

## NEW YORK GOVERNOR SIGNS THREE NEW EMPLOYMENT BILLS

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THREE NEW LAWS WERE ENACTED ON AUGUST 31, 2010, ALL OF WHICH WILL AFFECT CERTAIN EMPLOYERS IN NEW YORK.

### Independent Contractor vs. Employee – Construction Industry

The first enactment establishes a test to determine if a construction industry worker is an independent contractor or an employee, and is entitled “The New York State Construction Industry Fair Play Act.” The law is aimed at eliminating misclassification in New York’s construction industry by establishing three factors that must be met for a worker to be properly deemed an independent contractor:

- (1) “The individual is free from control and direction in performing the job, both under his or her contract and in fact;”
- (2) “The service must be performed outside the usual course of business for which the service is performed;” and
- (3) “The individual is customarily engaged in an independently established trade, occupation, profession, or business that is similar to the service at issue.”

Under this new law, there is a presumption that a person performing services for a contractor is an “employee.” For business entities, there is also a presumption that the person performing services is an employee, unless twelve separate criteria establish that the entity is a “separate business entity” from the contractor. The new law provides remedies for violations and proscribes retaliation against workers who assert their rights under the new law.

### Same-Sex Partner Rights

The second enactment is an amendment to the New York Civil Rights Law, and requires that same-sex committed partners be provided the same funeral or bereavement leave as those in traditional spousal relationships. The new law defines “same-sex committed partners” as “those who are financially and emotionally interdependent in a manner commonly presumed of spouses.”

### Domestic Worker Rights

The third new law expands existing rights under New York law to domestic workers, in areas such as minimum wage, overtime, workers’ compensation, anti-discrimination, and unemployment insurance. A covered “domestic worker” is a person employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose.” The new law does not, however, cover individuals who work on a casual basis, or who is a relative through blood, marriage, or adoption.

Among the added protections are:

- A new Section 170 to the New York Labor Law to require the payment of 1.5 times a worker’s normal wage rate for all hours above 40 that the individual works in a week (44 for live-in workers).
- A new provision to Section 161 of the New York Labor Law to require that domestic workers be allowed at least one consecutive 24-hour rest period in every calendar week, although the worker may voluntarily agree to work on the day of rest, provided that he or she is paid at the overtime rate for such day. This new provision also affords domestic workers three paid days off each calendar year after completing one year of work with the same employer.
- A new Section 296-b to the New York Executive Law (Human Rights Law) to create a new cause of action for domestic workers who are the subject of unwelcome discrimination or harassment based on gender, race, religion, or national origin.

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*If you would like to discuss any aspects of these new laws and how they might impact your business or organization, please contact any of the Cozen O’Connor Labor and Employment Department lawyers.*