

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

MARCH 9, 2022

New York Legislature Passes Significant Amendments to Strengthen Sexual Harassment Protections for Employees

The New York legislature has passed significant legislation that would further expand sexual harassment protections for employees in New York. This suite of legislation is intended to ensure that all public and private employees are treated in a fair manner and have the necessary resources available to seek accountability from their employers. If signed by the governor, the legislation will ban “no-rehire” clauses in settlement agreements, extend the statute of limitations for workplace harassment and discrimination claims, explicitly extend applicability of the New York Human Rights Law (HRL) to public employees, provide protection from unlawful retaliation, create a confidential sexual harassment hotline and enact the Let Survivors Speak Act. Each provision is discussed in turn below.

Senate Bill [S.766](#) amends New York General Obligations Law to prohibit “no-rehire” clauses in settlement agreements for employees and independent contractors that have filed a claim against their employer. Such clauses bar an aggrieved employee or contractor from ever applying or working for the defendant employer again. The legislation renders settlement agreements unenforceable if they contain a no-rehire clause. The legislation, however, would not prohibit any termination of employment mutually agreed upon as part of a settlement, nor would it automatically require an employer to rehire an employee with whom it had previously settled a case against. This bill was passed by the Senate on March 1, 2022 and has been delivered to the Assembly. If passed by the Assembly and signed by the governor, this legislation will take effect 60 days from the date of signature.

Senate Bill [S.849A](#) amends the Civil Practice Law and Rules by extending the statute of limitations for actions based upon unlawful discriminatory practices in employment from three years to six years. This would double the current amount of time an individual has to file a lawsuit in court alleging unlawful discrimination, including discrimination in the form of harassment. The bill was passed by the Senate on March 1, 2022 and has been delivered to the Assembly. If passed by the Assembly and signed by the governor, this legislation will take effect 60 days from the date of signature.

Along the same lines, Senate Bill [S.566A](#) amends the HRL by extending the statute of limitations for filing complaints related to alleged unlawful discriminatory practices with the New York State Division of Human Rights (DHR) from one year to three years following the alleged discriminatory practices. The three-year statute of limitations is consistent with the current law for unlawful discriminatory practices that constitute sexual harassment in employment. Currently, the law provides a three-year statute of limitations for claims of sexual harassment to be brought before the DHR. As a result of the amendment, all unlawful discrimination claims could be brought before the DHR within three years. The bill was passed by the Senate on March 1, 2022 and has been delivered to the Assembly. If passed by the Assembly and signed by the governor, this legislation will take effect 90 days from the date of signature.

Senate Bill [S.3395A](#) amends the definition of “employer” under the HRL. The definition would now explicitly include the State and all public employers as employers subject to the HRL. The legislation further clarifies that the State shall be considered the direct employer of elected and appointed officials and their staff for the purpose of the HRL and extends this provision to localities as well. The bill was passed by the Assembly on Feb. 28, 2022 and passed by the Senate on March 1, 2022. If signed by the governor, this legislation will take effect immediately and be deemed to have been in full force and effect as of the effective date of Chapter 161 of the laws of 2019.

Senate Bill [S.5870](#), amends the HRL to include the release of an employee’s personnel file to possibly constitute “retaliation” prohibited under law, except in cases where such release is necessary to respond to a complaint, civil or criminal action, or judicial or administrative proceeding. The legislation clarifies that prohibited retaliation includes disclosing an employee’s personnel files because the employee opposed any practices forbidden under the HRL or because the employee filed a complaint, testified or assisted in any proceeding. The legislation also provides additional recourse for victims of unlawful retaliation by allowing them to file a complaint with the Attorney General, who may then commence an action in state Supreme Court if the employer is found to be in violation of Section 296(7) of the HRL. The bill was passed by the Senate on March 1, 2022 and passed by the Assembly on March 2, 2022. If signed by the governor, this legislation will take effect immediately.

Senate Bill [S.738](#), the Let Survivors Speak Act, amends New York General Obligations Law, in relation to violations of non-disclosure agreements (NDA) in certain settlement agreements involving sexual harassment and discrimination. NDAs are commonly included in settlement agreements involving workplace disputes, including issues such as sexual harassment and discrimination claims. Such agreements also frequently include provisions that require a complainant to pay liquidated damages if they violate the agreement by disclosing information covered by the NDA provision. The Let Survivors Speak Act prohibits any settlement or other resolution of a claim involving sexual harassment or any other form of unlawful discrimination from including any term or condition that requires a complainant to pay the defendant liquidated damages in the event the plaintiff violates an NDA. The Let Survivors Speak Act was passed by the Senate on March 1, 2022 and has been delivered to the Assembly. If passed by the Assembly and signed by the governor, this legislation will take effect immediately and will apply to agreements entered on or after that date.

Senate Bill [S.812A](#) amends the HRL to establish a toll-free confidential hot line for complainants of workplace sexual harassment. The legislation requires the DHR to establish a hotline intended to connect complainants with experienced pro-bono attorneys who will help make them aware of their legal rights and advise them on the specifics of their individual cases. The legislation provides that the hotline is to be accessible, at a minimum, Monday through Friday from 9 a.m. to 5 p.m. The bill was passed by the Assembly on March 1, 2022 and passed by the Senate on March 7, 2022. If signed by the governor, this legislation will take effect 120 days from the date of signature.

In light of all the above referenced changes reflected in this legislative package, including the longer statute of limitations to bring claims of workplace harassment and discrimination before the DHR and in State Supreme Court, it can be anticipated that employers may see an increase in the number of complaints regarding sexual harassment and discrimination in the workplace. Employers should

always consult with legal counsel to review settlement agreements, especially given the recent changes in the law governing frequently used provisions. We will continue to monitor the status of these bills as they make their way through the legislature.

If you have any questions about the information presented in this memo, please contact [Gianelle M. Duby](#), any attorney in Bond's [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.

