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Client Alert

November 2, 2026

Northwell Health Facing Federal Pregnancy Discrimination Suit

A registered nurse at Mather Hospital in Port Jefferson, has filed a suit against Northwell Health in the United States District Court for the Eastern District of New York, alleging violations of the Pregnant Workers Fairness Act ("PWFA"). The complaint seeks backpay, compensatory damages and attorney's fees. The PWFA, issued by the Equal Employment Opportunity Commission, applies to employers with fifteen or more employees and requires reasonable accommodation of known limitations arising from pregnancy, childbirth or related medical conditions so long as there is not an undue hardship to the employer. Under the PWFA, "limitations" are physical or mental conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The statute prohibits an employer to require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the qualified employee.

According to the complaint, Northwell initially approved a temporary pregnancy-related lifting and standing accommodation that permitted her to continue working. When she sought to extend that accommodation, Northwell is alleged to have forced her onto leave. Northwell is also alleged to have threatened termination unless she formally requested leave. Her request to return to work with the same accommodation was later denied.

The complaint, although asserted under the PWFA and filed in Federal court, likely could have been brought in a New York State court. The N.Y. Exec Law 296(3)(a) sets forth that it shall be an unlawful discriminatory practice for an employer to refuse to provide reasonable accommodations to the known disabilities, or pregnancy-related conditions, of an employee, prospective employee or member in connection with a job or occupation sought or held or participation in a training program. Moreover, N.Y Exec Law 296(1)(g) independently prohibits an employer from compelling an employee who is pregnant to take a leave of absence, unless the employee is prevented by such pregnancy from performing the activities involved in the job or occupation in a reasonable manner. The accommodation provisions apply to employers with four or more employees, a lower threshold than the PWFA's fifteen minimum and its remedies for a prevailing plaintiff are more favorable than those available under PWFA.

For New York employers it is important to engage in a good faith interactive process with the employee before denying, modifying or declining to extend an accommodation. Additionally, the employer must be aware that an accommodation should be treated as binding. Forcing leave exposes the employer under both the PWFA and NYS Human Rights Law.

New York employers are also reminded of their obligations under NY law which include the Paid Prenatal Leave (N.Y. Labor Law 196-b(4-a)) which requires employers to provide, in addition to the sick leave, twenty hours of paid prenatal personal leave during any fifty-two week calendar period, regardless of employer size, and the lactation accommodation

law (N.Y. Labor Law 206-c) which provides a thirty minute break as need for up to three years following childbirth, for nursing employees to express breast milk.

These New York requirements, should be reflected in your written policies and procedures and employee handbook. Now is the time to review and revise your documents. We are here to help you draft them.

Influenza Declared Prevalent in New York State Mask Requirement are Now in Effect for Unvaccinated Health Care Personnel

On October 26, 2026, influenza was declared prevalent in New York State. The New York State Department of Health (the "Department") describes this flu season as starting earlier than usual with vaccination rates that are lagging from prior years. The declaration activates the State's flu mask regulation which applies to facilities and agencies licensed under Articles 28, 36, or 40 of the Public Health Law. Any personnel who are not vaccinated against influenza for the 2026–27 season must wear a surgical or procedure mask while in areas where patients or residents are typically present. The regulation carves out three exceptions: staff may remove masks when accompanying patients in the community, when providing speech therapy services, or when communicating with someone who lip reads. The obligation remains in effect until the Commissioner formally declares influenza no longer prevalent.

Practical steps for agencies:

- Confirm vaccination status for all personnel and get unvaccinated staff masked before their next shift in patient-facing settings;
- Continue to promote vaccination, bearing in mind full protection takes about two weeks to develop;
- Continue to reinforce infection prevention practices, encourage appropriate vaccination and prompt reporting of respiratory symptoms;
- Remind your workforce of the Department's standard prevention guidance: proper handwashing, avoiding face-touching, and staying home when symptomatic.

NYC Commission on Human Rights Adopts Final Rules Implementing Fair Chance Act Amendments

The NYC Commission on Human Rights (the "Commission") adopted amended Fair Chance Act rules, effective October 30, 2026. The Fair Chance Act, enacted in 2015, bars most employers from inquiring into an applicant's criminal history before a conditional offer, and requires a written individualized assessment (the Fair Chance Act Notice) with an opportunity to respond before any adverse action is taken by the employer. These amended rules codify and formalize standards the Commission had already been applying through its 2021 enforcement guidance. They don't create new substantive obligations, but they do raise enforcement stakes by identifying "per se" violations.

Some highlights under the rules:

- Applicants and employees have a five-business day minimum to respond to a Fair Chance Act Notice. For applicants, this is an increase from three days.
- When an employee is placed on unpaid leave during an individualized assessment of a pending case or a conviction, there is a rebuttable presumption that leave beyond five business days constitutes "adverse action".
- Employers must notify individuals in writing, in a timely manner, if the outcome of reviewing their response is a decision not to hire or to take adverse action.
- Using any employment application or form that asks about or references criminal history, before a conditional offer, is now a per se violation.
- It is a per se violation to fail to run a new Fair Chance Employment Analysis after an applicant or employee identifies a material error in the criminal history record relied upon, meaning a single flagged inaccuracy obligates a full re-review, not just a correction of the record.

