

# UTICA



UNIVERSITY

**Workplace  
Law Update  
Summer 2023**



# Objectives

- Provide a summary of important employment laws
  - Share general trends
  - Clarify the leader's role relative to compliance & provide tips on how to minimize your risk and risk to the University
  - Identify resources to aid in understanding and compliance
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# Selected Laws

- New York State Sexual Harassment Law
  - Wage & Hour Laws
  - Non-discrimination Laws
  - Family & Medical Leave Act (FMLA)
  - New York State Paid Family Leave (PFL)
  - New York State Paid Sick Leave
  - Anti-retaliation
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# New York State Sexual Harassment Law

## Examples of Sexual and Non-Sexual Harassment

### Sexual harassment in the workplace

- Sharing sexually inappropriate images or videos
- Sending suggestive letters, notes, or e-mails
- Making inappropriate sexual gestures
- Inappropriate touching



### Non-Sexual Harassment in the workplace

- Using racist slang, phrases, or nicknames
- Making negative comments about an employee's personal religious beliefs
- Sharing inappropriate images, videos, emails, letters, or notes
- Wearing clothing that could be offensive to a particular ethnic group



the balance



#MeToo

## SEXUAL HARASSMENT in the Workplace

**1 in 4** women experience sexual harassment in the workplace.

**1 in 3** women ages 18 to 34 has been sexually harassed at work.

**81%** of women experience harassment in verbal form.

**1 in 10** men experience sexual harassment

**25%** of men are concerned about being falsely accused of sexual harassment.

**Top industries where sexual harassment is prevalent are:**  
BUSINESS • TRADE • BANKING • FINANCE

# New York State Sexual Harassment Law

## Brief Summary

Took effect in October 2018 and updated this past spring (2023)

- Calls for Employers to:
  - ✓ Have a **policy** that contains legally required items; distribute to employees (can be electronically)
  - ✓ **Define harassment** and provide examples of prohibited conduct
  - ✓ Alert supervisors of **responsibility to report**
  - ✓ Have an **investigatory process** that is well-documented
  - ✓ Provide information on how to contact the **NYS Division of Human Rights** or the **EEOC** (and law enforcement)
  - ✓ Provide a **complaint form**
  - ✓ Be clear that substantiated claims of sexual harassment will carry **sanctions**
  - ✓ Be clear that **retaliation of any kind is not tolerated**
  - ✓ **Train all employees annually**; interactive training (Vector training)

### \*NEW FOR SPRING 2023\*:

-Language regarding **gender diversity and gender-based harassment and discrimination**

-Harassment **does not have to be “severe and pervasive”** - more strict than federal definition

Guidance for Supervisors: Under NYS law, you are REQUIRED to report incidences of sexual harassment! Contact the Office of Human Resources if you witness or receive a report of sexual harassment. Do the same if you are a victim of harassment. Be prepared to participate in an investigation. Work with the Office of Human Resources if workplace accommodations are needed.

# Wage and Hour: FLSA

- Establishes standards for minimum wage & payment of overtime
- What is the minimum wage in NYS?

Non-Exempt: \$14.20/hr (moving to \$15/hr for 2024)

Exempt: \$55,380/yr (number not officially released yet for 2024)

- Dictates exempt vs. non-exempt
- Directs payment for ALL time worked
- Defines rules around meal periods

Guidance to Supervisors: Always pay attention to recorded work time; ensure employees avail themselves of meal periods; keep job descriptions up to date and accurate; remember our work week is 37.5, inclusive of 5.5 hours of Flex Time (32 hours of actual work time/5.5 Flex Time), so anything from 37.5-40 per week for non-exempt employees is straight time and anything above 40 is overtime.

Remember: as the supervisor you are signing off on a legal document (the official time record), so review it carefully.

# Wage and Hour: Equal Pay

- Part of the Fair Labor Standards Act and EEO
- Prohibits discrimination on the basis of gender in compensation (including most fringe benefits) for substantially equal work in the same establishment.
- Performance is a valid reason for differences in pay but it needs to be verifiable if a question arises (another reason why performance reviews are important)

Guidance to Supervisors: When recommending start rates or changes in pay, make sure to base the recommendation on performance, seniority, experience, etc. and not gender or any other characteristic that is unrelated to the job.





