



New York State  
Public Employer Labor Relations Association Inc.

**WINTER (January) 2025**

[www.nyspelra.org](http://www.nyspelra.org)

**HAPPY HEALTHY, PEACEFUL NEW YEAR WISHES. WINTER IS HERE – BURRR!**

**UPDATE ON ANNUAL TRAINING CONFERENCE**

The NYSPELRA Annual Training Conference (“ATC”) will be held in lovely Saratoga Springs on July 8, to 10, 2025. This will be the 50<sup>th</sup> ATC and a celebration of this achievement is in the planning stages. The NYSPELRA Board will host our members on Tuesday, July 8 at the historic Canfield Casino, located in Congress Park (only a short walk from the Holiday Inn!) More details will be provided as the planning progresses.

**ADDRESS CONFIDENTIATITY PROGRAM**

Section 108 of the NYS Executive Law established the Address Confidentiality Program. This program provides individuals in need of safety and protection with the right to be assigned a substitute address for use in place of their actual address. The program protects:

- Victims of domestic violence
- Victims of stalking
- Victims of human trafficking
- Kidnapping victims
- Reproductive health care providers, employees, volunteers, patients or immediate family members of reproductive health care services providers.

Individuals who believe they may fall into one of the above categories and seek protection/safety must apply. Once registered, the individual will be assigned a

substitute address for use in place of their actual address. The law requires all state and local agencies to accept the “substitute” address.

The law allows a registered individual to “use the substitute address as his or her work address.” The substitute address should be the one used in all public records unless it can be shown that to do so is not necessary or will be burdensome. In such case, the NY Secretary of State may waive the obligation.

## **CIVIL SERVICE LAW SECTION 72**

To supplement and expand the many already necessary steps for the proper utilization of CSL§72, effective January 1, 2025 (see Ch. 306, Laws of 2024) there are now additional required steps with a goal toward ensuring advance notice and full comprehensive transparency:

- Any employee required to attend a “Fitness for Duty” medical evaluation must be provided with any written, electronic or other communication submitted to the medical evaluator that supports the belief that the employee is unable to perform the essential duties of their job. This data must be shared with the employee prior to the medical evaluation taking place.
- In situations in which the employer seeks to immediately remove the employee from the workplace (see, CSL§72.5 potential danger to persons, property or would severely interfere with operations) the employee must contemporaneously with immediate removal (if practical) receive supporting documentation that will be shared with the medical evaluator(s).
- All of the above data must be sent to the Civil Service Department or commission having jurisdiction and to an “authorized representative” of the at-issue employee. The NYS Department of Civil Service, in its Policy Advisory Report dated December 20, 2024 (PAR-19-24)

strongly recommends that confidential medical information should not be give to the employee’s union, a union representative (such as an agency or facility union rep), a co-worker, an attorney, family member or any other purported “authorized representative” without [first obtaining] a newly signed authorization from the employee.

- A CSL§72 employee, once placed on a statutory leave, must be advised of the specific reason for the leave, including written reports that form the basis.
- The medical evaluator must be informed if/when an employee has been placed on leave so that the medical evaluator can make arrangements to share the conclusions with the at-issue employee (note: records must be sent by regular mail or by certified mail).

## **ACCOMODATION OF SABBATH OBSERVANCE**

Facts: A new hire for the position of Senior Tourism and Marketing Coordinator has advised the county that she is not available to work on Saturday and would have to leave at around 4:00 P.M. every Friday for observance of the Sabbath. The position requires weekend work for events, shows, and Visitor Center coverage, among other things, and the candidate was advised of this during her interview. This is, in essence, a request for religious accommodation. The following will discuss the issues surrounding such a request.

### **I. Scope of employer's duty to accommodate religious practices**

Under both federal and state law, an employer is required to offer an employee a reasonable accommodation where the employee has a genuine religious practice that conflicts with an employment requirement. Further, "an employer may not discriminate against its employee because of [the] observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of his religion."

New York and federal law require employers to make a "good faith" effort to accommodate a Sabbath-observing employee. Employees are not necessarily entitled to the precise accommodation they seek, but an accommodation may be unreasonable "if it causes an employee to suffer an inexplicable diminution in employee status or benefits. [...] In other words, an accommodation might be unreasonable if it imposes a significant work-related burden on the employee without justification, such as the neutral operation of a seniority system."

