

# Remote Employees in New York

*Employment Law Traps for the Unwary Employer*

Scott P. Horton  
Horton Law PLLC

**HORTON**  
Management Law



# Big Picture Considerations

- ▶ Do remote employees subject employer to new regulatory jurisdictions?
- ▶ When is a remote employee “working”?
- ▶ Who is responsible for “workplace” safety?
- ▶ Is working from home a privilege or a right?

# New York City Pay Transparency in Job Advertisements Law

- ▶ Enacted Jan. 15, 2022; amended May 12, 2022
- ▶ Takes effect Nov. 1, 2022
- ▶ Applies to employers with 4 or more employees, even if only 1 works in NYC



# Covered Postings

- ▶ Applies to jobs (including promotions and transfers) that could be performed in NYC
- ▶ Doesn't require that job be advertised
- ▶ Exception for temporary help firms seeking workers to join their pool of temporary workers



# Required Information

- ▶ Must state minimum and maximum salary or hourly wage for the position
- ▶ Range may extend from lowest to highest salary/wage the employer in good faith believes at the time of the posting it would pay for the job
- ▶ Not required to post overtime rates or other forms of compensation or benefits

# Salary History

- ▶ Can't inquire about applicants' wage or salary history
- ▶ If obtained, can't use such information in hiring and determining wages (incl., promotions)
- ▶ Exception where employees discloses salary to negotiate higher compensation

# Insurance Coverage

- ▶ Worker's Compensation
- ▶ Unemployment
- ▶ Disability
- ▶ Paid Family Leave



# Paid Sick Leave

- ▶ Up to 56 hours of paid leave per year based on employer size
- ▶ Accrue at least 1 hour per 30 hours physical worked within New York
- ▶ Can be combined with other leaves (e.g., PTO)
- ▶ Carryover conundrum



# Annual Max. Leave

- ▶ Under 5 employees – 40 hours (unpaid, unless employer net income > \$1 million)
- ▶ 5-99 employees – 40 hours, paid
- ▶ 100+ employees – 56 hours, paid

# Meal Periods

- ▶ If employee works more than 6 hours including the hours 11:00 a.m. to 2:00 p.m., must be relieved from duty for at least 30 mins. during that period
- ▶ If employee starts work before 11:00 a.m. and continues working beyond 7:00 p.m., must get additional 20 minutes off between 5:00 – 7:00 p.m.
- ▶ If employee works more than 6 hours starting between 1:00 p.m. and 6:00 a.m., must have 45\* min. meal period midway through the shift
- ▶ \*DOL generally permits shorter meal period of not less than 30 mins. absent indication of hardship to employees

# Minimum Wage

- ▶ FLSA - \$7.25/hr
- ▶ NYC, Long Island, Westchester - \$15.00/hr.
- ▶ Rest of State - \$13.20/hr\*

\*Likely to increase effective 12/31/22



# Exemption Salary Threshold

- ▶ FLSA - \$684/wk.
- ▶ NYC, Long Island, Westchester - \$1,125/wk.
- ▶ Rest of State - \$990/wk.\*
- ▶ NY - no salary requirement for professional exemption

\*Likely to increase effective 12/31/22

# Wage Notice

- ▶ Written notice of basic compensation terms
- ▶ Within 10 days of hire (and when changes made)
- ▶ Employee's primary language
- ▶ Signed by employee
- ▶ DOL forms available

# Wage Notice Components

- ▶ Rate(s) of pay
- ▶ Overtime rate(s), if applicable
- ▶ Pay increment (hour, shift, day, week, commission, etc.)
- ▶ Minimum wage allowances (tips, meals, lodging)
- ▶ Official business name and DBAs
- ▶ Address and phone number of employer's main office

# Required Policies

- ▶ Sexual Harassment (w/annual training)
- ▶ Paid Family Leave
- ▶ Electronic Monitoring\*
- ▶ Vacation\*
- ▶ Airborne Infectious Disease Exposure Prevention Plan



# Electronic Monitoring Notice

*Any and all telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage by an employee by an electronic device or system, including but not limited to the use of a computer, telephone, wire, radio or electromagnetic, photoelectronic or photo-optical systems may be subject to monitoring at any and all times and by any lawful means.*



# Human Rights Law(s)

- ▶ NYS and NYC employment discrimination laws
- ▶ Broader than federal laws
- ▶ Administrative adjudication

# NYS Protected Characteristics

- ▶ Age
- ▶ Race
- ▶ Creed
- ▶ Color
- ▶ National origin
- ▶ Sexual orientation
- ▶ Gender identity or expression
- ▶ Prior arrest / conviction record
- ▶ Military status
- ▶ Sex
- ▶ Disability
- ▶ Predisposing genetic characteristics
- ▶ Familial status
- ▶ Marital status
- ▶ Status as victim of domestic violence

