CLIENT ALERTS & INSIGHTS

New York Harassment Law- A New Frontier?

JULY 1, 2019

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On June 18, 2019, the New York legislature passed a bill that makes significant changes to the long-established standard for establishing unlawful harassment in the workplace. The most significant changes include:

- Eliminating the settled "severe or pervasive" standard from discriminatory and retaliatory harassment cases;
- Prohibiting an employer from relying upon the Faragher-Ellerth defense to avoid liability. The fact that an individual did not make a harassment complaint to their employer will not be determinative of whether an employer is liable;
- Extending the statute of limitations to three years for sexual harassment complaints under the New York State Human Rights Law;
- Prohibiting mandatory arbitration of all claims of discrimination - an expansion from existing legislation, which prohibited mandatory arbitration of sexual harassment claims only; and
- Prohibiting employers from including nondisclosure provisions in settlement agreements for all claims of discrimination - not only sexual harassment claims - unless the condition of confidentiality is the plaintiff's preference.

New York Lawmakers Turn Their Sights to Salary History and Equal Pay

One day after passing these sweeping changes to the harassment laws, the New York State Legislature passed two other employment measures, a salary history bill and an equal pay bill.

Pursuant to the salary history bill, employers will be prohibited from soliciting job applicants for past salary information and using any past compensation information to set new salaries. The bill permits voluntary disclosure by workers if they prefer to do so in the course of negotiating their compensation. New York's salary history "ban" comes on the heels of similar laws recently passed in several states and municipalities with the stated purpose of limiting race- or sex-based pay gaps.

The equal pay bill will amend New York's current law regarding equal pay which prohibits employers, subject to various exceptions, from paying workers differently for "equal work." The amendment would bar employers from paying workers differently for "substantially similar" work subject to exceptions for differences based on seniority, a merit system, quantity or quality of work, or a "bona fide" non-sex factor.

Employers Beware

What does all of this mean for employers? Given the nature of the changes to New York's employment laws, it is more important than ever for employers to do whatever possible to ensure that hiring and compensation procedures and decisions are compliant with current laws, and that employers are aware of any "unwelcome" conduct in the workplace. Employers should consider an audit of their job descriptions and compensation structure and a review of their anti-harassment policies to ensure they are unbiased and not tailored to the old "severe or pervasive" standard and instead are aimed at eliminating all unwelcome conduct. Identifying potential problematic situations - or problematic employees - before an employment claim comes to fruition has become an even more necessary cost of doing business.

For more information on this topic, please contact a member of the firm's Labor & Employment Practice Group.

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