

2024

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Introduction



Kristen E. Smith

Member

ksmith@bsk.com

Syracuse, NY

TODAY'S AGENDA

Kristen Smith – (12:00 PM-12:05 PM)

- Introduction / Agenda

Kristin Warner – (12:05 PM-12:15 PM)

- Property Tax Exemptions for Seniors and Persons with Disabilities and Limited Incomes

Michael Collins – (12:15 PM-12:30 PM)

- Problems With Pay Disparities

Delaney Knapp – (12:30 PM-12:40 PM)

- Amendment to Not-for-Profit Corporation Law: Classification of Directors

Property Tax Exemptions for Seniors and Persons with Disabilities and Limited Incomes



Kristin Warner

Associate

kwarner@bsk.com

Rochester, NY

Changes to Sections 459-c and 467 of the Real Property Tax Law

- In Chapter 59 of the Laws of 2023, the New York State Legislature amended three aspects of the senior citizens exemption (Real Property Tax Law §467) and the exemption for persons with disabilities and limited incomes (RPTL §459-c).
 1. They redefined what is considered income for purposes of the exemptions;
 2. They clarified which income tax year applies when determining income eligibility; and
 3. They replaced gender-specific language with gender-neutral language (i.e., they replaced “husband and wife” to “married couple.”)

Changes to Income Definition

- Beginning with the 2024 assessment rolls, the starting point for the new income definition will be the Federal Adjusted Gross Income (FAGI) reported on the applicant's income tax return.
- This new definition is similar (but not identical) to that of the New York State School Tax Relief (STAR) program.
- While the base definition is the FAGI, there are five adjustments, three of which are optional at the local level.

Optional Adjustments

1. Deduction of Taxable IRA Distributions (Local Option: Not to Deduct);
2. Addition of Social Security Benefits not included in FAGI (Local Option: Not to Add);
3. Deduction of Medical and Prescription Drug Expenses Not Covered by Insurance (Local Option: Option to Deduct [same as the current definition]);
4. Addition of Tax Exempt Interest and Dividends (Local Option: None);
5. Addition of Loss Limitations (Local Option: None)

Income Tax Year Changes

- When determining eligibility for the senior exemption and the exemption for persons with disabilities and limited incomes, the applicable income tax year depends on when the taxable status date (TSD) occurs.
- If the municipality's TSD is before April 15, the second-latest calendar year should be used.
- If the municipality's TSD is on or after April 15, the latest calendar year should be used.

Problems With Pay Disparities



Michael P. Collins

Member

mcollins@bsk.com

White Plains, NY

The Equal Pay Act's “Factor Other Than Sex” Defense; 29 U.S.C. § 206(d)(1)

- The EPA prohibits pay discrimination on the basis of sex. It provides that [n]o employer . . . shall discriminate . . . between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which [it] pays wages to employees of the opposite sex . . . for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.
- It also sets forth four exceptions to this prohibition, for pay disparities resulting from:
 - (i) a seniority system;
 - (ii) a merit system;
 - (iii) a system which measures earnings by quantity or quality of production; or
 - (iv) a differential based on *any other factor other than sex.*
- Each exception operates as an affirmative defense. The meaning of the fourth exception—“a differential based on *any other factor other than sex,*” which is often truncated to “factor other than sex” — was the focus of the court’s inquiry in the *Eisenhauer* case.

What does “any other factor other than sex” mean?

- That phrase seems pretty clear. But significant disagreement had arisen among federal courts in different circuits about the proper interpretation of the phrase. The crux of the disagreement was over the words “any other factor” and whether the “other factor” must be job related.
- The Second Circuit, relying on the “plain meaning” of the statutory text, found that “factor other than sex” did not have to be job related.

What does “any other factor other than sex” mean?

- Basic principles of statutory interpretation demonstrate that the term “any other factor other than sex” refers to any factor except for those based on sex. The term has sowed needless uncertainty and confusion among our sister circuits. Its meaning, we think, is about as simple as it sounds.
- Upon reflection, we conclude that the meaning of “any other factor other than sex” is unambiguous: We begin with the first half of the term “any other factor other than sex.” “Any” means “every”; its meaning is “expansive” rather than restrictive. “Other” means “additional.” And read in context, “any other factor” refers to “every” “additional” factor, beyond a seniority, merit, and productivity system, “other than sex.”

