

THIS IS NOT LEGAL ADVICE

State Resources

New York State
Division of Human Rights
<https://dhr.ny.gov/>

Reviewing Your
NEW YORK
Job Offer

Federal Resources
Equal Employment
Opportunity Commission
<http://www.eeoc.gov>

Does your job offer require that you sign a non-compete agreement?

There is no New York law that requires you to sign a non-compete agreement. However, an employer may require you sign a non-compete agreement as a term and condition of employment. Even when an employer requires you to sign a non-compete agreement, however, the non-compete agreement is only enforceable to the extent it 1) is necessary to protect the employer's legitimate interests, 2) does not impose an undue hardship on the employee, 3) does not harm the public, and 4) is reasonable in time period and geographic scope. When determining the enforceability of an agreement, courts consider the employee's duties and responsibilities, the validity of the protected interest, whether any harm would be caused to the employer by the employee's new employment, the length of the restricted/non-compete period under the agreement (periods over one year are harder to enforce, particularly if the employee is not receiving pay covering the period), and the geographic scope. In addition, New York courts also generally will be less inclined to enforce a non-compete agreement if an employee was terminated by the former employer (unless direct harm can be demonstrated by an employer). Further, "non-solicit" agreements may restrict a former employee's ability to recruit employees, contractors or vendors who work with the former employer or obtain business (or sometimes even work with) clients or prospective clients of the former employer. Such agreements vary greatly in scope, and sometimes can be negotiated to exclude previously existing relationships that the employee already had when joining the employer. It is important to note that a Court may only invalidate or modify the particular terms of a non-compete agreement it finds to be unenforceable, leaving the rest of the agreement in place with terms and conditions in accordance with the law.

Does your salary match the salary of your co-workers?

Effective May 15, 2022, New York City employers with four or more employees must post the minimum and maximum salary range for any external or internal job posting or announcement. There is no New York State requirement that an employer post or set a pay scale for an open position. However, when applying for a position in New York State, employers are prohibited from, either orally or in writing, personally, or through an agent, asking any information concerning a prospective employee's salary history. Additionally, it is unlawful for employers to restrict an employee's ability to inquire about, discuss, or disclose wages with other employees except under a written policy that provides reasonable workplace and workday limitations on the time, place, and manner such employees can discuss or disclose their wages. Importantly, New York State's Equal Pay Act prohibits an employee from being paid less than another employee of the opposite sex for equal work that requires equal skill, effort, and responsibility that is performed under similar working conditions. An employee or prospective employee should use all avenues available to them to ensure the employer is in compliance with the Equal Pay Act. For example, all new employees must be provided a wage notice that specifies the rate and timing of the employee's compensation (which must be updated whenever any of the required information changes). It is also important to note that New York prohibits the employer from taking retaliatory actions against an employee for making such inquiries.

Assuming your employment is "at will," can you negotiate for contractual protections?

Yes, although it is unusual for employers to do so except for high-ranking executives. A New York employer is under no obligation to provide you with contractual protections under the law (except for instances where the position is represented by a union), but negotiating a contract that affords certain assurances regarding compensation or how an exit would work may be advisable where possible. Employees who are joining an organization may be able to obtain job accommodations, guarantees regarding signing bonuses or first-year compensation or other specific terms and conditions of employment, although a guarantee of employment for a certain length of time (or a specific severance package) is rare unless the employee has unique skills or is in the top tier of an organization. Employees often have some leverage and employers may have room to negotiate, however certain terms and conditions (e.g., employment "at will," terms of benefits plans) may be beyond the discretion of a company representative to change.

Have you properly excluded your individual inventions prior to accepting your job offer?

As a term and condition of your employment, a New York employer may have you sign an agreement setting forth under what conditions an invention you create and develop during the course or after the cessation of your employment becomes the employer's property. These agreements also will commonly require employees to identify any and all inventions and other intellectual property (IP) to which they intend to retain ownership rights, although some agreements will still give employers license to use those inventions or IP as well. The terms and conditions of such agreements can differ between employers and can be negotiated to ensure protection of projects started prior to, during, and after employment. It is highly advisable should a contract involve the assignment of individual inventions to consult with a legal professional.

THIS IS NOT LEGAL ADVICE

Does your job offer require that you sign a forced arbitration agreement?

Although New York State has a law prohibiting employers from requiring employees to resolve employment-related claims through arbitration rather than in court, that law has been found to be preempted by the Federal Arbitration Act. Therefore, as a term and condition of employment, a New York employer may require you to enter into an arbitration agreement with the organization or company. Entering into such an agreement may result in the waiver of the ability to pursue a claim in the applicable court of law, waive a right to a trial by jury and the right to join a class of plaintiffs, require the employee to split the cost of arbitration with the employer, or even put other limits on how a claim can be litigated (though certain restrictions could be found invalid under the law). It is important to thoroughly read an arbitration agreement and understand what rights may be waived and which types of claims are covered by the agreement. Also, as a prospective employee, you may inquire whether the employer will allow you to opt-out of the arbitration process, thus providing you the opportunity to pursue a claim in the courts and utilizing the full range of legal right and procedural mechanisms available under applicable law. Finally, employers are not allowed to require claims of sexual harassment or sexual assault be brought in arbitration. Those types of claims may be brought in court, either individually or as collective or class claims, regardless of the existence of an arbitration agreement.

Authors: Lawrence M. Pearson (Wigdor LLP), Lawrence Spasojevich (Spasojevich Law, P.C.), and Kristin Smith (MIT Equal Pay Working Group)

This work is licensed under the Creative Commons Attribution-No Derivatives 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nd/4.0/> or send a letter to Creative Commons, PO Box 1866, Mountain View, CA 94042, USA. Content is current as of March 2022.

| x | @ MIT
x = advancement

| x | @ MIT
x = pay

| x | @ MIT
x = opportunity

