

Now & Next

New York State Legal Developments Alert

January 9, 2024

How will New York State's legislative activity affect businesses?

By Erica F. Buckley, Paul F. Downs, Richard Shore, Julienne Hoffman, and Vincent Nguyen

Be on the lookout—these proposed changes could have far-reaching implications for businesses operating in New York State.



What's the impact?

- Proposed laws governing employers, lawyers and judges, and real estate owners could change the business landscape in New York State.
- Understanding the scope of these bills can help you prepare in advance and maintain smooth operations if/when any of these bills become law.

At the end of every year, New York's governor signs, vetoes, and amends bills passed by both houses of the New York Legislature and submitted for signature. Governor Hochul is no different; she has acted on a handful of bills with a tremendous impact for New Yorkers. Brief summaries of the most impactful proposed law, and Governor Hochul's response, are below.

Non-competition agreements

New York's proposed law would have prevented employers from seeking, requiring, demanding, or accepting a non-competition agreement for nearly all employees. This change would have had a massive impact on employment law throughout the state. Although Governor Hochul had previously expressed her support for a bill targeting certain income thresholds for a ban on non-competition agreements, a last-ditch negotiation proposal to only apply the law to individuals earning \$250,000 or more annually was ultimately rejected by Governor Hochul. We expect some variation of the bill to pass again in 2024 with much of the same structure in place.

General jurisdiction

Governor Hochul also vetoed a general jurisdiction bill that would have made it easier to sue corporations in the State of New York. The proposed bill would have required any company registered to do business in New York to consent to being sued in New York's courts, a concept known as "general jurisdiction." Last year, Governor Hochul vetoed a similar bill, claiming that subjecting foreign companies to the prospect of litigation would deter them from business in New York.

LLC landlord transparency bill

Governor Hochul vetoed a transparency bill targeting building owners, which would have required disclosure of the entities comprising a limited liability corporation that owns a building or property leased to the state. Proponents claim this bill is important because political contributions can be funneled through LLCs, raising questions as to whether profitable leases are being awarded by state officials in exchange for anonymized financial contributions. In a memorandum explaining her decision, Governor Hochul argued that the bill was unnecessary because potential landlords looking to lease to the State of New York must already fill out a "Vendor Responsibility Questionnaire," and that the State of New York attempts to identify a natural person behind the LLC. Governor Hochul justified her veto by claiming that any additional requirement for the State of New York when seeking spaces to rent would make those negotiations more difficult. Notably, Governor Hochul vetoed this amendment to the Public Buildings Law while approving the LLC Transparency Act, discussed below.

LLC Transparency Act

Following its amendment, Governor Hochul signed a transparency bill that will require limited liability companies (LLC) in New York to disclose their owners to the government and certain regulatory entities. The LLC Transparency Act, which would require anyone who owns at least 25% of a limited liability company or has substantial control over it to disclose their identity. The bill will now require all existing and newly formed LLCs in New York—as well as foreign LLCs that

register to do business in New York—to file a list of their beneficial owners with the New York Department of State (DOS) and update it whenever a change occurs. The legislation largely targets the shell companies operating in New York, including the LLCs that anonymously purchase high-value real estate in New York. Governor Hochul approved the bill, but included a chapter amendment that the list of LLCs would not be available to the public, only to state agencies that “have a law enforcement interest” in the data.

Bills affecting legal community

Governor Hochul signed into law a bill adding 20 judges throughout the State of New York to address the judicial backlog created by the COVID-19 pandemic. This change is expected to add much needed relief to the court system.

Conversely, Governor Hochul vetoed a bill that sought to eliminate the requirement that attorneys either reside or have an office in the State of New York to practice in-state. Although the New York State Bar Association advocated for this bill, claiming that the effects of the COVID-19 pandemic alleviated this requirement, Governor Hochul’s veto memorandum indicates her preference for attorneys to maintain a physical presence in the state.

Rent stabilization bills

Governor Hochul vetoed S2943B, which would have undermined the New York Court of Appeals ruling in *Matter of Regina Metropolitan Co., LLC v. DHCR* that the Housing Stability and Tenant Protection Act (HSTPA) cannot be applied retroactively. The bill would have permitted courts and the Division of Housing and Community Renewal (DHCR) to recalculate post-HSTPA legal rents for rent stabilized apartments under the HSTPA, even if the legal rent had previously been determined by a court or DHCR prior to the passage of the HSTPA.

However, Governor Hochul did sign S2980C, subject to negotiated chapter amendments to be passed in the upcoming legislative session, which provided the following: (i) Previously, when an owner combined two rent stabilized apartments the “first rent” could be set at any amount agreed to by the owner and tenant; however, under the new law, this rent will be limited to the combined legal rents of the two combined apartments; (ii) the bill requires that owners claiming exemption from rent stabilization due to substantial rehabilitation initiated after January 1, 2024, must obtain approval from DHCR within one year of completion of the substantial rehabilitation; and (iii) the legislature provided a “clarification” of the fraud exception to the pre-HSTPA four-year lookback rule for calculating legal rents, “clarifying” that common law fraud is not applicable, and instead, courts or DHCR must consider the totality of the circumstances to determine whether an owner has engaged in a fraudulent scheme to deregulate a unit.

Additional review of the Rent Law amendments is the subject of a forthcoming NP Alert.

Looking ahead

These are just a sampling of the proposed laws that could impact companies and individuals that do business in New York State. Our lawyers in New York's upstate, capitol, and NYC metro regions have decades of experience delivering creative solutions for clients navigating the state's unique legal landscape, and we can help you prepare in advance and maintain smooth operations if/when any of these bills become law.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Stephen P. Younger

212.940.3036

spyounger@nixonpeabody.com

Erica F. Buckley

212.940.3733

ebuckley@nixonpeabody.com

Paul F. Downs

212.940.3029

pdowns@nixonpeabody.com

Richard J. Shore

212.950.3050

rshore@nixonpeabody.com

Julienne Hoffman

212.224.7358

jhoffman@nixonpeabody.com

Vincent Nguyen

516.832.7619

vnguyen@nixonpeabody.com