

## New York Legislature Passes Significant Amendments to the New York Human Rights Law

On June 19, 2019, the New York State Assembly and Senate passed [legislation](#) that makes sweeping changes to the New York Human Rights Law. This legislation will have a significant impact on the litigation of discrimination and harassment claims filed with the Division of Human Rights and in court. It is expected that Governor Cuomo will sign the legislation soon. The legislation does not apply retroactively, so only future claims under the Human Rights Law will be affected.

Perhaps most significantly, the legislation broadens the legal definition of “harassment.” Under current law, developed through court decisions, workplace conduct based on a protected characteristic does not constitute actionable harassment unless it is “severe or pervasive.” Under the new legislation, it is an unlawful employment practice for an employer to subject any individual to harassment based on a protected characteristic “regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims.” The new legislation provides that an employer can assert an affirmative defense that “the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic would consider petty slights or trivial inconveniences.” By eliminating the “severe or pervasive” standard and expanding the definition of harassment to include any type of conduct based on a protected characteristic that rises above the level of “petty slights or trivial inconveniences,” the legislature has lowered the bar considerably for employees alleging workplace harassment. This expanded definition of “harassment” will take effect 60 days after the legislation is signed by Governor Cuomo.

It is important to emphasize that this expanded definition of “harassment” is not limited only to sexual harassment. It applies to harassment based on all protected characteristics: age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, and domestic violence victim status.

The new legislation also weakens an affirmative defense that employers currently have available to them in defending against harassment claims. Under current law, also developed through court decisions, an employer is generally not liable for hostile work environment harassment if the employer can demonstrate that: (1) it took reasonable care to prevent and correct harassing conduct (e.g., by promulgating an anti-harassment policy and complaint procedure, training employees regarding the policy and procedure, promptly investigating complaints, and taking appropriate corrective action); and (2) the employee unreasonably failed to take advantage of the employer’s preventive or corrective opportunities (e.g., by failing to report alleged harassment pursuant to the employer’s procedure). However, the new legislation specifically states: “The fact that such individual did not make a complaint about the harassment to such employer . . . shall not be determinative of whether such employer . . . shall be liable.” This provision will also take effect 60 days after the legislation is signed by Governor Cuomo.

The new legislation also expands the definition of “employer” under the Human Rights Law by eliminating the requirement that an entity have at least four employees in order to be covered by the law. Under the new legislation, all employers are covered by the law regardless of how many employees they have. This expanded definition of “employer” will take effect 180 days after the legislation is signed by Governor Cuomo.

The new legislation also expands certain prohibitions that were previously applicable only to sexual harassment claims. For example, the new legislation makes it unlawful to insert a non-disclosure provision into a settlement agreement in order to resolve any type of employment discrimination or harassment claim, unless the inclusion of the non-disclosure provision is the complainant's preference. Mandatory arbitration clauses, which were prohibited last year for sexual harassment claims, will also now be prohibited for all types of employment discrimination and harassment claims. It will also now be an unlawful discriminatory practice for an employer to permit any type of discrimination against non-employees in its workplace (contractors, subcontractors, vendors, consultants, or any other individuals providing services pursuant to a contract in the workplace) based on any protected characteristic. These new prohibitions will take effect 60 days after the legislation is signed by Governor Cuomo.

The new legislation also increases the potential financial penalties applicable to employment discrimination claims. Under the amendments, a prevailing complainant in an employment discrimination case against a private employer will be eligible to be awarded punitive damages. In addition, under the new legislation, a prevailing party in an employment discrimination case can recover reasonable attorneys' fees. Although the assessment of attorneys' fees against an employer that loses an employment discrimination case appears to be automatic, a prevailing employer can only recover attorneys' fees from a losing complainant if the employer can show that the action or proceeding filed by the complainant was frivolous. These increased financial penalties will take effect 60 days after the legislation is signed by Governor Cuomo.

Finally, for sexual harassment claims only, the new legislation expands the statute of limitations from one year to three years for filing a complaint with the Division of Human Rights. The statute of limitations for filing employment discrimination or harassment claims directly with a court is currently three years, but complainants will also now be able to take advantage of the administrative complaint process for sexual harassment claims for three years after the alleged harassment occurred. This new statute of limitations for filing administrative complaints of sexual harassment will take effect one year after the legislation is signed by Governor Cuomo.

The impact of these changes will be profound, and will almost certainly lead to an increase in the number of workplace harassment complaints that are filed. It is more important than ever that employers comply with their obligation to conduct training sessions for their employees regarding appropriate workplace conduct at least annually. Bond attorneys are available to conduct in-person training sessions prior to the October 9 deadline for any employer that has not yet conducted the training sessions. In addition, Bond's labor and employment practice has developed an [online training program](#) to ensure compliance with the new requirements.

If you have any questions about this Information Memo, please contact [Theresa E. Rusnak](#), [Subhash Viswanathan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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