

GOVERNOR CUOMO SIGNS LEGISLATION EXPANDING PROTECTIONS FROM GENDER BIAS IN THE WORKPLACE

Labor & Employment Alert
November 10, 2015

On October 21, 2015, New York State Governor Andrew Cuomo signed into law eight bills that significantly amend New York State's equal pay, sex discrimination, harassment, and other laws to provide additional protections for women in the workplace. Cumulatively referred to as the "Women's Equality Agenda," the bills will take effect on January 19, 2016.

The major provisions of the Women's Equality Agenda applicable to employers are summarized below.

Equal Pay

Bill (S.1./A. 6075) amends New York Labor Law Section 194 in relation to equal pay. Originally, Section 194 permitted pay differentials based on seniority, merit, and "any other factor other than sex." The Pay Equity Bill eliminates the last factor and now states that pay differentials may be based upon "a bona fide factor other than sex, such as education, training, or experience." However, any such differential must be job related and consistent with business necessity, and cannot be based upon or derived from a sex-based differential in compensation. An employer may not be able to rely on the "bona fide factor other than sex" exception if an employee demonstrates that: i) the employer's practices cause a disparate impact on the basis of sex, ii) an alternative employment practice exists that would have served the same business purpose and not produced such a differential, and iii) the employer refused to adopt the alternative practice.

In addition, the bill expands on the requirement that women are entitled to the same pay as similarly situated men working in the "same establishment" by altering the definition of "same establishment" to include "workplaces located in the same geographical region, no larger than a county." Thus, employers with multiple operations within a single county will be required to ensure pay equity among employees performing the same work.

The bill relating to pay equity further amends the Labor Law to state that no employer shall "prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee." While the National Labor

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Relations Act, which applies to most employers, already mostly prohibits this, the amendments make it an explicit violation of New York's Labor Law. This new Labor Law restriction is subject to certain exceptions.

The bill also increases liquidated damages liability to 300 percent of the total amount of wages found to be due in cases of willful violations of the equal pay law. The prior version of the law authorized liquidated damages of up to 100 percent of the wages due.

Sexual Harassment

Bill (S.2/A 5360) removes the four employee minimum coverage threshold for sexual harassment claims under the New York State Human Rights Law. Consequently, any employer, regardless of the size of its workforce in New York State, will be exposed to claims of sexual harassment under the Human Rights Law.

Sex Discrimination

Bill (S. 3/A. 7189) amends the Human Rights Law to allow a prevailing plaintiff in a sex discrimination case to recover attorneys' fees. Successful respondents may also recover attorneys' fees in cases where they can demonstrate that the claim was frivolous. Previously, attorneys' fee awards were not available under the Human Rights Law, although they have been available under relevant federal law and certain local laws.

Pregnancy-Related Accommodations

Bill (S. 8 /A. 4272) requires employers covered by the Human Rights Law to provide reasonable accommodations to employees with "pregnancy-related medical conditions," defined as "a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques," so long as the employee can perform her job in a "reasonable manner" upon receiving the accommodation. The bill specifically expands the definition of protected characteristics beyond "known disabilities" to include "pregnancy-related conditions" and requires that such conditions be treated as temporary disabilities under the law. The law further specifies that the employee must cooperate in providing medical or other information necessary to verify the existence of a pregnancy-related condition for consideration of the accommodation.

Familial Status as a New Protected Category Under the Human Rights Law

Bill (S. 4 /A. 7317) amends the Human Rights Law to add familial status as a protected category. "Familial status" refers to the state of being pregnant, having a child, or acquiring legal guardianship of a child.

The "Women's Equality Agenda" dramatically expands women's rights in the workplace and in other areas, increasing employers' responsibilities. Before these bills go into effect, employers should examine their workplace policies, including their compensation policies, and make any necessary modifications to ensure compliance.

What Should Employers Do Now?

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In anticipation of the new bills taking effect, employers should familiarize themselves with the various new obligations and assess whether changes to policies and procedures are warranted.

Please contact any one of our labor and employment attorneys should you have any questions.