

New York Passes Sweeping Changes to Anti-Harassment Law

Tuesday, June 25, 2019

New York is on the cusp of passing one of the strictest anti-harassment laws in the country. In the past week, the New York Assembly and Senate have passed broad reforms that will significantly lower the bar for employees to file and win harassment lawsuits. The bill, which has been championed by Governor Andrew Cuomo and is expected to be signed into law shortly, will enact the following changes:

- The New York State Human Rights Law (NYSHRL) will extend all anti-harassment laws (both sexual harassment and harassment based on other protected classes) to nonemployees, including contractors and vendors.
- The state will do away with the “severe or pervasive” standard used for Title VII and replace it with a lower standard. Conduct may be found to be actionable harassment if a reasonable victim would view the conduct as harassing and it rises above the level of “petty slights or trivial inconveniences.”
- The state will eliminate the Faragher-Ellerth affirmative defense and an employee will not have had to make an internal harassment complaint to file and win a lawsuit.
- If an employer and an employee settle a harassment or discrimination claim, the employer generally will be prohibited from including a confidentiality clause in a settlement agreement. While such a clause may be included if the employee prefers its inclusion, the employee must be given 21 days to consider the clause and seven days to revoke acceptance.
- Employers will be prohibited from requiring arbitration of harassment and discrimination claims.

These changes come at the heels of [last year's changes to the NYSHRL](#) that significantly strengthened protections against sexual harassment, including mandatory sexual harassment prevention training and the requirement that anti-harassment policies provide information regarding state and federal legal remedies for harassment.

New York's 2018 and 2019 amendments have created one of the strongest anti-harassment laws in the country. Although the U.S. Supreme Court has held that Title VII is “not a civility code,” New York's amended law appears to be moving in that direction. If other states follow suit, there could be far-reaching effects on employment litigation. If you do business in New York, it is a good time to review your harassment and discrimination policies to ensure that they comply with New York's strict minimum guidelines and that they are consistent with the new changes to the NYSHRL.

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