

Client Alert

Governor Cuomo Signs New Legislation to Expand Women's Equality in the Workplace

November 2, 2015 – Governor Andrew Cuomo signed into law several pieces of legislation, collectively referred to as the Women's Equality Agenda ("WEA"), on October 21, 2015. The WEA will have a significant impact on New York employers, as the legislation addresses several work-related issues including pay equity disclosures amongst employees, expansive sexual harassment protections covering all employees, regardless of employer size, employment discrimination based on familial status and accommodations for pregnancy-related medical conditions. The WEA goes into effect on January 19, 2016. New York employers must therefore update their policy manuals and HR procedures over the next two months to account for the following changes in the law:

Pay Equity Disclosures: Employers can no longer prohibit employees from disclosing information related to their wages under this new legislation. Currently the law allows employers to prohibit employees from discussing their compensation amongst each other. This is why, as a matter of policy, many employers deem wages of their employees to be "confidential" information. The WEA, however, eliminates this disclosure restriction and will allow employees to openly discuss their wages with each other without fear of discipline or discharge. This new legislation will make it easier for employees to identify gender disparity in pay and, as a result, bring potential discriminatory pay practices litigation. The goal of this legislation of course is to eliminate gender disparity and achieve equal pay for equal work, so as to ensure that women receive the same compensation as their male counterparts in comparable professions.

Expanded Protections for All Employees: The New York State Human Rights Law ("NYSHRL"), which prohibits sexual harassment in the workplace, excludes employers with fewer than four employees. Thus, under current law, an employee of a small business is precluded from filing a complaint with the New York State Division of Human Rights (the agency charged with enforcing the NYSHRL) unless his or her employer employs at least four workers. The WEA, however, amends the law and permits all employees in the state to file claims of sexual harassment under the NYSHRL regardless of employer size. This is a

significant change in the law, because many small businesses will have to start implementing and enforcing anti-discrimination and harassment policies in the workplace for the first time.

Recovery of Attorneys' Fees: Plaintiffs in sex discrimination lawsuits were previously precluded from recovering attorneys' fees under the NYSHRL. Naturally, this acted as a deterrent for potential victims of employment discrimination and sexual harassment to file a claim or action given the high cost associated with litigation. Now, under the WEA, a successful plaintiff in a sex discrimination case will be able to recover attorneys' fees. Plaintiffs will still be precluded from recovering attorneys' fees with respect to other types of discrimination claims brought under the NYSHRL. Nonetheless, the financial impediments for employees to file and recover attorneys' fees in connection with sex discrimination claims have been eliminated by this new legislation, which is another reason for employers to maintain and implement strict anti-discrimination policies and HR procedures to avoid any such litigation.

Prohibited Discrimination Based on Familial Status: Current law prohibits discrimination based on an individual's status as a parent or guardian of a child under the age of eighteen only in the areas of housing and credit. The WEA will expand these protections to employment agencies, licensing agencies and labor organizations.

Prohibited Pregnancy Discrimination: The WEA requires employers to provide reasonable accommodations for employees with a pregnancy-related medical condition. Possible accommodations include, but are not limited to, modified work schedules, extra break periods, and transfer from hazardous duties. Although a reasonable accommodation would not have to be granted for a pregnant employee if it imposed an undue hardship on the employer, employers must carefully evaluate each request on an individual basis.

If you require any additional information about the Women's Equality Agenda, or any other employment-related issue, please contact:

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