Effective January 11, 2020, the New York City Human Rights Law (“NYCHRL”) has been amended to expand protections under the law to freelancers and independent contractors. Significantly, this includes the requirement that certain contractors now complete annual sexual harassment prevention training in the same manner as covered employees. Contractors also are now eligible for reasonable accommodations under the law. The amendments also clarify how the four-employee threshold for coverage under the NYCHRL is calculated.

**Expanded Protections and Training Requirements**

The new law amends Section 8-107(23) of the NYCHRL to state that “[t]he protections of this chapter relating to employees apply to interns, freelancers and independent contractors.” (The law previously expanded provisions of the NYCHRL to interns by amendment in 2014.) Thus, freelancers and independent contractors now have the same protections against discrimination, harassment and retaliation under the NYCHRL as employees, including, presumptively, the same right to seek recourse by filing claims with NYC Commission on Human Rights (the “Commission”) or bringing suit in court.
The Commission has issued guidance interpreting this expansion of protections to include the requirement that independent contractors and freelancers who work for an employer with 15 or more workers (including employees, interns, and contractors) and who work: (a) more than 80 hours in a calendar year, and (b) for at least 90 days (which do not need to be consecutive) must complete the annual sexual harassment prevention training already required of employees and interns under the NYCHRL. Contractors who do not meet this 80 hour/90 day threshold do not need to be trained. Previously, the Commission recommended such training for independent contractors, but did not require it.

The guidance states that “[i]ndividuals who must be trained do not need to take the training at each workplace where they work over the course of a year,” and “[i]ndependent contractors and freelancers may provide proof of completion of one sexual harassment prevention training to multiple workplaces and need not repeat the training at multiple workplaces.”

The guidance further states that contractors and freelancers now have the right to request and receive reasonable accommodations for needs related to disability, pregnancy, lactation, religious observances, and status as victims of domestic violence, sexual offenses, or stalking in the same manner as such accommodations are available to employees.

**Changes to Determining Coverage Under the NYCHRL**

The new law further amends the definition of a covered “employer” under the NYCHRL to provide that it does not include any employer “that has fewer than four persons in the employ of such employer at all times during the period beginning twelve months before the start of an unlawful discriminatory practice and continuing through the end of such unlawful discriminatory practice.” Previously, the law did not clearly specify the period over which employee numbers should be considered in determining whether the four employee threshold had been met.

The amendments also now provide that the parent, spouse, domestic partner, or child of an employer who is employed by that employer must be counted in determining coverage. Additionally, independent contractors working “in furtherance of an employer’s business enterprise” must also be included in the count for that employer, regardless of whether such contractors are themselves employers (previously, contractors with their own employees were not included in the determination of coverage). It is noted that the four employee threshold does not apply, and employers of all sizes are covered by, the NYCHRL’s gender-based harassment provisions.

**Impact of the Amendments on Employers**

In addition to broadening sexual harassment training and reasonable accommodation obligations, these amendments will expand potential liability for employers faced with discrimination, harassment, or retaliation claims.

It is noted that, as of October 11, 2019, the New York State Human Rights Law (“State HRL”) expanded its protections against discrimination to contractors,
subcontractors, vendors, consultants, or other persons providing services pursuant to a contract. And, effective February 8, 2020, all employers within the state of New York will be covered by the state HRL, regardless of size (presently, the State HRL only applies to employers with four or more employees, except with regard to provisions regarding sexual harassment, which apply to employers of all sizes).

While the recently enacted City protections for contractors and freelancers are similar to those that have already been enacted at the State level, the NYCHRL amendments may nevertheless be significant for NYC employers because, in addition to the new training and reasonable accommodation requirements, the City law is distinct from the State law in the following ways:

- While both the state HRL and the NYCHRL prohibit discrimination and harassment on the basis on several protected categories, the NYCHRL includes additional categories that are not covered under state law, including caregiver status and unemployment status.

- The NYCHRL includes the NYC Fair Chance Act, which, among other things, prohibits inquiries into the criminal history of job applicants until after a conditional offer of employment has been made. It also sets forth strict limitations on the use of credit checks in the hiring process.

- The NYCHRL also contains prohibitions and limitations on employers’ ability to inquire into or obtain salary history information about applicants. While New York state has also recently enacted a law regarding salary history inquiries, the state law makes clear that it does not apply to independent contractors or freelancers unless such individuals work through an employment agency.

It is unclear whether the Commission will issue further guidance on the scope of protections under the recent amendments, but we will continue to monitor and report on any further developments.

In the meantime, NYC employers who utilize independent contractors or freelancers should review and update their existing policies where necessary and ensure relevant personnel are trained on these new requirements. Employers with 15 or more workers should also take steps to ensure that freelancers and independent contractors who meet the 80 hour/90 day threshold discussed above are provided with annual sexual harassment training as required under NYC law.

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