

New York Legislative Update — 2019 Starts With a Roar

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The New York State Legislature gaveled in for the 2019-2020 Legislative Session on January 9, 2019, with Democrats in control of all three chambers of New York State government for the first time since the 2008-2009 session. As expected, the Democrats are flexing their muscles and progressive legislation traditionally stalled in a Republican-controlled Senate has been given new life. For example, two long-stalled progressive pieces of legislation, Gender Expression Non-Discrimination Act (GENDA) and the Child Victims Act (discussed below), were quickly passed by the Legislature.

Jackson Lewis is tracking a number of proposals affecting employers that are going through the FY 2020 State Budget Process and 2019 Legislative Session.

Passed Legislation

GENDA – S.1047 (Hoylman) / A.747 (Gottfried)

Governor Andrew Cuomo signed the Gender Expression Non-Discrimination Act into law. GENDA will go into effect on February 24, 2019. GENDA prohibits discrimination based on gender identity or expression and includes such offenses

under the hate crimes statute. The legislation codifies the position taken by the New York State Division of Human Rights. “Gender identity or expression” is defined as “a person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-based characteristic regardless of the sex assigned to that person at birth, including but not limited to the status of being transgender.”

Child Victims Act – S.2440 (Hoylman) / A.2683 (Rosenthal)

Passed by the Legislature, the Child Victims Act extends the criminal statute of limitations for prosecuting sex crimes against children to when the child reaches 23 years of age. The legislation also extends the civil statute of limitations to allow commencement of child sex abuse cases until the alleged victim turns 55 years old. The law further creates a one-year opener or window for filing previously time-barred civil claims arising out of child sexual abuse, including negligence actions against employers, applicable to both public and private entities.

Discrimination based on Reproductive Health Decision – S.660 (Metzger) / A.584 (Jaffee)

Both houses of the Legislature passed legislation that would prohibit employment discrimination based on an employee’s or an employee’s dependent’s reproductive health decisions. The legislation creates a civil cause of action against employers alleged to violate the law, requires employers to include remedies provided under the law in their handbooks, and prescribes remedies, including liquidated damages, for relief. The bill has not yet been delivered to the Governor.

Policies in Governor’s FY 2020 Executive Budget Proposal

The Governor’s FY 2020 New York State Executive Budget Proposal includes many ideas that would affect employers. We highlight some that will be considered through the negotiation process with the Legislature that is expected to conclude on or about the State Constitution-mandated deadline of April 1. Many of these already are effective under New York City law.

Equal Pay; Salary History Ban

The Governor’s Executive Budget Proposal would amend the Human Rights Law to prohibit employers from inquiring about salary history or using salary history information as a factor in determining whether to offer employment to an individual. Currently, such a ban does not apply statewide, but only in certain localities, such as New York City and Westchester County.

The Executive Budget Proposal would further amend the Labor Law to require that members of a protected class receive “equal pay for equal work” in both the public and private sectors.

Workplace Harassment Protections

The Governor’s Executive Budget Proposal advances language to increase protections against workplace harassment by eliminating the restriction that the

harassment be “severe or pervasive.” This standard, which tracks the New York City Human Rights Law, would expand the scope of potential harassment claims greatly.

The proposal also would amend the General Obligations Law to mandate that all pre-dispute non-disclosure provisions in an employment agreement allow the filing of a civil complaint. It would further require employers to conspicuously post a sexual harassment educational poster in the workplace.

Protect Breastfeeding in Workplace

The Governor’s Executive Budget Proposal includes a provision that would guarantee breastfeeding rights in the workplace and protect those rights under the Human Rights Law. The proposal also would require an employer to make reasonable accommodations for breastfeeding in the workplace. New York City already has enacted expansive legislation in this regard, including a policy requirement, effective this spring. (See our article, [New York City to Require Private Employers to Establish Lactation Rooms and Policies.](#))

Wage Theft

The Executive Budget Proposal includes a provision that would increase the criminal penalties for wage theft and violations of other labor laws to align with comparable criminal offenses. The proposal would amend sections 198-a and 213 of the Labor Law to increase criminal penalties for employers who knowingly engage in wage theft. The class of penalty of which an employer would be guilty will be based on specified amounts of wage theft per employee. In addition, payment of lost wages to employees would be required as restitution.

Unemployment Benefits, Penalties

The Governor’s Executive Budget Proposal intends to minimize the financial impact on Unemployment Insurance (UI) claimants who work part-time while they seek full-time employment. Among other things, the proposal would permit a claimant who is partially unemployed and eligible for UI benefits to be paid a reduced benefit amount based upon the difference between the weekly benefit rate if totally unemployed and two-thirds of total remuneration of any nature payable to the claimant for services of any kind during such week. In addition, the proposal would amend section 594 of the Labor Law (“Reduction and recovery of benefits and penalties for wilful false statement”) to eliminate forfeit day penalties and to increase the monetary penalties.

Extend Workers with Disability Tax Credit

The Executive Budget Proposal would extend for three years the credits for qualified employers, including for-profit businesses, that employ individuals with developmental disabilities.

Employer Recovery Hiring Tax Credit

The Governor proposed the creation of an “Employer Recovery Hiring Tax Credit,” a credit of up to \$2,000 per employee in drug abuse recovery that a business employs.

Workers’ Compensation Reform

The Governor’s Executive Budget Proposal would permit the New York State Insurance Fund (SIF) to cancel a workers’ compensation policy based on the policyholder’s failure to cooperate with a payroll audit. Prior to cancellation, the SIF would be required to provide policyholders with 45 days’ notice, aiming to pressure policyholders to act to avoid losing coverage.

Prohibiting Public Employers from Disclosing Union Members’ Personal Information

The Governor’s Executive Budget Proposal contains language that would prohibit public employers, including local governments, from disclosing the personal information of public sector employees. The Governor said this proposal aims to protect public employees from the U.S. Supreme Court’s 2018 decision that public sector employees who are non-members of a union cannot be legally required to pay agency or “fair share” fees as a condition of employment. (See our article, [Supreme Court Rules Unconstitutional Mandatory Fees Imposed on Non-Union, Public Sector Employees.](#))

Newly Proposed Sexual Harassment Package

Senator Alessandra Biaggi and Assemblymember Aravella Simotas introduced a series of bills that aims to address issues related to sexual harassment in employment. S.2035/A.1115 would amend the Labor Law to require employers to inform employees that non-disclosure and non-disparagement provisions in employment contracts cannot prevent employees from speaking with law enforcement, the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or a local commission on human rights. The legislation is in the Labor Committees in both the Senate and Assembly.

S.2036/A.1042 would amend the Human Rights Law to extend the filing period for a complaint with the New York State Division of Human Rights from one year to three years after the alleged unlawful discrimination practice. The bill also would toll the statute of limitations during ongoing proceedings from the earlier of the commencement of an investigation or the filing of a complaint through the conclusion of an investigation. The legislation also would amend the Court of Claims Act to extend the filing period for a claim against the State and apply the same tolling provision in cases against New York State. The legislation is in the Government Operations Committees of both houses.

S.2037/A.869 would amend the General Obligations Law to demand that a person signing a confidential settlement agreement be fully informed of the rights she will be giving up and require a signed, written waiver before those rights are waived. The legislation would void confidentiality agreements that prohibit or restrict a party from lodging a complaint with the appropriate local, state, or federal agency;

participating in an investigation conducted with a local, federal, or state agency; or filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or any other public benefit to which the party is entitled. The legislation is in the Judiciary Committee of both houses.

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