

Summer 2009 New York State Employment Law Update: Recent Amendments to the State Human Rights and Labor Laws

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The following amendments to New York State's labor and employment laws will affect New York employers' hiring practices, terms of employment and employment-related litigation.

1. Rate of Pay, Regular Pay Day and Overtime Rate Must Be in Writing and Acknowledged by New Hires

Labor Law Section 195(1) currently requires employers to provide newly hired employees with information regarding their rate of pay and the employer's regular pay days – such notice need not be written. On July 28, 2009, however, the New York Labor Law was amended to require employers to provide all employees hired on or after October 26, 2009, with written notice of their rate of pay and the employer's regular pay days. In addition, employees who are eligible for overtime (including non-exempt, salaried employees) must be notified of their regular hourly rate and their overtime rate of pay. Employers will be required to obtain a written acknowledgment of receipt of such notice from each new employee. The legislature has not specified the content and form of the acknowledgment, but indicated that the Commissioner of Labor may provide guidance.

2. Anti-Discrimination Protections for Victims of Domestic Violence

On July 7, 2009, the New York State Human Rights Law was amended to include victims of domestic violence as a protected class. For employers in other localities, such as New York City, this protection is nothing new. Domestic violence victim status has been a part of the New York City Human Rights Law since 2001.

Effective immediately, it is unlawful in New York State for an employer to refuse to hire or discriminate against an individual in compensation or other terms of employment based upon the individual's domestic violence victim status. The statute defines the term "domestic violence victim" as an individual who is a victim of a family offense under New York's Family Court Act, including disorderly conduct, harassment, stalking, reckless endangerment or assault between spouses or former spouses, or between parent and child or between members of the same family or household.

3. Civil Fines and Penalties for Violations of the Human Rights Law

The New York State Human Rights Law has been amended to provide for civil fines and penalties, payable to the State, of up to \$50,000 for unlawful discriminatory acts and up to \$100,000 for willful, wanton or malicious discrimination that occurs on or after July 6, 2009. Previously, civil fines were only available in connection with housing discrimination. Now, such fines and penalties may be assessed in all cases of discrimination, including cases of employment discrimination, which comprise 80 percent of the New York State Division of Human Rights' cases.

The amendment to the Human Rights Law also provides that the imposition of civil fines and penalties will be in addition to – and will not reduce or offset – any compensatory damages or other payments available under the law. For employers with fewer than 50 employees, such civil fines and penalties may be ordered in installments, with interest.

Although punitive damages are not currently available for violations of the New York State Human Rights Law, there is pending legislation that would allow individuals to recover punitive damages and attorneys' fees. It should be noted, however, that punitive damages are currently available to individuals bringing claims under the New York City Human Rights Act.

What Should an Employer Do?

Employers should review their offer letters and new-hire paperwork to ensure compliance with the new written notice requirements discussed above. While engaging in such a review, employers also should be mindful of existing notice requirements pertaining to changes in pay days, termination of employment and policies on sick leave, vacation, personal leave, holidays and hours. Employers should review their Equal Employment Opportunity policies and train their managers and human resources staff to ensure they are aware of the protections now afforded to victims of domestic violence. Generally, such training is always valuable to employers who wish to avoid the costly fines, penalties and other damages associated with non-compliance with the labor and employment laws.

If you have any questions regarding these new developments or any other New York labor or employment law, please contact:

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