# New York State Pay Transparency Law



- Effective September 17, 2023
- Primary goal is to help close pay gaps. In 2022, women made 83 cents for every dollar made by men, according to the [U.S. Department of Labor](#). Gap was greater for black women and Hispanic women.
- Must disclose the pay range for any job that is advertised, including those for internal promotion or transfer opportunities.
- Disclose the job description if one already exists when advertising a job, promotion, or transfer opportunity

Guidance to Supervisors: Know that HR will be posting all salary ranges for every open position, regardless of the circumstances. Refer employees to HR with salary range questions first.

# Non Discrimination: EEO

- EEO: includes Title VII, Title IX, ADA, ADEA, Equal Pay Act, Sections 503 & 504 of the Rehabilitation Act, Pregnancy Discrimination Act, and more.
- All of these laws prohibit discrimination in the workplace.

Applicants, employees and former employees are protected from employment discrimination based on [race](#), [color](#), [religion](#), [sex](#) (including [pregnancy](#), [sexual orientation](#), or [gender identity](#)), [national origin](#), [age](#)(40 or older), [disability](#) and [genetic information](#) (including family medical history).

- The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcement.
- Employers must file certain reports periodically to prove EEO compliance
- EEO claims against employers usually increase year over year.

Note: At the State level, these claims are filed with the NYS Division of Human Rights (or DOL, if appropriate)

**REMEMBER THAT MOST EMPLOYMENT LAWS APPLY TO THE APPLICANT AND HIRING PROCESS AS WELL!**

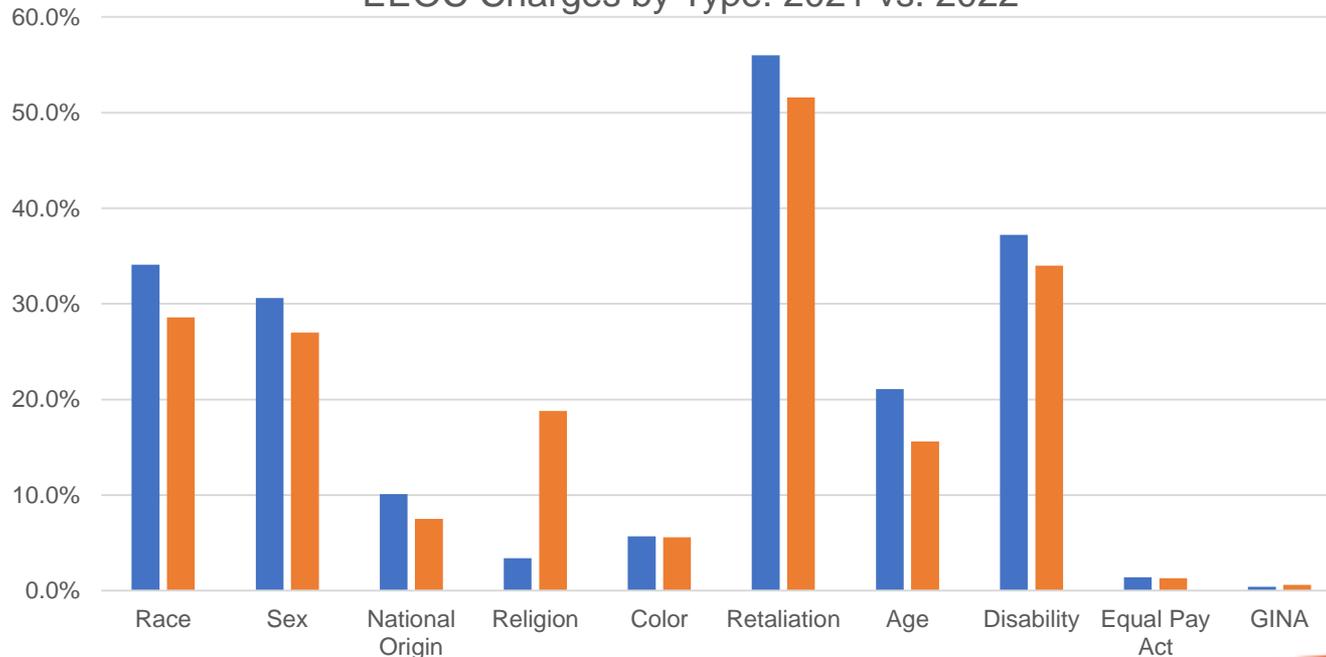


# EEOC Charges

In FY 2022, the agency received 73,485 new discrimination charges, which represents an **increase of almost 20%** when compared to the previous fiscal year.

