

RECENT AMENDMENTS TO THE NEW YORK STATE HUMAN RIGHTS LAW

New York State Governor David A. Paterson recently signed amendments to the New York State Human Rights Law ("NYSHRL"). The amendments have expanded both the scope of protection afforded employees and the potential costs of violations by employers.

DOMESTIC VIOLENCE VICTIMS PROTECTED

On July 7, 2009, Governor Paterson signed an amendment to the NYSHRL that adds "domestic violence victim status" to the list of characteristics upon which employers may not discriminate against employees. The NYSHRL recognizes an individual as a domestic violence victim if he or she has been a victim of an act which would constitute a family offense under the New York Family Court Act. Family offenses include various criminal offenses occurring between spouses or former spouses, between parent and child, or between certain other members of the same family or household. Covered offenses include harassment, stalking, criminal mischief, reckless endangerment, assault, and attempted assault.

In addition to domestic violence victim status, the NYSHRL prohibits employment discrimination based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, and marital status.

CIVIL PENALTIES FOR VIOLATIONS

Governor Paterson also signed an amendment to the NYSHRL on April 7, 2009 permitting the imposition of civil penalties against employers and individuals found to have engaged in unlawful employment discrimination. Civil penalties, which would be payable to New York State, can be awarded in proceedings with the New York State Division of Human Rights ("NYSDHR") as well as in civil lawsuits. These new penalty provisions were passed as part of the 2009-2010 New York Budget Bills.

Fines of up to \$50,000 may be assessed upon a finding of unlawful discriminatory conduct that occurred on or after July 6, 2009. In cases where the violation is found to be "willful, wanton or malicious" the penalty can be as high as \$100,000. For employers with fewer than 50 employees, the NYSDHR may allow payment of the penalty in installments over no more than three years, subject to payment of interest. Based upon language in the legislation, the NYSDHR is expected to issue regulations regarding installment payments. It is also likely that the NYSDHR will provide standards to guide the determination of appropriate penalty amounts.

Prior to the amendment, the NYSDHR was only authorized to impose fines in cases of housing discrimination. Remedies in employment discrimination cases were previously limited to injunctive relief, such as reinstatement, and recovery of compensatory damages, including lost pay/benefits and emotional distress damages.

Legislation has also been proposed, but not yet enacted, that would allow employees to obtain punitive damages and/or attorneys' fees if they prevail on claims of employment discrimination under the NYSHRL. Punitive damages and attorneys fees are currently available under most federal employment discrimination statutes, but not under the NYSHRL.

EMPLOYERS MUST TAKE PRECAUTIONS

Statements by Commissioner Galen Kirkland indicate that the NYSDHR will likely pursue the newly authorized penalties as part of its mission in enforcing the NYSHRL and deterring discriminatory practices in employment.

The possibility of large civil penalties gives employers additional incentive to strengthen their efforts to avoid even the appearance of discriminatory practices in the workplace. Well drafted equal employment opportunity, anti-discrimination, and anti-harassment policies and effective internal complaint procedures are critical in avoiding discrimination claims. Periodic anti-discrimination/anti-harassment training for all employees and supervisors should also be considered as an additional preventative measure towards avoiding costly discrimination claims.

Employers who receive complaints of discrimination (either internally or through the courts or government agencies) are strongly encouraged to seek immediate assistance from their experienced labor and employment legal counsel.

If you have any questions regarding the amendments, please contact Randall M. Odza (716.843.3877; rodza@jaeckle.com) or Scott P. Horton (716.843.3949; shorton@jaeckle.com).

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