

Labor & Employment Law Alert: Governor Cuomo Signs into Law Profound Changes Increasing Workplace Protections

As explained in our previous [alert](#), the New York State Legislature recently passed legislation that proposed sweeping changes to the New York State Human Rights Law (NYSHRL) and Labor Law. On August 12, 2019, Governor Cuomo signed this legislation into law, dramatically changing the legal landscape for discrimination and harassment claims.

In an amendment to the Labor Law, effective **August 12, 2019**, all New York State employers must provide employees in English and in each employee's primary language, both at the time of hiring and at each annual sexual harassment training, a notice with the employer's sexual harassment policy and the information presented at the employer's sexual harassment training program. This amendment directs the New York State Department of Labor (NYSDOL) to prepare New York State's **model** sexual harassment policy and training program in languages other than English, but the NYSDOL has discretion in deciding which languages to publish.

Effective **October 11, 2019**, the definition of harassment under the NYSHRL will be significantly expanded to include harassment based on a person's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, genetic predisposition, familial status, marital status, or domestic violence victim status. Under the amendments the "severe or pervasive" standard will no longer apply to harassment claims under the NYSHRL. Instead, conduct may violate the NYSHRL "regardless of whether such harassment would be considered severe or pervasive." Further, a prevailing complainant in an employment discrimination action will be **entitled** to reasonable attorney's fees. The amendments to the NYSHRL explain a prevailing complainant may also recover punitive damages, but only against private employers.

The changes also eliminate a key defense to harassment claims. Beginning **October 11, 2019**, employers will no longer be able to rely upon an employee's failure to report harassment using an employer's internal complaint procedure as an affirmative defense to shield the employer from liability under the NYSHRL.

Many other changes to the NYSHRL take effect starting **October 11, 2019** including that: (a) employers can be liable for **any** form of unlawful discrimination committed against non-employees (contractors, vendors, consultants, etc.) in the workplace; (b) the use of nondisclosure provisions in settlement agreements for **all** claims of harassment and discrimination is prohibited unless the complainant prefers confidentiality and is provided with sufficient time to consider and revoke the provision and; (c) mandatory arbitration agreements are prohibited for **all employment discrimination claims**.

The validity of the prohibition on arbitration is questionable as it conflicts with the Federal Arbitration Act (FAA). At least one federal court has already determined that the prohibition on the use of

mandatory arbitration agreements for sexual harassment claims is invalid under the FAA. Importantly, in that case, the court noted that the then pending, and now signed, changes to the NYSHRL barring mandatory arbitration of all employment discrimination claims would similarly be invalid because any such bar would still be inconsistent with the FAA.

Also, effective **February 8, 2020**, the coverage of the NYSHRL will be expanded. Currently the NYSHRL applies to employers with four or more employees, aside from sexual harassment claims. However, the amendments to the NYSHRL eliminate this requirement and apply to all employers in New York State regardless of the number of employees.

Finally, on **August 12, 2020**, the statute of limitations for filing administrative complaints of sexual harassment with the New York State Division of Human Rights (NYSDHR) will be extended from one year to three years. However, all other harassment and discrimination claims under the NYSHRL are still subject to a one-year statute of limitations when filed with the NYSDHR.

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