<https://www.eeoc.gov/data/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2022>

EEOC Charges by Type: 2021 vs. 2022



Type of Claim	2021	2022
Race	34.1%	28.6%
Sex	30.6%	27.0%
National Origin	10.1%	7.5%
Religion	3.4%	18.8%
Color	5.7%	5.6%
Retaliation	56.0%	51.6%
Age	21.1%	15.6%
Disability	37.2%	34.0%
Equal Pay Act	1.4%	1.3%
GINA	0.4%	0.6%

# Non Discrimination: Title VII, Title IX

- **Title VII** of the Civil Rights Act of 1964 prohibits harassment and unequal treatment on the basis of race, color, religion, sex or national origin in all areas of employment from advertisement for new employees through termination or retirement. Overseen by EEOC. NYS law covers more protected classes for non-discrimination.
- **Title IX** of the Education Amendments of 1972 prohibits discrimination against students in education programs or activities that receive federal financial assistance on the basis of sex (overseen by Office of Civil Rights).

Guidance to Supervisors: **ANY complaints of harassment, discrimination or any form of unfair treatment taken by a supervisor must immediately be shared with the appropriate internal resource**

Title VII - Office of Human Resources

Title IX - Title IX Coordinator (Lisa Green) or the Office of Campus Safety

Go to <https://www.utica.edu/college/tix/> for more Title IX information.



# Non Discrimination: Americans with Disabilities Act (as amended)



- ADA is the Americans with Disabilities Act; ADAAA is amended version
- Prohibits discrimination of individuals with known disabilities, whether “perceived” or told
- Burden is on employers to remove barriers or make “reasonable accommodations” wherever possible
- Employers are required to engage in the “interactive process”
- Updated in past decade or so to include more conditions to be classified as disabilities

Guidance to Supervisors: Contact Human Resources immediately if you suspect an employee is suffering medically in some way, get help, think about accommodation requests (fair and equitable?), keep separate from performance documentation, keep medical information separate (send to HR!).

# Non Discrimination: ADEA

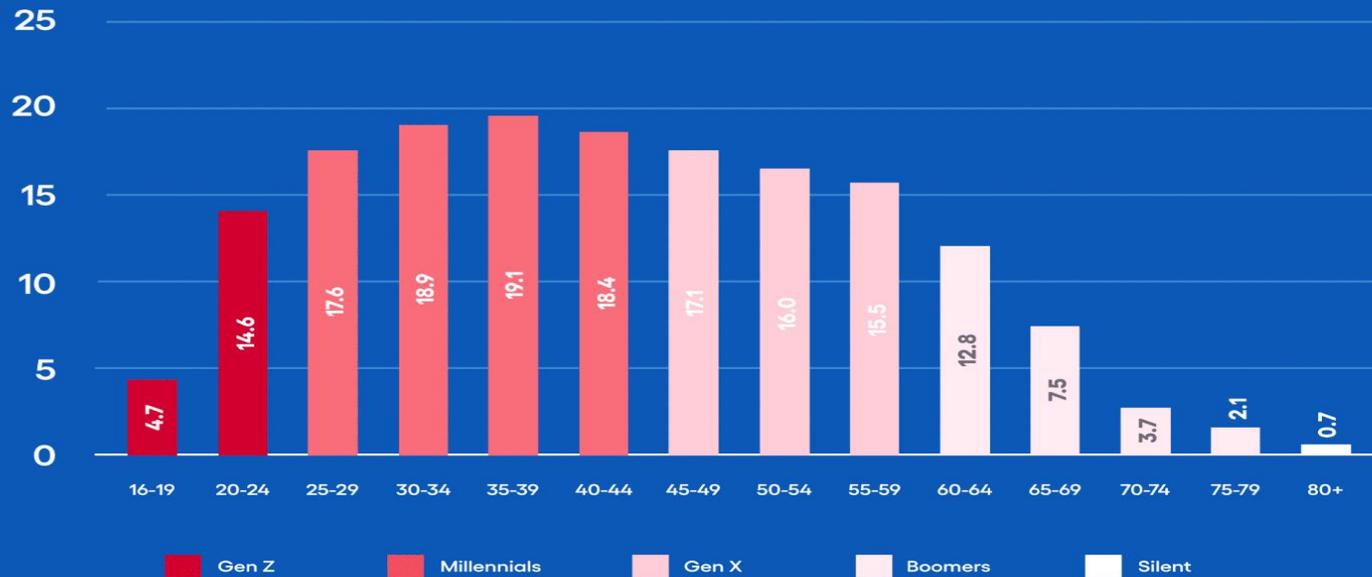
- ADEA is the Age Discrimination in Employment Act
- Prohibits employers from engaging in age-based discrimination against individuals who are age 40 or older (unless age is a bona fide job qualification)
- One provision says the employer cannot force a person to retire
- The employer may, in some cases, offer voluntary retirement
- It is anticipated that there will be a greater number of ADEA claims filed against employers in coming years due to the aging of a large segment of the population.

