



May 2019

Follow @Paul_Hastings



NYC Adds New Protected Category to Expansive NYCHRL, Seeks to Curb Pre-Employment Marijuana Testing

By [Sara B. Tomezsko](#)

The New York City Council has passed two amendments to the already expansive New York City Human Rights Law ("NYCHRL"), one that goes into effect next month, and another awaiting signature from Mayor De Blasio. These new amendments will impact all employers covered by the NYCHRL with respect to their New York City based employees, in other words, those operating in NYC with four or more employees.

"Sexual and Reproductive Health Choices"

Starting May 20, 2019, it will be unlawful for NYC employers to discriminate on the basis of "sexual and reproductive health decisions," defined as "any decision by an individual to receive services, which are arranged for or offered to individuals relating to sexual and reproductive health, including the reproductive system and its functions." Examples of protected sexual and reproductive health decisions include:

- Fertility-related medical procedures
- STD prevention, testing and treatment
- Family planning services and counseling
- Use of birth control drugs and supplies
- Emergency contraception
- Sterilization procedures
- Pregnancy testing
- Abortion

In the coming weeks, employers should review and update company policies and handbooks to reflect sexual and reproductive health decisions as a protected category under local law, and educate human resources personnel and managers about the change. There is significant overlap between this amendment and existing requirements of local law, including the New York City Earned Sick Time Act,



which provides employees paid time off to receive treatment related to sexual and reproductive health, and New York City's Pregnant Workers' Fairness Act, which requires employers to engage in a cooperative dialogue with employees seeking accommodations related to sexual and reproductive health procedures.

Ban On Pre-Employment Marijuana Testing

On April 9, 2019, an overwhelming majority of the New York City Council (41-4) voted to pass a ground-breaking new bill that would prohibit employers, labor organizations, employment agencies, or their agents from requiring pre-employment drug screening for marijuana or tetrahydrocannabinols as a condition of employment. Mayor de Blasio is expected to sign the bill, which will take effect one year later, approximately May 2020.

Drafted as an amendment to the NYCHRL, the bill sets forth a number of exemptions. The amendment, if signed by the Mayor, will not cover applicants seeking:

- Law enforcement positions
- Work on a public works site covered by N.Y. Lab. L. § 220-h
- Positions requiring compliance with NYC Building Code § 3321
- Positions requiring a commercial driver's license
- Work requiring the supervision or care of children, medical patients, or other vulnerable individuals as defined by N.Y. Soc. Servs. L. § 488(15)
- Any position that could "significantly impact the health or safety of employees or members of the public," as determined by the Department of Citywide Administrative Services or specified in regulations to be issued by the NYC Commission on Human Rights

In addition, the bill excludes from coverage pre-employment drug testing required by state, federal or local law, or pursuant to:

- Regulations issued by the federal, state and city Departments of Transportation
- Contracts and grants from the federal government
- Collective bargaining agreements

The bill does not impact an employer's ability to require drug testing of *current* employees, consistent with any existing limitations on drug testing in the workplace and New York's medical marijuana laws. While there is a high likelihood that Mayor de Blasio will sign the bill into law, unanswered questions remain. For example, the breadth of the many exemptions identified in the bill is unclear. For now, employers should begin evaluating their applicant drug screening procedures to be in a position to respond if this bill is indeed signed into law and becomes effective in May 2020.

◇ ◇ ◇

STAY CURRENT



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:

Marc E. Bernstein
1.212.318.6907
marcbernstein@paulhastings.com

Emily R. Pidot
1.212.318.6279
emilypidot@paulhastings.com

Kenneth W. Gage
1.212.318.6046
kennethgage@paulhastings.com

Patrick W. Shea
1.212.318.6405
patrickshea@paulhastings.com

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2019 Paul Hastings LLP.