However, where an employer would suffer "undue hardship," it need not provide an accommodation. The U.S. Supreme Court has held that an accommodation imposes an "undue hardship" on an employer whenever it imposes "more than a de minimis cost." (TWA v. Hardison, 432 U.S. 63, 84 (1977)).

In practice, the courts are far from consistent on what would constitute an “undue hardship” and how far an employer must go in attempting to seek a reasonable accommodation. Some courts have held that an employer satisfies its duty to offer an accommodation where it allows an employee to swap shifts or take unpaid or vacation leave for religious observance (Sides v NYS Div of State Police, 2005 U.S. Dist. Lexis 12635 (NDNY 2005)). Other courts, however, have held that where it would be impractical or impossible for an employee to swap shifts, and the employee would not have the seniority to bid a favorable shift, offering only unpaid leave was not a reasonable accommodation, particularly where the employer did not show that they attempted to work out a solution with the employee’s union.

The issue of what constitutes an “undue hardship” is equally opaque. The phrase “de minimis cost” has been held to cover “not only monetary concerns, but also the burdens employers bear in conducting their businesses, such as scheduling difficulties, loss of efficiency, disruption of other employees’ work routines, and general employment discontent.” But, these concerns must be more than speculative and the record must reflect an effort on the part of the employer to work around them in attempting to reach an accommodation.

## **II. Concerns for further handling**

A holistic view of the applicable caselaw reveals a landscape that is very favorable to employees seeking accommodation. Only a minority of cases are resolved as a matter of law in favor of employers.

Applying the above to the issue at hand, a job description requiring weekend work will be insufficient to demonstrate an “undue hardship.” Rather, the county will need to show that it made a good faith effort to work with the employee (and the union if applicable) to determine if an accommodation can be made that will allow the employee to have Saturdays off. If the county determines that such an accommodation is not feasible, it will need to be able to point to concrete, non-speculative situations in which granting the employee Saturdays off would negatively impact county services – e.g., are there Saturday events which this employee would be solely responsible for covering? Are there no other employees who could be asked to cover? Can the Visitor Center coverage be arranged without forcing other employees to work regular overtime?

The first step will be to engage in a conversation with the employee and the Department about their respective needs. The unfeasibility – and not merely the

inconvenience – of an accommodation must be firmly established before it is denied. (By: Benjamin D. Heffley, Esq., Roemer Wallens Gold & Mineaux LLP)

## **CLEAN SLATE ACT**

The New York State Legislature passed the Clean Slate Act, which was signed into law by the Governor on November 16, 2023. (Chap. 631, L. 2023). The purpose of this law as declared by the Legislature, is to require automatic sealing of records pertaining to certain criminal offenses in order to diminish the consequences of a criminal conviction for those who have “paid their debt to society.” As justification, the Legislature indicated that successful rehabilitation requires ensuring a “way forward” for individuals who have satisfied their criminal penalty. The provisions of the law took effect on November 16, 2024. Relevant provisions of the act:

### *Automatic Sealing of Certain Convictions Involving State Crimes*

The law requires the automatic sealing of certain infractions under specific criteria. The sealing of these records, may mean that this information need not appear on the application for employment or be divulged in a job interview.

- a. Vehicle and Traffic Law §1192(1) (Driving While Ability Impaired) Convictions: Such infractions shall be sealed after three years.
- b. Misdemeanor Convictions: Such convictions shall be sealed three years from release from incarceration or, if no incarceration occurred, from the date of sentencing. If another conviction occurs before the conviction is sealed, the timeframe will begin running from the subsequent conviction.
- c. Felony Convictions: A felony conviction shall be sealed if eight years have passed from the date of release from incarceration or sentencing if no incarceration occurred. The time period will not be affected by an alleged violation of post-release terms or an alleged violation of parole unless the allegation leads to a revocation of post-release supervision, or the individual is reincarcerated for the violation.

