



CLIENT ALERT

NEW YORK STRENGTHENS EMPLOYEE PROTECTIONS

On October 21, 2015, New York Governor Andrew Cuomo signed a spate of employment-related legislation into law. The following changes are effective January 19, 2016:

- I. **Pay Equity:** Amendments to the New York Labor Law strengthen an employer's obligation to pay men and women the same wages for the same work.
- II. **Protection for Employees Sharing Wage Information:** While employers were previously permitted under the Labor Law to prohibit employees from discussing their salaries under threat of discipline, employees are now specifically permitted to discuss their wages with each other and employers are prohibited from retaliating against any employee who does so.
- III. **Sexual Harassment:** Currently, the definition of "employer" under the New York State Human Rights Law ("NYSHRL") excludes employers with fewer than four (4) employees. The new legislation expands the definition of "employer" to cover all employers within New York, regardless of size, but only with respect to sexual harassment claims. Accordingly, an employee of any business will be able to file a workplace sexual harassment complaint.
- IV. **Discrimination Based on Family Status:** While the NYSHRL previously protected individuals from discrimination based on "familial status" in the housing and credit context, the NYSHRL is amended to include "familial status" in the list of protected characteristics in the employment context.
- V. **Pregnancy Discrimination:** Employers will now be required to provide reasonable accommodations for "pregnancy-related disabilities". While employers have long been required to accommodate disabilities, including those related to pregnancy, under the NYSHRL, the rules were largely misinterpreted. The NYSHRL amendments make it clear that pregnancy-related disabilities must be treated in the same manner as other temporary disabilities.
- VI. **Attorneys' Fees:** Until now, the NYSHRL did not contain a fee-shifting provision, and, accordingly employees were not entitled to recover attorneys' fees on successful employment discrimination claims. The new legislation allows successful plaintiffs to recover attorneys' fees in employment actions based on sex – which includes sexual harassment.

Governor Cuomo has also introduced proposed regulations under the NYSHRL that would prohibit discrimination and harassment based on gender identity, transgender status and gender dysphoria. The proposed regulations are subject to a 45-day notice and comment period and may face legal challenges on the grounds that the regulations create protections the NYSHRL does not authorize. We will update you should these regulations take effect.

As the changes to the Labor Law and NYSHRL are effective mid-January 2016, employers should consider reviewing and, where necessary, revising their policies and practices as follows:

- Revise policies regarding the discussion of wages in the workplace and carefully tailor such policy to comport not only with the requirements of the Labor Law but also the National Labor Relations Act.
- Strengthen harassment policies and internal complaint procedures as well as revise disability accommodation policies to specifically accommodate pregnancy-related disabilities.
- Provide updated non-harassment training to all employees in early 2016.

If you have questions or would like additional information, please contact Amanda M. Fugazy (afugazy@egsllp.com), Paul P. Rooney (prooney@egsllp.com), Valerie J. Bluth (vbluth@egsllp.com) or the primary EGS attorney with whom you work.

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