The stakes behind these changes are significant. Violations are enforced as unlawful discriminatory practices under the NYC Human Rights Law, exposing an employer to a civil penalty of up to $125,000 per violation and up to $250,000 where conduct is found to be willful, wanton, or malicious on top of whatever an individual complainant separately recovers in uncapped compensatory damages, punitive damages, and attorneys' fees.

Next Steps: Audit all pre-offer forms and applications for criminal history language, confirm your Fair Chance Act Notice and tracking procedures reflect the five business day response and leave thresholds, and ensure whoever adjudicates these decisions is trained on the new rules.

Proposed Regulations To Streamline LHCSA Reporting Requirements

The New York State Department of Health (the “Department”), through its EXPRESS NY initiative, has proposed amendments to Section 766.12 to streamline reporting requirements for Licensed Home Care Services Agencies ("LHCSAs”) and eliminate duplicative administrative paperwork. Specifically, the proposed amendments revise subdivisions (c) and (d) of 766.12 and add a new subdivision (e). The proposed amendments would result in the consolidation of agencies’ existing statistical report and ownership disclosure filings into a single annual registration submission, and to expressly codify the registration deadline and the penalties for noncompliance.

In the Regulatory Impact Statement, the Department acknowledges that Public Health Law § 3612 authorizes the collection of necessary information from LHCSAs but notes that the existing statistical report is “lengthy, excessive and in need of streamlining.” The Department further states that the current annual statistical report collects extensive data, much of which is duplicative of information already submitted through other required reports. Accordingly, the proposed amendments are designed to eliminate redundant data requirements, while retaining the annual registration component.

The penalties for failure to register would remain unchanged and would be expressly codified in the proposed regulations. These penalties include:

- A $500 fine for each month that the LHCSA remains unregistered;
- A prohibition on operating while unregistered; and
- Potential license revocation if a LHCSA fails to register by the DOH established deadline in two annual registration periods, whether or not consecutive.

The proposed regulation will take effect 60 days after publication of the Notice of Adoption in the New York State Register. However, the new reporting requirements would not apply to the 2025 statistical report, which remains due on December 31, 2026.

The Department of Health Updates Billing Requirement for FFS Program

Effective October 1, 2026, the New York State Department of Health (the “Department”) updated its UB-04 Billing Guidance, to require worker specific identification on fee-for-service ("FFS") claims for Personal Care Aide and Consumer Directed Personal Assistant Services ("CDPAS"). All Home Health Aide and Personal Care Aide Medicaid claims must now include, in the Medical Record Number field, a Home Care Registry ID, and all CDPAS claims must now include a Statewide Fiscal Intermediary ("SFI") Personal Assistant ID This requirement also extends to providers participating in the Nursing Home Transition and Diversion and Traumatic Brain Injury programs. When a claim reflects services performed by multiple caregivers, providers must separate each Home Care Registry ID or SFI Personal Assistant ID with a semicolon (;), report all service units on the first claim line, and use any additional lines solely to identify the other caregivers. Providers should not submit separate claims for each worker’s unit as doing so can trigger duplicate claim edits and result in underpayments.

The Department advises against using ePACES when multiple Home Care Worker Registry IDs or SFI Personal Assistant IDs need to be reported, because the Medical Record Number field’s 10-byte limit on ePACES allows only one ID per claim line. Providers submitting claims with multiple IDs should use the 837I format, which allows up to 50 bytes and therefore accommodates multiple IDs on a single line. This requirement is for FFS claims. The Department has issued separate guidelines for submitting Managed Care claims. Providers should apply the correct set of instructions, as applying Managed Care instructions to FFS claims (or vice versa) may result in claim denials.

OMIG Extends Medicaid Audit Response Deadlines

The Office of the Medicaid Inspector General (“OMIG”) plans to amend its regulations to provide providers with additional time to respond to Medicaid overpayment audits. Currently, OMIG issues a Draft Audit Report (“DAR”) directly to providers and requires providers to respond within thirty (30) days from the date the DAR is received (receipt is

presumed five (5) days from the date of DAR). The proposed amendment would extend this response deadline from thirty (30) to forty-five (45) days from receipt of the DAR. Currently,, OMIG may not issue a Final Audit Report until at least forty (40) days have elapsed from the date the DAR was mailed, absent earlier resolution of the provider's objections, and final recoupment may not begin until at least twenty (20) days after the Final Audit Report. The proposed amendment would extend that forty (40) day period to fifty-five (55) days, and extend the minimum recoupment waiting period from twenty (20) days to sixty (60) days. Please note, until these regulations are officially amended by the Department, the current timelines are still applicable. These changes will give providers more time to review audit findings, and dispute potential overpayments before recoupment begins.

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