

Election 2018: Midterms' Effect on Employment Law Issues and Advocacy

October 30, 2018

Voters will have the chance to determine the outcome of races for more than 6,000 legislative seats and 36 governorships, as well as weigh in on 160 or so statewide ballot measures, on Election Day, November 6, 2018. While the federal elections, including the battle for control of the U.S. House of Representatives and the U.S. Senate, will affect employment law throughout the country, the impact of state elections may be even greater on the companies doing businesses in some states.

Spotlight: New York State Senate

The lower house of New York State's Legislature, the Assembly, has a substantial Democratic Party majority that will not change in November. However, the current Republican control of the State Senate hangs by a slim one-vote margin. Although a majority of the current Senators are registered Democrats, one conservative Democrat caucuses with the Republicans, giving Republicans that thin margin of control. The party leading the Senate in 2019 will depend on the November elections.

Should control of the New York Senate flip to the Democrats, many of the progressive, pro-employee measures that have consistently passed in the Assembly, but failed in the Senate, likely will be taken up and passed by a new, liberal Senate majority.

One can look to the progressive employment laws that New York City has enacted over the past five years under a Democratic mayor and an overwhelmingly Democratic City Council (48 out of 51 members) to see what might be in store for the state. See our articles, [New York City Council Approves Legislation Limiting Prospective Employers' Ability to Obtain and Use Salary History Information](#), [New York City Council Tightens Employers' Use of Credit Information of Applicants, Employees, 'Safe Time' Amendments to New York City Paid Sick Leave Effective](#), [Temporary Schedule Change Amendments to New York City Fair Workweek Law Effective](#), and [New York City Council Passes Major Workplace Reforms for Fast Food & Retail Workers](#).

Examples of bills that have not passed the New York State Senate, but could have good chances of becoming law under a Democratic Senate majority include the following:

- Call-in pay and workplace scheduling mandates (while the New York State Department of Labor has passed draft regulations on these subjects, the regulations have not been finalized due in part to opposition from the Senate Republican majority);
- Limits on the use of salary history, criminal background, and credit checks in employment decisions;
- Paid sick and safe time leave; and
- Requirements on companies contracting with freelancers or terminating a group of employees working in a government-owned facility.

Such New York state laws as those concerning workplace harassment and paid family leave also may be expanded with the executive and legislative branches controlled by Democrats. See our articles, [New York State Issues Final Guidance Regarding Combating Sexual Harassment in the Workplace](#) and [New York Legislature Approves Paid Family Leave Expansion for Bereavement and Organ Tissue Donation](#).

The changes that may take place in New York will even affect businesses that do not operate in the state as New York's employment measures often are considered and adopted in other cities and states nationwide.

Jackson Lewis attorneys will continue to keep you informed of these and other developments.

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