Guidance to Supervisors: Never use age as the basis for decision on hiring, firing, promoting or for offering educational opportunities to employees. If an employee expresses a desire to retire, make sure to request it in writing.

# Non Discrimination: ADEA

## The workforce in 2025

Projected size of U.S labor force (in millions) by age, for the year 2025



Source: Department of Labor

# Non Discrimination: USERRA



- USERRA is the Uniformed Services Employment and Reemployment Rights Act
- Ensures that members of the armed forces can return to their job after serving; protects employees from discrimination based on present or future membership in the armed forces
- If serving <5 years and honorably discharged, employee returns to the same job, same pay, and all seniority and seniority-related benefits are restored
- Also protects employees who become disabled as a result of service

Guidance to Supervisors: Notify Human Resources immediately of any upcoming military leave; HR will need to keep track of pay, seniority and seniority-related benefits for the employee.

# Family and Medical Leave Act (FMLA)

- Established to help families balance their work and life needs
- Provides 12 weeks of unpaid leave (which can be intermittent); requires at least 1,250 hours of service
- Offers job protection and continuation of health benefits during the leave period
- Available for employee's own leave, to care for a relative with a serious health condition, for child birth or adoption
- Amended in 2008 to provide leave for those caring for family member who became ill or injured due to military service
- Employees must apply and be approved for FMLA (when feasible); medical certification will be required

Guidance for Supervisors: Always notify Human Resources of FMLA requests; HR will contact the employee to start required paperwork. Do not allow employee to return to work without a full release from physician and notify HR of that release.

# NYS Paid Family Leave

## NEW YORK'S PAID FAMILY LEAVE STARTS JANUARY 1, 2018



New York's new Paid Family Leave program will provide wage replacement to employees who need time away from their jobs to bond with a child, care for a close relative with a serious health condition, or when a family member is called to active military service. In addition to paid leave, this program guarantees that employees will be able to continue receiving their health insurance while on leave and return to their jobs after their leave concludes.

### BONDING

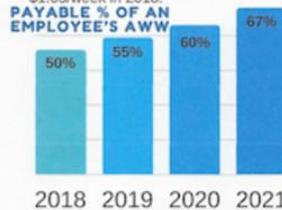


A parent may take Paid Family Leave during the first 12 months following the birth, adoption or fostering of a child.

### HOW IT WORKS



Workers who have been employed for 26 consecutive weeks, or part-time for 175 days, will be eligible for a Paid Family Leave benefit based on their average weekly wage (AWW). In 2018 the benefit will be capped at 50% of the statewide AWW, but by 2021, the benefit will increase to 67%. The AWW for 2016 is \$1,305.92. For example, if you earn \$1,000 per week, you'd receive \$500 per week in paid leave benefits. The program is funded by employee paycheck deductions which may begin as early as July 1, 2017. Contributions are based on a percentage of workers' wages and are capped at a maximum of \$1.65/week in 2018.



### FAMILY CARE



If an employee's family member has a serious health condition, the employee can take Paid Family Leave to care for them. These relatives can live outside of New York State and include the following categories:

- Spouse
- Parent-in-law
- Domestic Partner
- Grandparent
- Child
- Grandchild
- Parent

### MILITARY



An employee may be eligible to take Paid Family Leave to assist with family situations arising from a family member on active duty or one who has been notified of an impending active duty assignment.

