HR UPDATE

NorthEast Talent Solutions

A bimonthly newsletter brought to you by NorthEast Talent Solutions, LLC

VOL. 1, ISSUE 5 SEPTEMBER 2019

Top stories in this newsletter

New York "SHIELD" Act Broadens Data Security Requirements

New EEOC Pay Data Reporting Takes Effect

New York Prohibits Hairstyle Discrimination

New York "SHIELD" Act Broadens Data Security Requirements

On July 26, 2019, New York Governor Andrew Cuomo signed the Stop Hacks and Improve Electronic Data Security (SHIELD) Act into law. The SHIELD Act's purpose is to broaden pre-existing breach notification requirements and heighten data security requirements in order to better protect New York residents' private information.

Prior to passage of the SHIELD Act, New York law already required businesses to protect against disclosure of New York residents' "personal information" and "private information," as these terms were specifically defined in the law. Under the SHIELD Act, "private information" now includes not only individuals' names, social security numbers, and driver's license numbers, but also credit or debit card numbers, financial account numbers, biometric information, and username or e-mail addresses with a password that permits access to online accounts.

In addition, prior to the SHIELD Act, a business that discovered a data security breach had to report the breach if the exposed data was acquired, or reasonably believed to be acquired, by the hacker. Acquisition was the standard. Under the new law, a business must report a breach even if the hacker had only "access" to private or personal data.

Importantly, the SHIELD Act may not create an additional notification requirement for businesses that are already regulated by, and compliant with, other state or federal laws with data breach notification provisions.

What a business must do to "safeguard" New Yorkers' personal and private information varies based on the size and characteristics of the business. The law requires each business to "develop, implement, and maintain reasonable safeguards to protect the security, confidentiality and integrity" of personal and private information. The law recognizes that a small business' obligation under the law is necessarily different than the obligation of a larger corporation.

This new law applies broadly to every employer with employees in New York as well as any business that collects New York residents' private information. This means that businesses without a physical presence in New York State may still be subject to the law if they house New York residents' personal and private information.

The SHIELD Act does not create a private right of action for New York residents. Any legal action under the SHIELD Act would be brought by the New York State Attorney General.

For further information, here is a link to the text of the SHIELD Act: https://www.nysenate.gov/legislation/bills/2019/s5575.

New EEOC Pay Data Reporting Takes Effect

During the Obama Administration, the Equal Employment Opportunity Commission expanded employers' reporting requirements to include pay and hours-worked data for employees of each race, ethnicity, gender and job category. The purpose for this expansion was to provide the EEOC with data so that it could better identify pay disparities and investigate potential avenues to resolve them.

Prior to this expansion, the EEOC required employers to submit EEO-1 Component 1 data listing employees by job category, race, ethnicity and sex. The expansion now requires employers to submit an additional filing, EEO-1 Component 2 data, comprised of employees' hours worked and pay information from W-2 forms, broken down by job category.

In 2017, the Trump administration stayed this expansion. Lawsuits ensued and, on April 25th of this year, a federal court order reinstated the expansion. The EEOC set September 30, 2019 as the deadline for employers to submit EEO-1 Component 2 data for 2017 and 2018.

The EEOC released a sample form, instructions, and frequently asked questions to assist employers.

This additional reporting requirement applies to employers with 100 or more employees and federal contractors with 50 or more employees and contracts worth $50,000 or more.

Here is a link to further information about EEO-1 Component 2 data filings: https://www.eeoc.gov/employers/eeo1survey/index.cfm.

New York Prohibits Hairstyle Discrimination

New York State and New York City recently banned discrimination based on natural hairstyles and the law takes effect immediately. New Jersey is currently considering similar legislation. This legislation, known as the CROWN Act, is not limited to the workplace, but experts suggest these laws are primarily focused on protecting employees of color who wear traditional hairstyles associated with their race.

These laws in New York and New Jersey are, in part, a reaction to a December incident in which a high school wrestler in New Jersey was ordered to cut off his dreadlocks or forfeit a wrestling match. The incident gained a significant amount of attention. The law is also a reaction to employers' historical use of office grooming policies to require employees of color, particularly women, to change their hairstyle.

Employees can already bring claims for discrimination or harassment based on race, but this law is significantly more specific, prohibiting employers from engaging in discrimination based on "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles."

The new law prohibits employers from maintaining grooming policies that place an undue burden on people of color. Employers should undertake a review of their office policies to determine whether their existing policies require revision based on this new legislation.

Here is a link to the text of the new law: https://www.nysenate.gov/legislation/bills/2019/s6209.

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Next edition: November 2019

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