In order for the convictions or infractions discussed above to be sealed, the following criteria must also be met:

- There is no “subsequent” criminal charge pending within the state;
- The individual is not under the supervision of a probation or parole department for the conviction eligible for sealing;
- The conviction is not for a sex offense or a sexually violent offense, as defined by NY Corrections Law §168-a;
- The conviction to be sealed is not for a Class A felony offense, other than those listed in Article 220 of the Penal Law (involving controlled substance offenses);
- The individual at-issue is a natural person;
- The individual at-issue does not have a pending felony charge in another jurisdiction unrelated to reproductive care, gender affirming care, or the possession of cannabis; and
- The at-issue individual does not have a subsequent felony conviction in another jurisdiction during the preceding eight years unrelated to reproductive care, gender affirming care, or the possession of cannabis.

After the criteria for sealing are satisfied, the records associated with such conviction or infraction shall not be accessed by or made available to any entity. There are certain exceptions for public employers, which include (but not limited to):

- Any entities required by law or regulation to receive a fingerprint-based criminal history check;
- Any entities who are authorized by law or regulation to request and receive a fingerprint-based check of criminal history information in relation to an individual’s fitness to have responsibility for the safety and well-being of children or adolescents, elderly individuals, individuals with disabilities, or otherwise vulnerable populations;
- Any prospective employer of a police officer or peace officer, as defined in Section 1.20 of the Criminal Procedure Law (which would include Corrections Officers pursuant to Criminal Procedure Law §2.10), but any and all records received must be furnished to the applicant;
- Any entity tasked with the responsibility of issuing licenses to possess firearms or are tasked with conducting background checks before the transfer of a firearm or explosive when the entity is engaged in that task;

- For the purposes of civilian investigation or evaluation of a civilian complaint or civil action concerning law enforcement or prosecution actions. The entity that is investigating shall make application to the appropriate court on an ex-parte basis in order to obtain said records;
- For the State Education Department investigating professional misconduct or considering restoration of a professional license;
- The Office of Mental Health or Office for People with Developmental Disabilities operating under statute to receive such information in instances that such information be made available for case review where such information is included in clinical records of an individual receiving care.

In connection with this section of the law, local correctional facilities (County Jails) must provide data to the Office of Court Administration necessary to determine what records should be sealed of those who have served a definite sentence of imprisonment. Furthermore, the Office of Court Administration will notify the court of conviction, county clerks and the heads of all appropriate police and sheriff departments, prosecutors' offices and law enforcement agencies upon the sealing of a conviction pursuant to the law. Upon said notification, any records of the conviction must be immediately sealed:

Please note: Executive Law, Judiciary Law, Civil Rights Law were all amended to comply with the terms and spirit of the Clean Slate Act.

### **COVID-19 QUARANTINE LEAVE RIGHTS EXPIRE - JULY 31, 2025**

**NOT APPLICABLE TO LOCAL GOVERNMENTS: PAID PRENATAL LEAVE.** Amendment to NYS Labor Law §196-b does **not** apply to a local governmental entity (only governs in private sector employment).

### **WORKERS' COMPENSATION: WORK RELATED STRESS CLAIMS**

Effective January 1, 2025, all employees (who are worker's comp covered) will be able to file a claim for "mental injury" premised upon extraordinary work-related stress (see Ch. 546, L. 2024). The legislation amending section 10(3)(b) of the NYS Workers' Compensation Law requires that the Workers' Compensation Board ("WCB") not merely disallow a stress claim but instead focus (as it was charged with doing for first responders) on mental illness claims premised upon extraordinary work-related stress.

Because these matters are fact specific, it should be expected that the WCB will decide each set of facts on a case-by-case basis.

### **JOHN CORCORAN IS RETIRING**

Please join the NYSPELRA Board in wishing John a life full of happiness, health, warm sunshine and time to relax. We will miss your laugh, your commitment to labor relations goals, and your amazing contribution to our organization.

#### **Contact NYSPELRA**

NYSPELRA

Attn: Jack Kalinkewicz

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Please let us know your thoughts and opinions of the NYSPELRA Newsletter.

In addition, you are encouraged to forward to Jack or to Elayne Gold [[egold@rwgmlaw.com](mailto:egold@rwgmlaw.com)] any article, information from your municipality, agency, or school district relating to Arbitration Awards (grievance arbitration, discipline, etc.), Fact Findings, contract settlements, etc. for inclusion in future editions of our Newsletter.

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