DATA UPDATE – Women, Business and the Law 2023

United States

Department of the Treasury

THE WORLD BANK IBRD • IDA | IFC International Finance Corporation | MIGA Multilateral Investment Guarantee Agency

1. Workplace

Comment received from Government:

New York City Law Updates

New York City enacted at least one potentially relevant law between October 2, 2020 and October 1, 2021. We have included relevant information below,but recommend consulting with New York City officials regarding any questions or comments about these laws, as they are most knowledgeable about them.

Date of entry into force: 25/08/2021
Legal basis: The following information was found on the New York City Government's Amendments to NYC Human Rights Law page, https://www1.nyc.gov/site/cchr/law/amendments.page.

Local Law 88, August 25, 2021 (enacted August 25, 2021; effective March 12, 2022: A Local Law to amend the administrative code of the city of New York, in relation to protections for domestic workers under the human rights law Download Local Law 88

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the legal texts above. These initiatives are currently not captured by the *Women, Business and the Law* report. The *Women, Business and the Law* team will update these in our records and consider them where relevant.

Comment received from Government:

Is there legislation on sexual harassment in employment? Are there criminal penalties or civil remedies for sexual harassment in employment?

Description of the data update: Suggested footnote additions to Questions 3 and 4 in the Workplace Indicator section of Table A.1 on page 96.

To encompass all forms of harassment related to sex, we recommend that the World Bank add a footnote to Questions 3 and 4 noting that the definition of "sexual harassment" varies among surveyed countries, and depending on applicable legal authorities, may encompass both harassment of a sexual nature and sex-based harassment, such as offensive comments of a non-sexual nature based on gender. Adding such footnotes would help ensure that the questions address applicable legal requirements regarding all forms of harassment on the basis of sex in a comprehensive manner.

Suggested data modification: New footnotes attached to Questions 3 and 4: The definition of "sexual harassment" varies among surveyed countries. Depending on applicable legal authorities and legal standards, sexual harassment may include harassment of a sexual nature and/or sex-based harassment (conduct of a non-sexual nature based on gender).

Legal basis: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the suggestion to add footnotes to Questions 3 and 4 in the Workplace Indicator section of Table A.1 on page 96 of the *Women, Business and the Law 2022* report, regarding the definition of sexual harassment. Based on the *Women, Business and the Law* methodology, the definition of sexual harassment encompasses harassment of a sexual nature only. While the definition of "sexual harassment" varies among countries, *Women, Business and the Law* ensures comparability of the data by using a very detailed methodology and definitions. As such, the *Women, Business and the Law* methodology adopts the following definition of sexual harassment: "Any unwelcome sexual advance, request for sexual favor, verbal or physical conduct or gesture of a sexual nature or any other behavior of a sexual nature that might reasonably be expected or be perceived to cause offense or humiliation to another. Such harassment may be but is not necessarily of a form that interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive work environment".

2. Parenthood

Comment received from Government:

a. Federal Law Updates

i. Families First Coronavirus Response Act (Pub. L. No. 116-127)

While enacted prior to October 1, 2020, the Families First Coronavirus Response Act (FFCRA) was in effect during part of the applicable time period, from April 2, 2020 through December 31, 2020. Among other things, the FFCRA permitted employees to take public health emergency leave to care for a child during the COVID-19 public health emergency. Section 3102 of the FFCRA, the Emergency Family and Medical Leave Expansion Act, required employers with fewer than 500 workers to provide up to 12 weeks paid leave to an employee who is unable to work because the school or child-care provider of the employee's child is closed as a result of a public health emergency. After the first 10 days of such public health emergency leave, during which employees could use accrued paid leave, covered employers were required to pay at least two-thirds of an employee's regular pay for the number of hours per week the employee normally works. The maximum amount of compensation for such leave is $200 per day and $10,000 in aggregate. Further, covered employers are generally required to restore an employee's former position following the use of public health emergency leave, unless the employer (1) has fewer than 25 workers, and (2) has made reasonable efforts to retain the employee's position but such position no longer exists due to economic conditions caused by such public health emergency.
Question impacted: N/A

