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Expansive Changes Coming to the New York State Human Rights Law

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On June 19, 2019, the New York State Legislature passed Senate Bill S.6577, which upon Governor Cuomo's anticipated signature will significantly expand the scope of employee protections provided by the New York State Human Rights Law (State HRL). While press around the bill has focused on issues of sexual harassment, the bill, in fact, expands all employee protections under the State HRL and prohibits mandatory arbitration of all discrimination claims, regardless of protected class. Employers should begin preparing for both the immediate and incremental effects of the anticipated new law.

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Expanded Definition of Employer

On the 180th day after it goes into effect, the new State HRL will apply to all employers within the state, not just to employers with four or more employees. It also will provide protection not only to employees but also to non-employees such as contractors, subcontractors, vendors, consultants, or "any person providing services pursuant to a contract in the workplace."

Expanded Liberal Construction of the State HRL

The State HRL's construction provision will soon read almost verbatim with the historically more expansive New York City Human Rights Law (City HRL). Similar to the City HRL, the State HRL now must be interpreted independently of similar federal civil rights laws, such as Title VII, and other laws with comparable language. The new State HRL provides that exemptions and exceptions to the State HRL provisions must be "construed narrowly in order to maximize deterrence of discriminatory conduct." This provision appears to have been copied directly from the City HRL.

Moreover, the "severe and pervasive" standard will no longer be applicable to hostile work environment claims and employers will no longer be able to avail themselves of the *Faragher/Ellerth* affirmative defense where an employee fails to take advantage of their employer's internal complaint procedures.

New Employer Responsibilities Regarding Notice of Sexual Harassment Prevention

Every employer will be required to provide notice of the employer's sexual harassment prevention policy, in writing and in the employees' primary languages, to existing employees, on hire to new employees, and annually to all employees as part of the annual sexual harassment prevention training. Training must still be provided consistent with the sexual harassment provisions that went into effect earlier this year.

Expanded State HRL Employee Protections

On the 60th day after Senate Bill S.6577 shall become law, State HRL protections expand to cover all forms of discriminatory harassment and apply to all protected classes.

- Punitive damages may be awarded in all employment discrimination actions in claims against private employers.
- Attorneys' fees must be awarded to the prevailing party in any employment discrimination actions. (A

prevailing defendant must still make a motion for such fees.)

- Nondisclosure agreements are prohibited with respect to all claims of discrimination. (Still enforceable subject to the plaintiff's preference and upon expiration of requisite revocation periods.)
- Mandatory arbitration to resolve any allegation or claim of discrimination based on any protected class is prohibited from inclusion in employment contracts.
- State HRL protections expand to cover all forms of discriminatory harassment against domestic workers.

Statute of Limitations Extended on Sexual Harassment in Employment Claims

One year after Senate Bill S.6577 goes into effect, the statute of limitations will extend from one to three years for sexual harassment in employment complaints to the State Human Rights Division.

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