



New York State Expands its Discrimination and Harassment Protections

In its latest development, the New York State Legislature expanded its signature legislation addressing [sexual harassment training and prevention](#) and passed a new [bill](#) this year that provides greater protections under the New York State Human Rights Law (NYSHRL). The Legislature's changes to the law impact all discrimination and harassment claims under the NYSHRL, and Governor Andrew Cuomo is expected to sign the bill shortly. Notably, the law closely tracks the New York City Human Rights Law (NYCHRL).

Training Deadline

On the training front, employers were to comply with the October 9, 2019 sexual harassment prevention [training deadline and requirements](#). Employers were required to train all current employees by this date, and new employees were to be trained as quickly as possible once their employment began. Relatedly, the Legislature's new bill requires employers to provide a notice that contains a copy of the employer's sexual harassment prevention policy and the information presented at the employer's sexual harassment training program at the time of an employee's hire and when the employee receives annual training. Notices must be provided in English and in the primary language identified by each employee. The State's notice provision will go into effect immediately upon enactment.

New Standard for Proving Discriminatory Harassment

The Legislature's new law modifies the legal standard for harassment claims across all prohibited bases and establishes a lower standard of proof. Currently, harassment claims under the NYSHRL are subject to a 'severe or pervasive' standard – that is, the same standard of proof required under federal law. With the passage of this new bill, plaintiffs need demonstrate only that harassment, including retaliatory harassment, subjected them to "inferior terms, conditions, or privileges of employment." This lower standard appears similar to the NYCHRL's "treated less well" standard; however, the Legislature's bill explicitly provides that an employee need not identify another individual to whom the employee's treatment must be compared in proving his or her harassment claim. This provision becomes effective 60 days after the new bill becomes law.

Elimination of the Faragher-Ellerth Affirmative Defense

Mirroring the NYCHRL, the State's new bill eliminates the well-known Faragher-Ellerth affirmative defense whereby an employer may avoid liability by showing that: (1) it attempted to prevent and correct harassing conduct; and (2) the employee unreasonably failed to take advantage of the employer's preventative or corrective opportunities (such as internal complaint procedures).

In its place, the bill provides an identical affirmative defense to the NYCHRL if an employer can demonstrate that the alleged harassment “does not rise above the level of what a reasonable victim of discrimination would consider petty slights or trivial inconveniences.” This change to the NYSHRL’s affirmative defense will take effect 60 days after the new bill is signed.

Longer Statute of Limitations for NYS Sexual Harassment Claims

Identical to the NYCHRL, the State’s bill impacts the viability of harassment claims brought by employees by extending the statute of limitations period for filing state claims of sexual harassment with the New York State Division of Human Rights (NYSDHR) from one year to three years. This provision will take effect one year after the bill is signed.

Recovery of Punitive Damages and Attorney’s Fees

Finally, the State’s bill now provides employees who prevail on their claims of discrimination against private employers in court or before the NYSDHR the ability to recover punitive damages and reasonable attorney’s fees. Currently, the NYSHRL does not authorize punitive damages and allows recovery of attorney’s fees only for gender-based discrimination claims.

While most of these changes will not affect the way in which companies operate or manage their employees, these amendments raise the stakes for companies with respect to harassment claims. Accordingly, New York employers should take note of the breadth of changes created by the Legislature’s new law, and review and update their policies as needed.

If you have questions about this law, please contact **Blythe E. Lovinger** +1 (212) 407-7770, **Jonathan A. Wexler** +1 (212) 407-7732, **Monique E. Chase** +1 (212) 407-7774 or any other Vedder Price attorney with whom you have worked.



Blythe E. Lovinger



Jonathan A. Wexler



Monique E. Chase