Suggested data modification: Specifically, full-time employees are entitled to 80 hours of paid sick time, available immediately if the employee is, among other reasons, caring for an individual who is subject to a governmental or selfquarantine, or caring for a child because the child's school or child-care provider is closed. Paid sick leave pursuant to this bill may be used before other paid sick leave that may be available to employees. Part-time employees are entitled to such paid sick time for the average number of hours they work during an average two-week period. The bill requires covered employers to provide conspicuous notice in the workplace of emergency paid sick time requirements. The bill prohibits covered employers from taking adverse actions against employees who take paid sick leave provided pursuant to the bill or take actions to enforce the requirements of the bill.

Date of entry into force: 02/04/2020
Legal basis: Section 5102 of the FFCRA, the Emergency Paid Sick Leave Act, requires covered employers to provide paid sick time to employees who are unable to work because of the effects of COVID-19.

b. New York State Law Updates

New York State's Emergency COVID-19 Paid Sick Leave Law went into effect on September 30, 2020. The law provides covered employees with job protection and financial compensation if they or minor dependent children are subject to a mandatory or precautionary order of quarantine or isolation issued by the State of New York, the Department of Health, the local board of health, or any governmental entity authorized to issue such order due to COVID-19. Paid family leave may also be used to care for a family member with COVID-19, which may qualify as a serious health condition. Additional information is available at https://paidfamilyleave.ny.gov/COVID19.

Question impacted: N/A
Suggested data modification: N/A
Date of entry into force: 30/09/2020

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the legal texts above. These initiatives are currently not captured by the *Women, Business and the Law* report. The *Women, Business and the Law* team will update these in our records and consider them where relevant.

Comment received from Government:

Addition to footnote 8, attached to text on page 29. We recommend that the World Bank consider updating footnote 8 to note that Title VII of the Civil Rights Act of 1964 also prohibits employers from discriminating based on gender with respect to eligibility and approval of parental leave.

Question impacted: N/A

Suggested data modification: We recommend the following language be added to footnote 8, which is attached to text on page 29: "In addition, Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating based on gender, including with respect to eligibility and approval of parental leave. 42 U.S.C. § 2000e et seq."

Legal basis: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the legal texts above. The information related to discrimination based on gender has already been reflected in the published data citing to the Civil Rights Act of 1964. The text of footnote 8 will remain as is in the *Women, Business and the Law 2022* report. Changes to citations will be considered in future editions of the *Women, Business and the Law* report, where applicable.

Comment received from Government:

Revision of second paragraph on page 29. While we do not question the cited studies, we wonder whether it is necessary to include some of the descriptive language in this paragraph and, if so, whether it is possible to rephrase it to focus on positive labor market outcomes. Stating that "excessively long durations of leave may have a negative effect on an individual's career progression and wages" and that parental leave may have "potentially negative effects" on women's labor market outcomes for high-skill workers may inadvertently discourage governmental entities and employers from considering and adopting family or

parental leave policies, and/or may discourage governmental entities and employers from offering more than leave of minimal duration in such policies. Long-term leave may be medically necessary and/or due to unforeseen medical complications, situations that may be protected in the U.S. by federal, state, or local laws such as the Family and Medical Leave Act, the Americans with Disabilities Act, or state or local equivalents. Further, "excessively long durations" of leave may be subjective.

Question impacted: N/A

Suggested data modification: We recommend revising the second sentence of the second paragraph on page 29 to: "A certain amount of leave granted to mothers upon the birth of a child is associated with positive labor market outcomes." We recommend deleting: "Any positive impacts on wages and employment are limited to low-skill workers, with potentially negative effects for high-skill workers." We also suggest consulting with the White House Gender Policy Council to determine if they have suggestions regarding potential revisions to this paragraph.

Legal basis: Executive Order 14020, Establishment of the White House Gender Policy Council (March 8, 2021), stating the Administration's policy to advance gender equity and equality and promote the "full participation of all people – including women and girls – across all aspects of our society."