What does “any other factor other than sex” mean?

- The meaning of the second half of the term “any other factor other than sex” is also plain. “Other than” means “except for.” Together, then, “any other factor other than sex” means “every” “additional” factor “except for” those based (intentionally or unintentionally) on sex. Accordingly, to establish the EPA’s “factor other than sex” defense, a defendant must prove that the pay disparity in question results from a differential based on any factor except for sex.

Prima Facie Case under EPA and the Affirmative Defense

- A plaintiff must establish a *prima facie* EPA case by demonstrating that “i) the employer pays different wages to employees of the opposite sex; ii) the employees perform equal work on jobs requiring equal skill, effort, and responsibility; and iii) the jobs are performed under similar working conditions.” If the plaintiff has established a *prima facie* case, the burden of persuasion shifts to the employer to show that one of the EPA’s affirmative defenses justifies the pay disparity.
- The court assumed for purposes of its analysis in *Eisenhauer* that the plaintiff had established a *prima facie* case under the EPA.

Prima Facie Case under EPA and the Affirmative Defense

- The court found that the Culinary Institute had shown there was no “genuine factual dispute” because the pay disparity at issue was based on a factor other than sex.
- The pay disparity resulted entirely from (1) disparate starting salaries and (2) the formulaic application of the compensation plan, which it also applied uniformly to other faculty members, male and female. The terms of the compensation plan are sex neutral. In addition, the Culinary Institute provided undisputed explanations for its fixed dollar pay increases: The raises recognized the skill, experience, or added value associated with additional degrees or academic promotions. The Culinary Institute’s justification produces neither a whiff of pretext nor anything else to raise a jury’s doubt or suspicion.

New York Labor Law's §194 (1) “Factor Other Than Sex” Or “Status” Defense

- The New York statute governing equal pay was essentially the same as the EPA until 2016. At that point, the State legislature amended the fourth exception (affirmative defense) from “any other factor other than sex” to “a *bona fide* factor other than sex,” and later in 2019, it further amended it to “a *bona fide* factor other than status within one or more protected class or classes.”
- Neither *Eisenhauer* nor the *Culinary Institute* identified or acknowledged the difference in the two statutes before the District Court and so the District Court understandably overlooked it. The Second Circuit held that the District Court should have assessed Eisenhauer’s § 194(1) claim as altogether distinct from her EPA claim in regard to the Culinary Institute’s affirmative defense.
- The Court found that whether Culinary Institute’s compensation plan was “job related” as required by the New York statute was an issue to be considered anew by the district court and so it remanded the case to that court to make that determination.

Amendment to Not-for-Profit Corporation Law: Classification of Directors



Delaney M. Knapp

Associate

dknapp@bsk.com

Albany, NY

- Incorporation
 - Single class of directors
 - Increase number of directors over time
- Maturation
 - Classifying the board
 - Staggering the terms of class elections
 - Enhance continuity of responsibility
 - Succession planning
 - Institutional knowledge

S.5806/A.6940 Amendment to NPCL Section 704(a)

- (a) **The certificate of incorporation or a by-law** may provide that directors elected or appointed at large shall be divided into either two, three, four or five classes for the purpose of staggering their terms of office and that all or some of the directors elected or appointed otherwise than at large shall be divided into the same or a different number of classes, not exceeding five, for the same purpose . . .
- Signed by Governor on October 25, 2023

Your Questions



Kristen E. Smith

Member

ksmith@bsk.com

Syracuse, NY

Property Tax Exemptions for Seniors and Persons with Disabilities and Limited Incomes

Kristin Warner, kwarn@bsk.com

Problems With Pay Disparities

Michael Collins, mcollins@bsk.com

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Delaney Knapp, dknapp@bsk.com

New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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It is not to be considered as legal advice.
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