

September 5, 2019

New York State Expands Protections for Domestic Violence Victims

On August 20, 2019, Governor Andrew Cuomo signed legislation that will expand existing legal protections for victims of domestic violence by creating new reasonable accommodation obligations under the New York State Human Rights Law (“NYSHRL”), effective November 18, 2019.

Although the New York Penal Code currently requires employers to provide unpaid leave to victims of domestic violence in connection with their attendance at certain legal proceedings, and some employers already have obligations to provide reasonable accommodations and/or paid leave to victims under their local human rights and sick leave laws (e.g., in New York City and Westchester County), the NYSHRL has not, until now, specifically required employers to provide accommodations for victims of domestic violence.

Expanding Covered Individuals

The amendments to the law will expand the class of individuals who are covered by the NYSHRL’s protections for victims of domestic violence, defining the term by reference to the Social Services Law (rather than the law’s current reference to the Family Court Act). For example, the current definition of “victim of domestic violence” refers to a specific list of criminal offenses, but an individual may qualify as a victim of domestic violence under the Social Services Law if he or she has experienced *any* penal offense, provided that the law’s other requirements are met (e.g., that the perpetrator be a “family or household member”).

Reasonable Accommodation Requirements

Absent undue hardship, employers will be required to provide “reasonable” leave to victims of domestic violence who need time off for certain related purposes, including:

- Seeking medical attention for injuries;
- Obtaining services from a shelter, program, or rape crisis center;
- Obtaining psychological counseling;

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- Participating in safety planning, including relocation;
- Obtaining legal services or participating in related legal proceedings; or
- Seeking medical attention or obtaining psychological counselling for children who are victims (provided that the employee is not the perpetrator).

Employees whose need for time off is foreseeable must give their employer “reasonable” advance notice, where feasible. Employers may require employees who cannot feasibly give advance notice to provide certification of their need for leave within a reasonable time after the absence. Acceptable forms of certification are defined by the statute, and include police reports, court orders, and documentation from care providers, among others. Employers may also require that employees use applicable paid time off when taking leave for these purposes (unless otherwise provided by an existing policy or collective bargaining agreement), before taking unpaid leave as an accommodation. Employees are further entitled to continue their employer-provided health insurance coverage during any period of leave.

The amendments to the law also adopt existing guidance from the New York State Division of Human Rights, expressly indicating that physical or mental disabilities resulting from domestic violence must be treated the same as any other disability for purposes of the NYSHRL’s disability accommodation and non-discrimination protections.

Discriminatory Advertising

Employers will be expressly prohibited from printing or circulating statements, advertisements, publications, or job applications that directly or indirectly express any limitations, specification, or discrimination based on an individual’s status as a victim of domestic violence (excluding inquiries or information obtained to provide assistance or reasonable accommodations to victims of domestic violence). Unlike existing state law prohibitions on discriminatory advertising with respect to other protected characteristics, employers are not permitted to claim that such advertisements or job applications are based on a “bona fide occupational qualification”.

Confidentiality Obligations

Finally, the amended NYSHRL will expressly require employers to keep any information regarding an employee’s status as a victim of domestic violence confidential, to the extent permitted by law.

Although the amendments to the NYSHRL do not expressly require employers to provide written notice of the reasonable accommodations that may be available to victims of domestic violence, employers should consider updating their policies to advise victims of domestic violence of the accommodations available to them, and ensure that managers and supervisors are aware of their obligations when receiving and responding to accommodation requests. In addition, although state law will not require employers to provide reasonable accommodations other than time away from work, employers in New York City and Westchester County should be mindful that their obligations to victims of domestic violence are broader under local law.

If you have any questions or would like more detailed information about these amendments to the NYSHRL, please contact Nick Bauer or any other attorney at the Firm at (212) 758-7600.

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