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NYC UPDATES “SEXUAL ORIENTATION” AND “GENDER” DEFINITIONS UNDER HUMAN RIGHTS LAW

Insights
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New York City employers will soon be required to expand existing protections against sexual orientation and gender discrimination due to an [amendment to the definitions of these terms under the New York City Human Rights Law](#) (“NYCHRL”). The broadened definitions take effect on May 10, 2018.

“SEXUAL ORIENTATION,” REDEFINED

The NYCHRL already [prohibits discrimination](#), harassment and retaliation on the basis of, among other things, gender and sexual orientation. The NYCHRL [currently defines “sexual orientation”](#) as “heterosexuality, homosexuality, or bisexuality.” Under the expansive new definition, “sexual orientation” will be defined as “an individual’s actual or perceived romantic, physical or sexual attraction to other persons, or lack thereof, on the basis of gender.” The definition recognizes there is a “continuum of sexual orientation” protected under the law, including, but not limited to, asexuality and pansexuality in addition to the already covered heterosexuality, homosexuality and bisexuality.

After this amendment takes effect, the protections of the NYCHRL based on an employee’s sexual orientation will go well beyond just hetero-, homo-, or bi- sexuality. The new definition of sexual orientation will impose essentially no limitations on how one must define sexual orientation as a protected class in New York. Asexual and pansexual employees will be expressly covered by the protections of

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the NYCHRL, as well as other individuals wherever they may fall within the “continuum of sexual orientation.”

“GENDER” DEFINITION EXPANDED

For purposes of the NYCHRL, “gender” is currently defined as “actual or perceived sex and shall also include a person’s gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.” The new, broader, definition will define gender as “actual or perceived sex, gender identity, and gender expression including a person’s actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth.”

NYC has already taken a broad view on the definition of gender, ahead of the curve of most other jurisdictions. You must continue to be cognizant that an employee’s “actual” gender—however he, she, or ze (a common gender-neutral pronoun) chooses to define it—will not limit the scope of a discrimination claim. Additionally, you may wish to re-familiarize yourself with the Commission on Human Rights’ previously issued [Legal Enforcement Guidance on Discrimination the Basis of Gender Identity or Expression](#), which gives great insight into how the City will enforce the NYCHRL’s protections as applied to gender, gender identity, and gender expression, and also provides best practices for employers to adopt.

CONCLUSION

Broadening the definitions of “sexual orientation” and “gender” expands the protections under the NYCHRL for employees that fall within these categories. Come May, you must be cognizant of the scope of the expanded definitions. You should consider updating your policies and practices to reflect the new definitions in your EEO statement and any other discrimination, harassment or retaliation policies in effect.

For more information about how this legislation could affect your workplace, contact any attorney in our [New York City office](#) at 212.899.9960, or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of specific city legislation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.