

# Gender and Diversity: How can YOU benefit from knowing the law?

## Section 1: Laws/Policies Impacting Women in the Workplace

Tiffany Ma and Susan Gross Sholinsky  
Harvard Business School Women's Association and  
Harvard Law School Women's Alliance

January 14, 2016

# Presented by

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**Tiffany Ma**

Partner

[tma@youngandma.com](mailto:tma@youngandma.com)

(212) 971-9773



**Susan Gross Sholinsky**

Member of the Firm

[sgross@ebglaw.com](mailto:sgross@ebglaw.com)

(212) 351-4789

# Agenda

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1. Introduction
2. NYC Pregnancy Accommodation Law
3. FLSA and NYLL Protections for Nursing Mothers
4. Women's Equality Agenda
  - i. NY Equal Pay Act Amendments
  - ii. Sexual Harassment Protections for Employees of Small Employers
  - iii. Recovery of Attorneys' Fees in Certain Cases
  - iv. Familial Status as Protected Class
  - v. Reasonable Accommodation due to Pregnancy
5. Limitations on use of Credit Checks
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# New York City Pregnancy Accommodation Law

# Pregnancy Accommodation

## NYC Law

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- Provide **reasonable accommodations** to address the needs of an employee for her pregnancy, childbirth, or related medical condition that will allow the employee to perform the essential requisites of the job
- Reasonable accommodation is one that does not cause an undue hardship in the conduct of the employer's business
- Examples:
  - bathroom breaks
  - leave for a period to recover from childbirth
  - breaks to facilitate increased water intake
  - periodic rest for those who stand for long periods of time; and
  - assistance with manual labor
- Covered employers are those with 4 or more employees
- Notice requirement

# Pregnancy Accommodation

## Required Poster



**NEW YORK CITY** is a family friendly city with a strong and vibrant workforce, including pregnant women and people with children. The **NYC COMMISSION ON HUMAN RIGHTS** wants to help you keep your workforce strong and your job secure.

The City Human Rights Law requires employers to provide reasonable accommodations to address the needs of an employee for her pregnancy, childbirth or related medical condition; and also requires employers to provide written notice of employees' rights under the law.

### EMPLOYERS

Take the time to work with your employee to agree on a reasonable accommodation that:

- Values your employee's contributions to the workplace
- Helps your employee satisfy the essential requisites of her job
- Keeps her in the workplace for as long as she is able and wants to continue working
- Is right for your employee & doesn't cause undue hardship in the conduct of your business

Ignoring a request for a reasonable accommodation or firing your employee after she requests one can expose you to damages and civil penalties. Stay informed about your obligations under the law – contact the Commission for more information, including how you must notify employees about their rights under the law.

### EMPLOYEES

If you need a reasonable accommodation to continue working or remain employed, you can request one. Examples include:

- Breaks (e.g. to use the bathroom, facilitate increased water intake, or provide necessary rest)
- Assistance with manual labor
- Changes to your work environment
- Time off for prenatal appointments
- A private, clean space and breaks for expressing breast milk
- Light duty or a temporary transfer to a less strenuous or hazardous position
- Time off to recover from medical conditions related to childbirth

If your request for a reasonable accommodation has been ignored or denied without an appropriate alternative, speak with someone at the Commission.

The type of reasonable accommodation appropriate for an employee should be tailored to the needs of the employee and the employer. Call the Commission to help keep women in the workplace.

**NYC** Commission on Human Rights | [www.nyc.gov/humanrights](http://www.nyc.gov/humanrights) or call 311  
@NYCCHR  
Bill de Blasio, Mayor • Carmelyn P. Malalis, Commissioner/Chair

# Pregnancy Accommodation

## Differences from other Laws

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- Sixteen states, the District of Columbia and four cities have passed laws requiring some employers to provide reasonable accommodations to pregnant workers
- Most states, like California, Hawaii, Maryland, Minnesota, New York and West Virginia protect pregnant employee with a “disability related to” or “conditions related to” pregnancy
- **No disability required** - NYC law covers all pregnant employees, regardless whether a pregnant employee's condition would qualify as a disability under federal, state, or city law (broader protections)

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# New York Labor Law and FLSA Protections for Nursing Mothers



# Comparison between NYS law and federal law

	NYS	Federal Law
<b>Duration</b>	3 years after birth	1 year after birth
<b>Length</b>	at least 20 minutes per break	reasonable amount of time
<b>Frequency</b>	at least once every three hours	as frequently as needed
<b>Businesses Covered</b>	applies to all employers, regardless of the size or nature of the business	if 50 employees or fewer, not subject to break time requirement when compliance would impose an undue hardship
<b>Compensation</b>	Not required. Employees can (but are not required) use regular paid break or meal time to pump breast milk	Not required. When paid breaks are provided, an employee who uses that break time to express milk must be paid in the same way that other employees are paid for break time
<b>Notice Requirements</b>	provide notice to employees returning to work following the birth of a child	none
<b>Location</b>	private, separate location (not a restroom) close to the employee's work area	a place that is shielded from view and free from intrusion from coworkers and the public/ not a restroom
<b>Room Requirements</b>	a chair and small table or other flat surface	none
<b>Retaliation/ Discrimination</b>	Prohibited	Prohibited

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# New York Legislation on Gender Equality in the Workplace: The **Women's Equality Agenda**

# Current NY Equal Pay Act

## New York Labor Law Section 194

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- Prohibits pay differentials based on gender in jobs within the same establishment requiring “equal skill, effort and responsibility” which are “performed under similar working conditions”
- Except where payment is based on
  - seniority system;
  - a merit system;
  - a system which measures earnings by quantity or quality of production; or
  - any other factor other than sex.
- The law does permit different rates of pay based on factors other than gender, such as:
  - Length of service
  - Quality of work
  - Quantity of work