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the suggestion regarding rephrasing the second paragraph on page 29 of the *Women, Business and the Law 2022* report and the legal texts above. The cited paragraph is a summary of published studies to support that "the relationship between family leave policies and women's labor market outcomes is not clear-cut" and is not an analysis of the laws and regulations of the United States on this topic. While the cited paragraph will remain as is in the *Women, Business and the Law 2022* report, the *Women, Business and the Law* team may consider the cited legal texts in future editions of the report, where applicable based on the *Women, Business and the Law* established methodology.

Comment received from Government:

Does a worker have to formally notify her employer that she is pregnant to be protected against dismissal?

Revision to first paragraph, second to last sentence on page 73. The current language refers to "the time frame for notification of pregnancy" and cites EEOC's Pregnancy Discrimination Enforcement Guidance as a source, which could be interpreted to suggest that U.S. federal employment discrimination laws allow U.S. employers to require that employees notify them of their pregnancies within a certain period of time. The laws enforced by the EEOC do not impose such a requirement, and the EEOC could consider such a requirement to constitute evidence of pregnancy discrimination. We recommend that the World Bank remove "the time frame for notification of pregnancy or" from the second to last sentence of the first paragraph on page 73.

Suggested data modification: Removal of "the time frame for notification of pregnancy or" from the second to last sentence of the first paragraph on page 73. Proposed revised sentence: "Even when working mothers are legally protected against unlawful dismissal due to pregnancy, aspects such as the possibility that employers will claim lack of knowledge of the pregnancy can hinder women's ability to remain in the workforce (US EEOC 2015; Ushakova 2015)."

Legal basis: Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k).

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the suggestion to modify the first paragraph, second to last sentence, on page 73 of the *Women, Business and the Law 2022* report and the legal texts above. The sentence in question is in a section of the report summarizing relevant literature related to the effective implementation of the laws measured by *Women, Business and the Law*. The citation to the EEOC's Pregnancy Discrimination Enforcement Guidance is not an analysis of the laws and regulations of the United States on this topic. Rather, taken together with the other source cited, it is intended to demonstrate the types of discrimination pregnant women all over the world may face in the workplace. As such, enforcement guidance such as that provided by the EEOC is an example of good practice sequencing of legislation.

Comment received from Government:

Does a worker have to formally notify her employer that she is pregnant to be protected against dismissal?

Revision to Question 4 in the Parenthood Indicator section of Table 3.3 on page 77.

We recommend that the World Bank replace "dismissal" with "employment discrimination based on pregnancy." Pregnant workers may be subjected to a range of discriminatory conduct, including but not limited to termination, such as mandatory leave despite workers' ability and desire to work, harassment, denial of benefits, or involuntary transfer. We also recommend revising this question and references to prohibitions on dismissal of pregnant workers throughout the report to clarify that the focus is on discrimination against (or dismissal of, if the World Bank prefers to retain the focus on dismissal) pregnant workers based on their pregnancies. Under U.S. federal employment discrimination laws, workers, including pregnant workers, may be terminated for any reason except an unlawful reason. For example, in the U.S., pregnant workers may be fired for poor performance, misconduct, or no reason at all, but they may not be fired because of pregnancy, childbirth, or related medical conditions. To the extent the World Bank may use this question in subsequent reports, it would help to better understand the rationale behind the question and the legal authorities and practical realities with respect to this issue in other countries. The question could encompass situations in which employers require that employees notify the employer that they are pregnant either as soon as they become aware of the pregnancy or within a certain period of time after learning they are pregnant. Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, the EEOC would consider such a requirement to constitute evidence of pregnancy discrimination.

Suggested data modification: Does a worker have to formally notify her employer that she is pregnant to be protected against employment discrimination based on pregnancy? Alternatively, if the World Bank prefers to retain the focus on dismissal: Does a worker have to formally notify her employer that she is pregnant to be protected against dismissal based on pregnancy?

Legal basis: Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k).

