

January 21, 2016

Caregivers Now Have Protected Status Under New York City Human Rights Law

On January 5, 2016, New York Mayor de Blasio signed into law an amendment to the New York City Human Rights Law (“NYCHRL”) prohibiting discrimination against employees and job seekers with caregiving responsibilities. The amended law takes effect on May 4, 2016, and will be enforced by the New York City Commission on Human Rights (the “CHR”).

Under the amendment, employers may not refuse to hire a job applicant, and may not terminate or otherwise discriminate against an employee, based on his or her actual or perceived status as a “caregiver.” Advertisements or inquiries as part of the hiring process that express or imply any employment limitations or specifications based on an individual’s caregiver status are also prohibited. The new law protects those individuals who provide “direct and ongoing” care for:

- 1) A minor child; or
- 2) An individual with a disability who is either related to the employee or a person who resides in the employee’s household and relies on the employee for medical care or to meet the needs of daily living.

Although the law does not define “ongoing” care, employers should be mindful that the NYCHRL’s definition of “disability” (“any physical, medical, mental or psychological impairment, or a history or record of such impairment”) is framed broadly and may be construed to cover more

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transitory and less severe conditions than its state and federal counterparts.

The NYCHRL's caregiver protections extend to employees providing care to children (biological, foster, and adopted children, as well as wards or children of a caregiver standing in loco parentis), siblings (half-siblings, step-siblings, or adopted siblings), spouses, domestic partners, parents, children or parents of an employee's domestic partner or spouse, grandparents, and grandchildren. The CHR may designate other familial relationships for coverage under the law and may also adopt additional rules regarding the interpretation and implementation of the law's new caregiver protections.

The text of the amendment does not require employers to make reasonable accommodations for an employee's caregiving responsibilities, and such a provision was removed from an earlier draft of the bill. Unless there are further legal developments, we do not interpret the amendment to require employers to grant employees who are caregivers accommodations such as telework arrangements or flexible scheduling.

In anticipation of the amendment's effective date, employers should review their policies and practices to ensure compliance with the new law. Prudent employers already avoid unnecessary inquiries into caregiver status, but may wish to consider training managers and supervisors on the NYCHRL's new caregiver protections to ensure that employees' caregiver status is not improperly considered in workplace decision-making, such as in the allocation of desirable work assignments. Employers who violate the NYCHRL, including its new caregiver protections, may be liable for back pay, front pay, punitive damages, attorneys' fees, and civil penalties. If you have any questions, or would like more information about the amendments to the NYCHRL, please contact Nick Bauer at (212) 758-7793 or any other attorney at the Firm.

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