

> Client Alert

New York Amends State Human Rights Law to Enhance Protection Against Workplace Harassment and Retaliation

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Authors and Key Contacts

If you require any additional information regarding workplace laws concerning pre-dispute arbitration agreements or joint action waivers, or any other employment law questions please feel free to contact any of the attorneys listed below.

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On March 16, 2022, New York Governor Kathy Hochul signed into law three bills which amend the New York State Human Rights Law ("NYSHRL") and provide employees with additional enhanced protection against workplace harassment and retaliation. Two of those laws, S5870/A7101 and S3395/A2483, took effect immediately upon the Governor's signature last week.

The first law (S5870/A7101) provides that an employer engages in unlawful retaliation in violation of the NYSHRL by disclosing an employee's personnel records in order to discredit their complaint of workplace discrimination, or releases such records in response to an employee's cooperation in the investigation of another employee's complaint. In proposing this provision, the bill's sponsors specifically noted that "recent events" demonstrate that retaliation "frequently" appears in the form of employers leaking complaining employees' personnel documents to disparage or discredit them. The law, however, does not prohibit employers from disclosing personnel files as necessary in commencing or responding to a complaint in either an administrative and/or judicial proceeding. Reading the statute *verbatim*, there is no guidance as to whether an employer may use such information in response to a pre-litigation claim or a notice thereof; at present it appears that such use is strictly limited to action in a formal proceeding. Nor does the statute define the materials that constitute an employee's personnel file.

In connection with the enforcement of S5870/A7101, the State legislature sought to provide investigative authority to the Attorney General, whose office operates more independently from the Governor's than the New York State Division of Human Rights (which is part of the executive branch). The new law thus grants power to the New York Attorney General to commence an action or proceeding in Supreme Court of the State of New York if, "upon information or belief," the Attorney General believes that the employer retaliated, or is about to retaliate, against an employee in violation of the NYSHRL.

The second law (S3395B/A2483B) extends the NYSHRL's definition of "employer" to include the state or a local government insofar as either employs elected officials, including judges, and their staff.

The third law (S812B/A2035B), which becomes effective July 14, 2022, establishes a toll-free hotline to assist individuals who believe they are experiencing workplace sexual harassment. The New York State Division of

Human Rights is tasked with recruiting experienced attorneys to provide callers with *pro bono* (cost-free) legal assistance via the hotline. The law prohibits such attorneys, however, from soliciting further representation of the hotline callers they advise.

Next Steps for Employers

In response to these new laws, employers should take care to ensure that employee personnel files are not disclosed for purposes of discrediting employees who make complaints of discrimination or who support others' claims, except as and where necessary to commence or respond to an administrative or judicial proceeding in which issues concerning the implicated employee have been or may be raised. Employers may also consider updating their employment policies to make it clear that any such retaliatory action is strictly prohibited.

The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice concerning workplace laws involving sexual harassment, retaliation, or other employment law questions that may arise from time to time and as otherwise needed.