# Fair Pay Law Amendments

## Pay Differentials

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- NYLL Section 194 amended from:
  - permitted pay differentials based on “**any factor other than sex,**” to
  - pay differentials must be based on a “**bona fide factor other than sex**”
- Pay differentials must now:
  - not be based upon or derived from a sex-based differential in compensation,
  - be job-related, and
  - be consistent with business necessity
- Law still violated (even if pay differential meets these criteria) if:
  - employment practice results in disparate impact on the basis of sex, and
  - alternative employment practice(s) exist that would
    - serve the same business purpose, and
    - not produce a pay differential, and
  - employer has refused to adopt such alternative practice.

# Fair Pay Law Amendments

## Equal Pay in the “Same Establishment”

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- Section 194.1 prohibits paying a lower wage:
  - To an employee of the opposite sex in the “**same establishment**”
  - For equal work
  - On a job that requires equal:
    - Skill
    - Effort and
    - Responsibility and
  - Which is performed under similar working conditions (unless exception applies)
- The term “**same establishment**” was amended
  - To include more than one workplace located in the same geographical region
  - A “geographical region” is no larger than a county

# Fair Pay Law Amendments

## Transparency Provision

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- Section 194.4 (Wage Transparency) added
  - Prohibits employers from taking adverse action when employees
    - Inquire about,
    - Discuss, or
    - Disclose their wages *or the wages of another employee*
  - Exceptions:
    - Cannot discuss or disclose wages of another employee without his/her consent
    - Employees with access to wage information of other employees as a part of their job (i.e., HR staff) may not share such wage information, except when certain circumstances are present (e.g., an investigation or government inquiry)

# Fair Pay Law Amendments

## Liquidated Damages

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- Section 198 revised to allow liquidated damages
  - Unless employer has good faith reason to believe it complied
  - Liquidated damages capped at 100% for most violations
  - But 300% liquidated damages for willful violations of Section 194

# Sexual Harassment Protections

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- New York State Human Rights Law (“NYSHRL”) Amended
  - NYSHRL generally applies to employers with 4 or more employees
  - Now, **sexual harassment protections** apply to *all* New York employers (regardless of number of employees)



# Recovery of Attorney's Fees

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- NYSHRL Section 297(10) amended
- Now permits attorneys' fees in claims of sex discrimination in
  - Employment
  - Credit
- NYSHRL previously provided attorneys' fees only in housing discrimination claims
- Attorneys' fees still not available for other types of employment discrimination under the NYSHRL (*e.g.*, race, marital status, sexual orientation)

# “Familial Status” Added as a Protected Category

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- NYSHRL amended to include “familial status” as a protected category
- Familial status was protected category but only with respect to housing discrimination
- “Familial status” means:
  - any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, or
  - one or more individuals (who have not attained the age of eighteen years) being domiciled with:
    - a parent or another person having legal custody of such individual or individuals, or
    - the designee of such parent

\* Effective May 4, 2016, NYC Law will prohibit discrimination on the basis of “caregiver” status

# Reasonable Accommodation for Pregnancy

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- NYSHRL amended to require reasonable accommodations for employees with a **pregnancy-related condition**
  - medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques
- Employees required to “cooperate” in providing medical or other information necessary to verify existence of a “disability or pregnancy-related condition” so that employer can engage in the interactive process
- New York City employers are already required to provide reasonable accommodations for pregnant individuals (whether or not the individual suffers from a “pregnancy related condition”) under the New York City Human Rights Law

# Reasonable Accommodation for Pregnancy

## Potential Reasonable Accommodations

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- Legislators indicated that potential reasonable accommodations include the following:
  - A stool to sit on
  - Extra restroom breaks
  - Transfer away from hazardous duties
  - A temporary reprieve from heavy lifting
  - A reasonable time for childbirth recovery (leave of absence)

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# California Legislation on Gender Equality in the Workplace: The Fair Pay Act

# Fair Pay Act

## Differences between CA and NY

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- “Same establishment” - CA law removes the term v. NY law defines the term
- Prohibition on wage discussions- NY law’s pay transparency provision has three important carve-outs, while CA law has none
  - employees cannot discuss the wages of others without permission of the other employee
  - employees with access to wage information as part of their jobs may not disclose such information
  - employers may set policies about reasonable limitations on discussing wages while at work
- “Business necessity” defined differently
  - NY: a factor that bears a manifest relationship to the employment in question
  - CA: an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve

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# NYC Limitation on Use of Credit Checks

# Stop Credit Discrimination in Employment Act

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- “Employer credit checks disproportionately harm unemployed people, low income communities, communities of color, **women**, domestic violence survivors, families with children, divorced individuals, and those with student loans and/or medical bills”
- Prohibits NYC employers from requesting or considering “consumer credit history” in employment decisions regarding applicants or employees
- Provides exceptions for a limited number of positions
- Applies to all NYC employers with four or more employees
- FAQs - <http://www.nyc.gov/html/cchr/html/coverage/credit-history-faqs.shtml>



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# Aside from the Law... Company Policies

# Company Policies

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- Parental Leave
- Telecommuting
- Flexible Schedules
- Other health/family leaves (e.g., FMLA, sick time, school/small necessities leaves, school leaves, marriage leaves)
- Domestic Violence (note: many state laws provide leave (some paid), other protections, such as non-retaliation, accommodation, protection from discrimination)
- More...

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