



Employers Will Likely Face New Litigation Challenges As New York Passes 'Adult Survivors Act'

Insights

6.08.22

New York State lawmakers have fiercely supported the #MeToo movement through codification of certain laws. Most recently, on May 24, Governor Kathy Hochul signed the Adult Survivors Act (ASA) into law, which provides survivors of sexual assault with a one-time opportunity to file civil lawsuits for their claims in New York that have already passed the statute of limitations period. A one-year window begins in November (six months from Governor Hochul's signing) for survivors of sexual assault to sue their alleged abusers – and potentially their employers – regardless of when the abuse occurred. The ASA applies to anyone who was age 18 or older when the sexual offense was committed, while an existing law, applies to child victims. Through prior legislation, New York extended the statute of limitations from 3 years to 20 years for adults filing civil lawsuits for a select number of sex crimes, but this was not applied to incidents that predate the passage of the law. Now, New York has followed the footsteps of its sister state, New Jersey, by applying a window of time that allows adult survivors to file a lawsuit, regardless of whether the statute of limitations has expired. You may be wondering how the ASA could impact your business. Although many questions remain, here is what you need to know to prepare for a potential uptick in litigation in November.

Increased Litigation Expected

Due to the recent passage of the federal law “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021” in February 2022, employers are prohibited from requiring employees to arbitrate disputes involving sexual harassment or sexual assault. This means that all employees subject to arbitration agreements have the right to choose whether to bring covered claims in arbitration or in court.

According to the New York Office of Court Administration, when the one-year lookback window for the Child Victims Act (CVA) opened in 2019, it resulted in more than 10,000 lawsuits being filed – and this number doesn't include those matters that were required to be arbitrated. Now that employees who are subject to arbitration agreements can choose to file claims of sexual assault publicly in court, claims under the ASA will likely generate as many or even more civil lawsuits than we saw under the CVA.

Interestingly, the ASA grants trial preference to covered claims and directs the Chief Administrator of the Courts to issue rules that enable these actions to be adjudicated in a timely manner. This

means that more rules will likely be on the way regarding how to expeditiously litigate sexual abuse claims in state court.

The ASA applies to approximately 20 crimes that are set forth in the New York Penal Law's sections on sex crimes ([Article 130](#)). Such crimes include forcible touching, sexual abuse, and rape.

What Does the ASA Mean for Employers?

The ASA allows employees to initiate civil lawsuits against not only the alleged abuser, but also the companies that employed them under a vicarious liability or negligence standard, for example, and even for incidents that might have occurred decades ago.

Importantly, you should review your company's document preservation procedures. A challenge in defending a lawsuit with no statute of limitations is that employers lose first-hand knowledge of the facts. For example, witnesses may leave the company and documents may have been lost or destroyed. Many companies retain documents for six years, which makes defending a lawsuit based on decades-old allegations extraordinarily difficult. To the extent hard copies of documents are archived in third-party warehouses or storage facilities, you should understand how to quickly retrieve these documents if your company is sued.

You should also determine whether your company has historical insurance policies, to understand potential coverage of claims, and immediately notify the insurance carriers if sued.

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