Information distributed by

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**FOR MORE** visit: [ny.gov/paidfamilyleave](http://ny.gov/paidfamilyleave)  
**INFORMATION** call: 844.337.6303

**Paid Family Leave**  
 starts January 1, 2018 and  
 phases in over four years



**Paid Family Leave**

# NYS Paid Family Leave

- Eligibility: Employees must work 20 hours per week and must be employed for at least 26 consecutive weeks; or must work less than 20 hours per week and work for at least 175 days.
- For birth, adoption, foster care, to provide care for family member's serious illness (see handbook for definitions of qualified situations and family members), care for a family member who is a service member; not for a person's own illness. **New for 2023**, "family member" includes siblings which means biological siblings, adopted siblings, stepsiblings and half-siblings.
- **For 2023**, income coverage is 67% of their average weekly wage, up to a cap of 67% of the current New York State Average Weekly Wage (NYSAWW). For 2023, the NYSAWW is \$1,688.19, which means the maximum weekly benefit is \$1,131.08.
- Can run concurrently with other leave (FMLA, for example)
- Requires documentation to be submitted to Office of Human Resources
- Employees must provide 30-day notice when the leave is foreseeable
- PFL will be supplemented with the employee's available leave time (not sick time, since it is not the employee's own illness or injury) unless the employee tells the Office of Human Resources that they do not wish to use leave time

For more information:

<https://www.utica.edu/policies/policies.cfm?id=151>

- Guidance for Supervisors: Always notify Human Resources of PFL requests; HR will contact the employee to start required paperwork. HR is responsible for tracking all leave periods.

# NYS Paid Sick Leave for Part-Time Employees

**Eligibility** – Part time employees (for the purposes of this benefit, employees who work less than 30 hours per week)

## **Accruing Sick Leave**

- Beginning September 30, 2020, part-time employees will accrue sick leave at a rate of one hour for every 30 hours worked.

## **Use of NYS Paid Sick Leave**

- Part-Time employees may use their available sick time for any illness, injury, ,other related health conditions related to an immediate family member, parent, or child; or when the employee or an employee's family member has been the victim of domestic violence, sexual offense, stalking or human trafficking.

Unused sick leave will automatically be carried forward to the following fiscal year up to the maximum of 56 hours. Sick leave will not accrue while an employee is on leave without pay.

<https://www.ny.gov/programs/new-york-paid-sick-leave>

# Anti-retaliation

Employers may not retaliate against any employee for raising issues under these laws!

If the employee has performance problems that coincide with a complaint, make sure to keep detailed documentation of the issues. Further, keep all performance-related documentation separate from any information concerning a complaint.

Don't be accused of retaliation – always contact Human Resources for guidance!



# General Recommendations

## How to Avoid Legal Pitfalls

- Be consistent with your application of rules, guidelines, policies
  - Document important discussions/meetings
  - Tell HR everything the first time
  - Refrain from oversimplifying a law (they are usually more complex than they seem)
  - Coach at every opportunity, but know when disciplinary steps are needed (and document); consider disruptive behavioral issues to be performance issues that require coaching and possibly even discipline if no improvement
  - Read important policies/employee handbook/collective bargaining agreement (CBA)
  - Keep communication lines open with your team members
  - Always call HR when you need help
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# General Recommendations

- If you have employee medical information, keep it completely secure and away from anything related to job performance. Better yet, send it to HR. Also, beware of making accommodations without an official request.
  - Keep detailed documentation of employee issues, but use e-mail cautiously
  - Beware of “off the record” conversations
  - Refrain from making promises of pay, benefits, terms and conditions of employment, etc. without seeking the proper approvals.
  - Avoid guessing; use the resources available to you (e.g. HR)
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# Questions



# Resources

<https://www.ny.gov/programs/combating-sexual-harassment-workplace>

<https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/new-york-modifies-pay-transparency-law-to-address-remote-work-.aspx>

<https://www.eeoc.gov/equal-paycompensation-discrimination>

<https://www.eeoc.gov/statutes/laws-enforced-eeoc>

## Utica University Resources

- <https://www.utica.edu/college/tix/> (Title IX web page)
- <https://www.utica.edu/policies/policies.cfm?id=151> (NYS Paid Family Leave Policy)
- <https://www.utica.edu/policies/policies.cfm?id=114> (FMLA Policy)