New York Enacts New Laws to Strengthen Employee Harassment Protections...and There's More to Come

Insights
3.16.22

New York already has some of the strongest anti-harassment and anti-discrimination laws in the country, due in large part to sweeping amendments to the state's anti-discrimination laws in 2018 and 2019. Nevertheless, New York lawmakers once again have workplace harassment and discrimination in their sights. Governor Hochul just signed into law two new pieces of legislation—one establishing a confidential hotline for complaints of workplace sexual harassment and one strengthening anti-retaliation protections. And it is likely that more is on the way—the New York Senate recently passed a suite of bills aimed to provide increased protections to victims of workplace harassment and discrimination. If enacted, the laws will have widespread impact on New York workplaces. Here's what you need to know.

The Enacted Laws

So far, two pieces of the slate of legislation have been enacted. First is a law that requires the New York State Division of Human Rights (NYSDHR) to establish a toll-free, confidential hotline to provide assistance to individuals with complaints of workplace sexual harassment. The hotline must operate during regular business hours and is to be staffed by pro bono attorneys experienced in providing counsel regarding sexual harassment. The NYSDHR must work with the New York Department of Labor to disseminate information about the hotline, including on required workplace postings and sexual harassment materials. This law takes effect July 14, 2022.

Second, the existing anti-retaliation provisions of the New York State Human Rights Law (NYSHRL) have been amended to explicitly prohibit employers from releasing an employee's personnel file in retaliation for opposing discriminatory practices, filing a complaint, or testifying or assisting in a proceeding. The law is aimed at preventing employers from leaking personnel files with the intent disparage or discredit a victim or witness of discrimination. Employers are not prohibited from disclosing an employee's personnel file as part of the legal process in connection with any civil or criminal action or other judicial or administrative proceedings. In addition to the private right of action bestowed on employees under the NYSHRL, aggrieved parties can file a complaint with the state Attorney General, who then has the authority to commence a proceeding if, upon information and belief, an employer has, or is about to, violate this law. This law takes effect immediately.

What's to Come

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Several other bills have passed the Senate and are now under consideration by the Assembly:

- **Extension of Statute of Limitations for Lawsuits:** Currently, employees have three years to file a lawsuit alleging workplace discrimination and harassment. If enacted, this bill will increase the statute of limitations to ***six years***, giving employees even more time to file claims.
- **Extension of Time to File a Charge:** Employees who wish to file an administrative charge of discrimination with the NYSDHR must do so within one year of the unlawful discriminatory practice, except if the complaint entails sexual harassment, in which case employees have three years to file a charge. This bill will increase the time frame to file a complaint with the NYSDHR of any unlawful discriminatory practice to three years.
- **Prohibition of No Rehire Clauses:** No rehire provisions clauses in settlement agreements prevent an employee from ever applying or working for the employer again. No rehire clauses are meant to protect employers from retaliation claims in the event a plaintiff agrees to a settlement, reapplies for a job with the employer and then sues the company again when they are not hired. If enacted, this bill will ban "no rehire" provisions in settlement agreements or other agreements by which an employee or independent contractor releases claims against the employer. The law will not prevent an employee and employer from agreeing to terminate the employee's employment as part of a settlement. If a release agreement does contain a no rehire clause, the release of claims will not be enforceable, but the employer will still be bound by all other provisions of the settlement agreement, including the obligation to pay any agreed upon settlement amount.
- **No Liquidated Damages:** New York law only permits nondisclosure provisions in settlements of discrimination claims if confidentiality is the complainant's preference and a robust process is followed, which includes a 21-day consideration period and 7-day opportunity to revoke. If enacted, this law will further restrict the use of nondisclosure provisions. Specifically, any release of claim will be unenforceable if the complainant is required to pay liquidated damages or forfeit all or part of the consideration for the agreement for violation of the nondisclosure provision or if it requires the complainant to make any affirmative statement that they were not in fact subject to unlawful discrimination. The law will also prohibit liquidated damages with respect to violations of a non-disparagement clause.

What Should New York Employers Do Now?

If enacted, the pending bills will further underscore New York's position as having some of the most protective laws against workplace harassment and discrimination. You must continue to take measures to ensure your workplaces are free from discrimination and harassment. Now is the time to shore up policies and training measures and affirm your commitment to a harassment-free workplace. Further, if these laws are enacted, you may need to revise your standard separation and settlement agreements. You should work with counsel to ensure your release agreements will remain valid and enforceable.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Conclusion

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting New York employers, so make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our New York City office.

Related People

Melissa (Osipoff) Camire
Partner
212.899.9965
Email

Service Focus

Employment Discrimination and Harassment

Related Offices

New York

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.