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NEW YORK STATE STRENGTHENS EQUAL PAY, SEXUAL HARASSMENT LAWS

New legislation expected to be signed by Governor Cuomo in the coming days will expand on current pay equality and anti-harassment laws.

New York State Adopts Expanded Pay Equity Standards

The New York State Senate and Assembly have passed two pay equity bills this month; one will expand pay protections by requiring employers to provide employees with equal pay for "substantially similar" work across all protected categories under the New York State Human Rights Law, while the other will prohibit employers from orally or in writing requesting or relying on the wage or salary history of an applicant in determining whether to offer employment or the rate of compensation.

The New York Equal Pay Act provides that no employee shall be paid at a lesser wage rate than an employee of the opposite sex in the same establishment for equal work on a job requiring equal skill, effort and responsibility, and performed under similar working conditions. The new bill extends the protections of the NYEPA to all protected classes under the New York State Human Rights Law, and broadens the requirement of "equal work" to "substantially similar work, when viewed as a composite of skill, effort and responsibility, and performed under similar working conditions."

New legislation also bans inquiries into an applicant's salary history. The legislation parallels the New York City law that bans salary inquiries, but the state law does not prohibit a search of publicly available records or reports for the purpose of obtaining an applicant's salary history. Unlike the New York City law, however, the state legislation will apply both to job applicants not currently employed by the employer, and also to the employer's current employees seeking a new position within the company.

New York Revisits Anti-Harassment Laws

Last week, New York lawmakers passed legislation expanding the definition of offensive conduct for employees claiming sexual harassment claims against employers. Different portions of the law will come into force immediately, within 60 days, after 6 months, or a year after the statute takes effect. The long-standing "severe and pervasive" standard used in Title VII claims will no longer apply to new claims brought under the New York State Human Rights Law. The removal of this standard will conform New York State and New York City law: conduct based on someone's protected status that a reasonable person would consider beyond the level of "petty slights or trivial inconveniences" would be actionable.   The bill also eliminates the "Farragher-Ellerth" defense, which had insulated an employer from liability for an employee's actions if the plaintiff-employee failed to follow an internal complaint procedure.

The legislation also extends the statute of limitations in sexual harassment claims from one year to three years from the date of alleged discriminatory practice. This follows the change made under New York City law last year. Employers will also be required to present employees upon hire with the terms of their sexual harassment policy, and the content of their sexual harassment training, in English and also the employee's primary language.

Finally, the legislation will extends New York's prohibition on non-disclosure agreements (NDA) and mandatory arbitration clauses in sexual harassment settlements, first adopted in 2018, to apply to all claims of discrimination and harassment.

If you have any questions or would like more detailed information about these decisions, please contact Daniel J. LaRose at (212) 758-7754 or any other attorney at the firm.