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the suggestion to modify Question 4 in the Parenthood Indicator section of Table 3.3 on page 77 of the *Women, Business and the Law 2022* report and the legal texts above. This question is part of *Women, Business and the Law* pilot research on *Measuring the Legal Environment in Practice*, a pilot of 25 countries in which the team studied some of the ways in which the laws measured are implemented and enforced. Since the publication of the report, the team has expanded

the pilot and undergone extensive consultations on the questions included, including on dismissal based on pregnancy. As this research is still ongoing, updates to the questions will be finalized before an expansion to all 190 economies covered. *Women, Business and the Law* plans to present a fully formed methodology for this work in 2024.

Comment received from Government:

Is dismissal of pregnant workers prohibited?

Revision to Question 5 in the Parenthood Indicator section in Table A.1 on page 96.
Discrimination is broader than dismissal, and would encompass not only terminations based on pregnancy, but also other prohibited conduct. For example, under U.S. federal employment discrimination laws, pregnancy discrimination includes refusal to hire, harassment, forced leave, demotion, or refusal to promote based on pregnancy, or refusal to accommodate pregnancy-related or childbirth-related disabilities or related medical conditions. Under U.S. federal employment discrimination laws, workers, including pregnant workers, may be terminated for any reason except an unlawful reason. For example, in the U.S., pregnant workers may be fired for poor performance, misconduct, or no reason at all, but they may not be fired because of pregnancy, childbirth, or related medical conditions.

Suggested data modification: Is employment discrimination against pregnant workers prohibited?
Alternatively, if the World Bank prefers to retain the focus on dismissal: Is dismissal of workers based on pregnancy prohibited?

Legal basis: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(k); Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.10

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the suggestion to modify the question under the Parenthood Indicator "Is dismissal of pregnant workers prohibited?" According to the *Women, Business and the Law* methodology, the answer to this question is "Yes" if the law explicitly prohibits the dismissal of pregnant women, if pregnancy cannot serve as grounds for termination of a contract or if dismissal of pregnant workers is considered a form of unlawful termination, unfair dismissal or wrongful discharge. The answer is "No" if there are no provisions prohibiting the dismissal of pregnant workers, or if the law only prohibits the dismissal of pregnant workers during maternity leave or for a limited period of the pregnancy or when their pregnancy results in illness or disability.

Additional aspects of discrimination in employment are covered under the questions "Does the law prohibit discrimination in employment based on gender" under the Workplace indicator. According to the *Women, Business and the Law* methodology for this question, the answer is "Yes" if the law prohibits employers from discriminating based on sex or gender, or mandates equal treatment of women and men in employment. The answer is "No" if the law does not prohibit such discrimination or only prohibits it in one aspect of employment, such as pay or dismissal.

Please, note that the United States scores a positive point in both questions, according to 42 United States Code, Sec. 2e-2 (nondiscrimination in employment) and Sec. 2000e-2 (prohibition of dismissing pregnant workers). Therefore, the answer to this question remains "Yes."

3. **<u>Pension</u>**

Comment received from Government:

New York City Law Updates

The Retirement Security for All Acts, signed on May 11, 2021 and effective on August 9, 2021, require private sector employers with at least five employees to enroll eligible New York City employees in the employer's retirement savings plan or in a city-managed retirement savings plan. Covered employers are any persons or entity that have been in continuous operation for at least two years and do not currently offer employee retirement plans to employees. Covered employees are workers who are at least 21 years old who work at least 20 hours per week in New York City. The laws require covered employers to automatically enroll eligible employees in individual retirement savings accounts, deposit employee funds into such accounts, and retain records.

Question impacted: N/A
Suggested data modification: N/A
Date of entry into force: 11/05/2021
Legal basis: Additional information is available at https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3498476&GUID=6E78D2BB-A4BA-4FD8-8C03-ABA62C914AEB&Options=&Search=

and

https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3498509&GUID=5A6075EC-42D4-47DC-B077- DF126CCFF8AD&Options=ID|Text|&Search=901-A

Response from *Women, Business and the Law* team:

The *Women, Business and the Law* team has noted the legal texts above. The *Women, Business and the Law* team will update these in our records and consider them where relevant.

Communications

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