EPSTEIN BECKER GREEN

Governor Cuomo Enacts Expansion of New York State Human Rights Law—Certain Changes Have Immediate Effect

Act Now Advisory

August 14, 2019 | Publications

On August 12, 2019, Governor Andrew Cuomo signed Assembly Bill A8421/ Senate Bill 6577 ("Law"), which, as we previously reported, contains sweeping changes to New York State's Human Rights Law ("HRL"). Below is an updated chart of the effective dates for the various provisions of the Law, discussed more fully in our earlier Advisory.

Importantly, several provisions of the Law became effective immediately, including the requirement that every New York employer distribute, at hire and upon each annual training, a notice containing the sexual harassment prevention policy ***and*** "the information presented at such employer's sexual harassment prevention training program." The Law requires that the notice must be provided in English and in the employee's primary language. As we anticipate additional guidance regarding the required contents of this notice, we will continue to monitor New York State's website and advise you of any pertinent developments.

It appears that Governor Cuomo waited to sign this Law until after August 9 so that the effective date for many substantive changes to the HRL will take effect *after* the upcoming October 9, 2019, deadline to complete the first annual anti-sexual harassment training. Thus, training conducted prior to October 9, 2019, does not need to incorporate a reference to the new lowered standard for a hostile work environment claim, the extended statute of limitations, or the availability of punitive damages. That being said, it may be best to begin incorporating these new provisions into any training programs over the next

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few months in anticipation of these changes.

Effective Dates for Various Provisions of the Law

An "" after the effective date indicates that the provision in the Law applies only to claims* ***that accrued or were filed*** *on or after that date.*

Provision in the Law	Effective Date
Required distribution of information relating to the employer's sexual harassment prevention policy and training to new hires and harassment prevention training program attendees	August 12, 2019
Liberal construction of the HRL	August 12, 2019*
Elimination of the "severe or pervasive" standard (for a hostile environment claim based on any protected category), weakening of the *Faragher/Ellerth* defense, and elimination of the requirement to identify a comparator	October 11, 2019*
Protections for domestic workers	October 11, 2019*
Expansion of the HRL's protections for certain non-employees	October 11, 2019*
Extension of the prohibition of non-disclosure agreements ("NDAs") in settlement agreements, unless the condition of	

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Focus Areas

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confidentiality is the preference of the complainant, to apply to settlements of *all*discrimination, harassment, and retaliation claims, plus new limitations

October 11, 2019

Extension of the ban on mandatory arbitration agreements

October 11, 2019

Availability of punitive damages

October 11, 2019*

Expansion of the power of the state Attorney General's Office

October 11, 2019*

Required notice of employees' disclosure rights in employment contract NDAs (including confidentiality agreements issued at the time of hire)

January 1, 2020

Expansion of the term "employer" to include *all* employers within New York State

February 8, 2020*

Extension of the statute of limitations from 1 year to 3 years

August 12, 2020*

What New York Employers Should Do Now

New York employers should immediately begin distributing information relating to their sexual harassment prevention policy and training to new hires and harassment prevention training program attendees.

Moreover, as we previously reported, employers should consider taking the following actions:

- With the lowered threshold for employers covered by the HRL, all New York employers will need to ensure that their policies and practices are compliant with the Law's myriad requirements, including notice postings.

- All New York employers should review their employment contracts and other onboarding materials, especially mandatory arbitration agreements, NDAs, and other confidentiality provisions that implicate any type of discrimination, harassment, or retaliation claim, to determine if they are consistent with the Law's prohibitions and requirements.
  - Any confidentiality provision in an employment agreement or otherwise issued at the time of hire must include language that excludes complaints to law enforcement or fair employment practices agencies.
  - Any arbitration agreements must exclude final, binding arbitration of discrimination, harassment, and retaliation claims based on any protected characteristic under New York law. However, it is advisable to consider recent case law that may implicate the enforceability of this mandatory arbitration ban (see blog posts here and here).
- All New York employers should revise their procedures to determine when "21/7" settlement NDA letters should be used if there are claims of harassment or discrimination on the basis of any protected status (not just sexual harassment) and retaliation. In addition, the letters and NDA language must confirm that nothing in the settlement's NDA provisions will prohibit or otherwise restrict a complainant from "(i) initiating, testifying, asserting, complying with a subpoena from, or participating in any manner with an investigation conducted by the appropriate local, state, or federal agency[,] or (ii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which the complainant is entitled."
- All New York employers should review the State's Combating Sexual Harassment website frequently for updates, including any new guidance or template documents.

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