



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”**

-Mario M. Cuomo-

GOVERNOR CUOMO DECLARES JUNE 19TH A HOLIDAY FOR NYS EMPLOYEES

Governor Andrew Cuomo issued [Executive Order 204](#) yesterday to make Juneteenth a holiday for state employees this year. In addition, he will introduce legislation to make it an official state holiday next year.

Juneteenth is celebrated on June 19 to commemorate the emancipation of enslaved people in the United States. The holiday was first celebrated in Texas, where on that date in 1865, in the aftermath of the Civil War, slaves were declared free under the terms of the 1862 Emancipation Proclamation from President Abraham Lincoln.

EEOC ISSUES COVID-19 ANTIBODY TEST GUIDELINES

On June 17, 2020 the Equal Employment Opportunity Commission (“EEOC”) issued guidance forbidding employers from requiring their workers to take a COVID-19 antibody test before entering the workplace. The EEOC cited the Center for Disease Control (“CDC”) recommendations that “an antibody test constitutes a medical examination under the Americans with Disabilities Act (“ADA”).”

The EEOC reasoned that “in light of CDC’s interim guidelines that antibody test results should not be used to make decisions about returning persons to the workplace” and does not meet the ADA’s ‘job related and consistent with business necessity’ standard for medical examinations or inquiries for current employees.” Several health authorities have reported major accuracy issues with COVID-19 antibody tests.

The EEOC stated that it will continue to monitor CDC recommendations and may update their guidance in “response to changes.” An antibody test is different from a test to determine if someone has an active case of COVID-19 (a viral test). The EEOC has previously advised in its guidance that COVID-19 viral tests may be permissible under the Americans with Disabilities Act. This is a link to the EEOC’s [guidance for COVID-19 antibody tests](#).

HEALTH CARE WHISTLEBLOWER PROTECTION BILL BECOMES LAW

On June 17, 2020 Governor Andrew Cuomo signed into law S.8397/A.10326 which provides whistleblower protections to health care workers against retaliation for speaking out against their employers on news outlets or on social media. The legislation was introduced by Senator Diane Savino and Assemblywoman Karines Reyes. The law takes effect immediately.

The State Legislature passed the legislation with overwhelming support in late May. At the height of the COVID-19 pandemic, health care workers spoke out against the dangerous working conditions at hospitals across the state on news outlets and social media.

Assemblywoman Reyes said, “by strengthening these protections we secure the wellbeing of all medical staff, patients and visitors by not limiting the right to speak against unsafe working conditions and patient care standards.” Senator Savino added that the state “must ensure all protections are given to individuals if they sound the alarm on unsafe worksites in order to guarantee the numbers infected are kept to an absolute minimum.”

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