer’s legitimate business interests.
- ²² N.Y.C. Admin. Code § 20-1272 (2021), as amended by Int. No. 1396-A and Int. No. 1415-A.
- ²³ N.Y. Lab. Law § 740, as amended by S4394-A.
- ²⁴ N.Y. Civ. Rights Law § 52-c, as added by A430.
- ²⁵ N.Y. Exec. Law § 296(22)(c)(2) (2021), as amended by S1040.
- ²⁶ N.Y. Exec. Law § 296, as amended by S8417-B.
- ²⁷ N.Y. Lab. Law § 203-e (2020), as amended by S660.
- ²⁸ N.Y. Exec. Law § 837-w, as added by S9077-A.
- ²⁹ N.Y. Civ. Rights Law § 70-b, as added by S9039-A.
- ³⁰ *See Governor Hochul Signs Nation-Leading Legislative Package to Protect Abortion and Reproductive Rights for All*, N.Y. STATE (June 13, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive>.
- ³¹ N.Y. Pub. Health Law § 18(3)(i); N.Y. Pub. Health Law § 17.
- ³² N.Y. Admin. Code §§ 8-101-8-131.
- ³³ *See* N.Y. Work. Comp. Law Ch. 9, § 201(6)(A), as amended by S6578.
- ³⁴ *See* N.Y. Work. Comp. Law Ch. 9, § 201(6)(A), as amended by S6578.
- ³⁵ *New York Paid Family Leave Updates for 2022*, N.Y. STATE, <https://paidfamilyleave.ny.gov/2022> (last visited Jan. 31, 2022).
- ³⁶ *Id.*
- ³⁷ *Id.*
- ³⁸ S.2928-A/A.06098-A, available at <https://www.nysenate.gov/legislation/bills/2021/s2928>.
- ³⁹ N.Y. Lab. Law § 196-c (2021), as amended by S2588A.
- ⁴⁰ *Additional Paid Leave for Child Vaccinations Goes Into Effect December 24, Available Retroactively to November 2*, N.Y. CITY CONSUMER & WORKER PROT. (Dec. 23, 2021), <https://www1.nyc.gov/site/dca/media/pr122321-Additional-Paid-Leave-for-Child-Vaccinations.page#:~:text=In%20an%20effort%20to%20keeping.of%2018%2C%20per%20vaccine%20injection>.
- ⁴¹ *Id.*
- ⁴² *See* N.Y. Lab. Law § 511, as amended by S6578.
- ⁴³ *See* N.Y. Lab. Law § 701, as amended by S6578.
- ⁴⁴ *See* N.Y. Lab. Law § 703, as amended by S6578.
- ⁴⁵ N.Y. Lab. Law § 27-d, as added by A2681-B and amended by S6768.