

## New York Legislation Redefines Harassment Standard

On August 12, 2019, Governor Cuomo signed legislation making sweeping changes to the New York Human Rights Law (“NYHRL”). Although we previously posted summaries of the [significant amendments](#) to the Human Rights Law and their [potential impact](#) on employers, we take this opportunity to explain how those amendments pose challenges for New York colleges and universities.

The new NYHRL legislation presents two immediate challenges for New York colleges and universities:

### **Colleges and universities should carefully review their institutional policies**

The NYHRL legislation broadens the definition of “harassment” by eliminating the “severe or pervasive” standard used in federal law. Instead, the NYHRL amendments expand the definition of “harassment” to include any type of conduct based on a protected characteristic that rises above “petty slights or trivial inconveniences.” It is important to emphasize that this expanded NYHRL definition of harassment applies not only to sexual harassment, but also to harassment based on these 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 expanded NYHRL definition of harassment will take effect on October 11, 2019.

Institutional policies that incorporate the Title IX standard of sexual harassment, which still adheres to the “severe and pervasive” definition, are no longer broad enough to encompass less serious conduct that may now be actionable under the NYHRL. Higher education institutions should carefully review their institutional policies, particularly their Title IX policies, to ensure that these differing definitions are taken into account and accurately stated.

### **Colleges and universities should carefully review their workplace policies**

The NYHRL legislation includes other important changes that impact colleges, universities, and their employees.

Under the new NYHRL legislation, an employer may still be found liable for alleged harassment even if the employee did not report the alleged harassment to the employer prior to filing a complaint under the Human Rights Law. This provision will take effect on October 11, 2019.

Additionally, certain prohibitions that were previously applicable only to sexual harassment claims now apply to harassment claims where the harassment was based on any protected characteristic. It is now 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 such a provision is the complainant’s preference. Furthermore, the new NYHRL changes prohibit mandatory arbitration clauses for all types of employment discrimination and harassment claims, although a federal court in New York has [recently held](#) that the Federal Arbitration Act preempts this particular provision. Finally, it is also 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. Each of these new prohibitions takes

effect on October 11, 2019. Colleges and universities should update their workplace policies accordingly, and review their current settlement practices to ensure compliance with the new law.

The impact of the NYHRL changes will be profound, and will almost certainly lead to an increase in the number of harassment complaints that are filed. It is more important now than ever for colleges and universities to conduct annual training sessions for their employees regarding appropriate workplace conduct and for employment and institutional harassment policies to be modified to include the broadened definition of harassment. Bond attorneys are available to conduct in-person trainings and review employee and institutional policies for compliance with the NYHRL. Bond's labor and employment practice has also developed an online training program that is compliant with all aspects of the Human Rights Law, including the new legal standard for harassment claims. It is also critical that colleges and universities review their institutional and workplace complaint investigation procedures for compliance with the new law.

Our attorneys in the [Higher Education Law Practice Group](#) are available to assist with these matters at any time.



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