# NYC Protected Characteristics

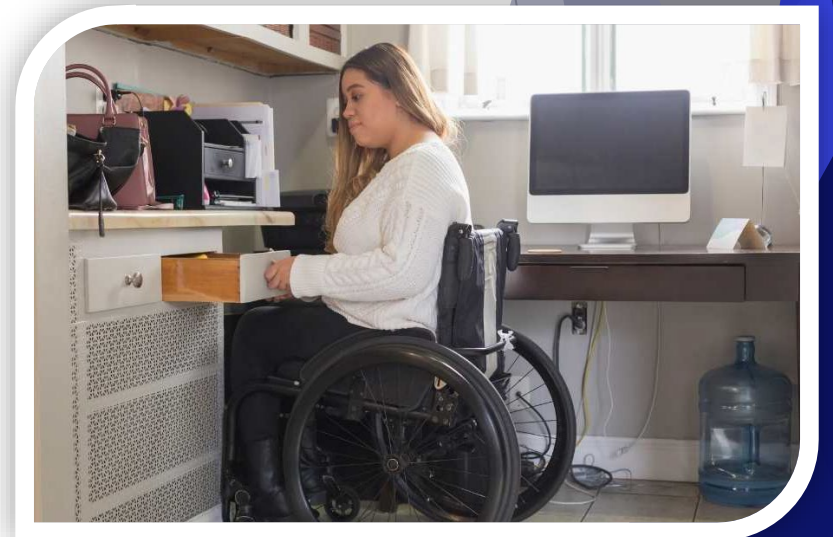
- ▶ Age
- ▶ Arrest or conviction record
- ▶ Caregiver status
- ▶ Color
- ▶ Credit history
- ▶ Disability
- ▶ Gender
- ▶ Gender Identify
- ▶ Immigration status
- ▶ Marital or partnership status
- ▶ Military service
- ▶ National origin
- ▶ Pregnancy
- ▶ Race
- ▶ Religion/creed
- ▶ Salary history
- ▶ Sexual and reproductive health decisions
- ▶ Sexual orientation
- ▶ Status as victim of domestic violence, sexual violence, or stalking
- ▶ Unemployment status

# Harassment Standard

- ▶ Not severe or pervasive
- ▶ Limited defenses
- ▶ “[H]arassing conduct does not rise above the level of what a reasonable *victim of discrimination* with the same protected characteristic or characteristics would consider *petty slights or trivial inconveniences*.”

# Disability Accommodations

- ▶ “Disability” broadly defined under NY law
- ▶ No requirement that condition “substantially limits a major life activity”
- ▶ Remote work situation can influence what is “reasonable” or “undue hardship” in either direction





# Protected Off-Duty Conduct

## ▶ Political Activities

- ▶ *Running for Office, Campaigning, Fundraising*

## ▶ Use of Consumable Products

- ▶ *Alcohol, Cigarettes, Cannabis*

## ▶ Recreational Activities

- ▶ *Sports, Hobbies, Reading, Watching Television*

## ▶ Union activity

- ▶ *Membership, Exercise of Taylor Law Rights*

# Lawful Activities (21+)

- ▶ Possessing, displaying, purchasing, obtaining, or transporting up to 3 ounces of cannabis and up to 24 grams of concentrated cannabis.
- ▶ Transferring, without compensation, to a person 21 years of age or older, up to 3 ounces of cannabis and up to 24 grams of concentrated cannabis.
- ▶ Using, smoking, ingesting, or consuming cannabis or concentrated cannabis (unless otherwise prohibited by state law).
- ▶ Possessing, using, displaying, purchasing, manufacturing, transporting, or giving to any person 21 years of age or older cannabis paraphernalia or concentrated cannabis paraphernalia.
- ▶ Assisting another person who is 21 years of age or older, or allowing property to be used, in any lawful acts listed above.



# Section 201-d Exceptions

- ▶ The employer's actions were required by state or federal law.
- ▶ The employee is impaired by the use of cannabis.
- ▶ The employer's actions would require such employer to commit any act that would cause the employer to be in violation of federal law or would result in the loss of a federal contract or federal funding.



# Big Picture Considerations

- ▶ Do remote employees subject employer to new regulatory jurisdictions?
- ▶ When is a remote employee “working”?
- ▶ Who is responsible for “workplace” safety?
- ▶ Is working from home a privilege or a right?

# Remote Work Policies

- ▶ More about business expectations than legal compliance
- ▶ Precautions against liability
- ▶ Timekeeping
- ▶ Monitoring



# Stay Updated!

Follow us on LinkedIn for our most recent labor and employment law updates:

<https://www.linkedin.com/company/horton-law-pllc/>

# Questions?



Contact me: [scott@hortonpllc.com](mailto:scott@hortonpllc.com)  
(716) 508-7748