

# **Public Sector Labor Relations**

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# LABOR LAW LEGAL DEVELOPMENTS 2025 & 2026

A Mash-up of Recent Developments and  
Potential Changes

# Marijuana Testing: Be Careful What You Test For.

- NYS Police Case
- Trooper Tested Positive for Marijuana Metabolite
- Any TCH Prohibited and controlled substances
- Consumed gummies – Hemp not illegal; all down stream - delta-9 THC less than 3%
- Not illegal
- No evidence crossed 3% threshold – Not illegal.
- Federal firearms statute and US Supreme Court Case

# Independent Contractors

- Enforce Fact Sheet #13 (7/2008) and Opinion Letter FLSA2019-6
- General Meaning of Employment Relationship
- Definition

# PERB – Grooming Standards

- Firefighters with tattoos – City implemented rule – No tattoos hands and face must be covered.
- Union filed IPC
- No PERB Rule on grooming
- Applied the balancing test – personal expression outweighed employer mission there being no evidence that tattoos scared octogenarians

# 47's Executive Orders and Impact on NY

- Ending DEI – Merit Based Opportunity
- Title VII Still in play
- NYSHRL – unaffected by federal role back.
- No longer “severe and pervasive”
- Liberal construction
- Elimination of DEI could trigger claims of systemic discrimination or disparate impact
- Scaling back may be seen as evidence of bias

# Freedom Isn't Free....

- Repeal of CRL § 50-a
- Union sought to bargain over release of disciplinary records
- Not preempted by NYS PO Law
- Pre-disclosure procedures – Mandatory Subjects of Bargaining
- Privacy
- Future employment
- Reputation and due process

# Criminal History Record

- DCJS obtained criminal history record
- Employee cannot be required
- Not subject to negligent hiring or retention if facts under 752 of Correction Law considered.
- 23-a of Correction Law
- Amends Executive Law 296

# Artificial Intelligence

- Summary of State Laws – no law as of 2024
- Civil Service Law § 80 amended
- 2/14/2025
- NY prohibits AI for certain purposes

# Military Law

- National Guard
- Military Service
- Military Law § 301 – Passed 9/24/24
- Bill in senate increase military leave under Military law 542 to 60 calendar days and 52 working days respectively
- Referred to Veterans and Homeland Security January 2025. No action.

# New York Lactation Breaks

- Labor Law 206-c – Right to paid break time to pump breast milk at work
- Not in this law but must provide private space to do so; Cubicle with 7 foot walls
- 30 Minutes – Less if employee chooses
- Cannot require to make up
- As many breaks as needed.

# Civil Service Law § 53

- No noncitizen lawfully admitted for permanent resident can be denied appointment in competitive class based on noncitizen status
- On the federal level – if valid I-9 can employ noncitizen
- But see Civil Service Law § 58 - High School and College US; Must be a US citizen

# Civil Service Law § 54

- Expands age requirements to person within 12 months of minimum age requirement
- Recruitment
- Mandatory age retirement still in play

# Civil Service Law § 72

- Effective January 1, 2025
- Must provide communication to the AP or medical officer or any entity provided with such information
- All info relied on by IME
- No cases on effect of failing to do so

# Video Taping or Recording at Work

## Meta Glasses

- PERB says it's a mandatory subject of bargaining under certain circumstances
- Matter of Orangetown, 40 PERB ¶ 3008 (2007)
- 207-c recipient attempts to video tape independent medical exam
- Town argues that prohibition on video taping was to maintain status quo
- Town did not file charge against the PBA
- Board infers that union may violate act by unilaterally changing term and condition of employment
- Town lost because PERB framed the issue in relation to initial determinations re GML 207-c
- Nanuet and its progency; DOT 58 PERB ¶ 4556 (2025)(video on private property)
- Triborough (U-39586) – Video taping in a workplace gym.

# Revocation of Police Officer Certifications: Challenge to DCJS Revocation

- Police officer served disciplinary charges resulting in discipline being imposed and charges settled.
- Police officer enters into subsequent agreement to retire and remains out of work on paid leave using accruals
- Officer then retires through written resignation
- Reported to DCJS as "no cause" related retirement
- DCJS directed employer to declare as a separation for cause
- Court determined that was not a separation for cause because underlying discipline resolved.

# FLSA OT Thresholds

- Texas Case vacated threshold increases for 24 and 25
- Reverts to 2019 rule - \$684 per week and \$107,437 for highly compensated
- Duties test remains the same

# Labor Law § 190

- S6180 – Seeks to amended employer to include public employer
- Currently not applicable
- Introduced 6 times and not passed
- Referred to Labor on March 5, 2025

# Labor Law § 194-c

- S6180 – Seeks to amended employer to include public employer
- If amended this would apply
- Prohibits requesting salary expectations or use those against hiring.
- Introduced 3x
- Referred to Labor March 3, 2025

# Labor Law § 202-m – Remote Work

- State or local emergency
- S515
- Introduced 2x
- Referred to Labor 1/8/2025

# Labor Law § 215-d – Severance Ultimatums & Trapped at Work Act

- S372
- Applies to Public Employers
- Does not apply to agreements negotiated pursuant to a collective bargaining agreement – What does that mean?
- 21 business days to consider
- 7 days to revoke
- Consult an attorney
- Passed senate; In committee assembly March 2025
- Trapped at Work Act (Labor Law § 1050); Cannot force employee to sign agreement to payback salary, etc., if leave work within specified period.
- Exception: Terms of collective bargaining agreement

# Workers Compensation and Mental Injuries

- Expands coverage 1/1/2025
- Must be extraordinary work-related stress – Previously only FF and PO, etc.
- Removal of greater requirement – normal work environment
- Limits right to sue for emotional distress

# NY Clean Slate Act

- Seals most misdemeanor and felony convictions after passage of time
- Except for drugs, Class A felonies will be sealed.
- Misdemeanors 3 years generally
- Felony 8 years generally
- Qualified agencies