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New York Employers Should Prepare for Big Changes Under Proposed Amendments to Human Rights Law

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On June 19, 2019, the New York State Assembly and Senate passed legislation making sweeping changes to the New York Human Rights Law. The proposed amendments will make it far more difficult for employers to defend against harassment claims, as a result we are forecasting a significant increase in the number of complaints brought under the State law. Governor Cuomo had commented favorably on the bill and it is anticipated he will sign it into law. The full text of the proposed legislation is available here.

Employers should be aware of several key components of the proposed amendment. First, it expands the scope of conduct which would be actionable; second, it lowers the employee threshold for coverage; third, it eliminates an important defense to certain harassment claims; fourth, it lengthens the limitations period; and, fifth, it increases the scope of potential damages.

Currently, discriminatory harassment must be “severe or pervasive” to be actionable. In contrast, the new law more broadly redefines “harassment,” eliminating the “severe or pervasive” standard and rendering unlawful any conduct that rises above “the level of what a reasonable victim of discrimination with the same protected characteristics would consider petty slights or trivial inconveniences.” As a practical matter, this standard will likely trigger jury trials in harassment cases involving all but the most innocuous of accusations. This exceptionally broad definition applies to harassment based on all protected characteristics, i.e. age, race, creed, color, national origin, sex, disability, predisposing genetic characteristics, familial status, martials status, and domestic violence, as well as sexual harassment.

While formerly only employers with four or more employees were covered by the Human Rights Law, now all New York employers will be subject to the statute and the new watered-down standard.

In addition to easing the plaintiffs’ burden of proof, the legislation also deprives employers of what has been called the “Faragher-Ellerth” defense. Specifically, in Title VII cases employers could defend against some harassment claims by demonstrating that: (1) the employer took reasonable

care to prevent and correct harassing behavior; and (2) the employee unreasonably failed to take advantage of the employer's preventive or corrective opportunities. However, with this new legislation, an employee's failure to invoke her employer's internal complaint procedure will not, of itself, shield the company from liability.

The amendment also extends the statute of limitations applicable to claims under the Human Rights Law: employees now have three years instead of one to bring claims of sexual harassment to the State Division of Human Rights or to a court.

Finally, the new law provides for potential recovery of punitive damages and requires courts to award reasonable attorneys' fees to employees who successfully bring an employment discrimination claim. Employers who fend off an employee's claim under the Human Rights Law may also be awarded attorneys' fees, but only if the employer demonstrates the claim was "frivolous."

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