

EMPLOYER ALERT: Governor Hochul Ushers in Sweeping Changes to Workplace Discrimination, Harassment, and Retaliation Laws

Recently, there has been a flurry of New York State legislation aimed at combatting workplace harassment, discrimination, and retaliation. Several bills were swiftly approved by the State legislature and signed into law by Governor Kathy Hochul, while others remain pending, having thus far been approved by the N.Y.S. Senate. It is important that employers familiarize themselves with these changes, as they could drastically impact the manner in which employers must approach claims of discrimination, harassment and retaliation in the workplace. Provided below is a summary of each bill and its current status.

Bills That Have Been Signed Into Law By Governor Hochul:

- **Expanded Definition of Retaliation (S5870):** The definition of “retaliation” under the New York State Human Rights Law (“NYSHRL”) has been expanded. Under the law, an employer cannot release an employee’s personnel file as a form of retaliation against claims of sexual harassment. An employer is prohibited from “disclosing an employee’s personnel file because he or she has opposed any practices forbidden under [the NYSHRL] or because he or she has filed a complaint, testified or assisted in any proceeding under [the NYSHRL].” The only exception to this prohibition is where the personnel file is disclosed in the course of an investigation or in connection with any civil or criminal action or other judicial or administrative proceeding as permitted by applicable law.

The law further provides that the New York Attorney General may commence an action to either address or prevent any violation of the anti-retaliation provision under the NYSHRL. The law went into effect on March 16, 2022.

- **Sexual Harassment Hotline (S812A):** This law establishes a toll-free confidential hotline to address complaints of workplace sexual harassment. This hotline will be operated by the New York State Division of Human Rights (“NYSDHR”). The NYSDHR will recruit attorneys to provide pro bono assistance to individuals with sexual harassment complaints. Employers should consider revising their employee handbooks to include information about the hotline in materials they provide to their employees. The State will likely issue further guidance on this new law in the coming months.

This law is slated to go into effect on July 14, 2022.

- **Elected Officials Are Held Accountable (S.3395B):** The third law which also went into effect last month, expanded the scope of the New York State Human Rights Law to hold New York’s elected officials accountable for their actions in response to sexual harassment complaints. Individuals may now file complaints of sexual harassment against elected officials in any city or town within the State of New York.

Bills That Have Been Approved by the N.Y.S. Senate:[1]

- **Limitations on Settlement and Separation Agreements (S738):** This bill provides that any provision which releases a claim of discrimination, harassment, or retaliation will be deemed unenforceable if:

1. The complainant is required to pay liquidated damages for a violation of a non-disclosure or non-disparagement provision.
2. The complainant is required to forfeit all or part of the consideration of the agreement for a violation of a non-disclosure or non-disparagement provision.
3. The release contains or requires any affirmative statement, assertion, or disclaimer by the complainant that he or she was not subject to unlawful discrimination, harassment, or retaliation.

In addition, the bill would amend the N.Y. General Obligations Law provision which provides that a complainant must consider a confidentiality or non-disclosure provision that relates to his or her discrimination claim for a full 21-day period. If this bill is enacted, a complainant would be entitled to "up to twenty-one days" to consider such confidentiality or non-disclosure provision, meaning a complainant can choose to waive the 21-day period by signing the agreement sooner. However, the complainant would still be entitled to revoke the agreement within seven days of his or her execution.

- "No Rehire" Clauses (S766): Under this bill, the release of any claim will be deemed unenforceable if the agreement contains a provision prohibiting an employee or independent contractor from applying, accepting, or engaging in future employment with the employer (or any related entity). If a release is deemed unenforceable under this provision, the employer remains obligated to comply with its obligations under the settlement agreement (including payment of the settlement proceeds). However, the bill provides that this provision shall not prohibit an employer from agreeing to terminate an existing employment relationship.
- Extension of the Statute of Limitations:

1. S849A: The statute of limitations for claims based on unlawful discriminatory practices would be extended from three years to six years.
2. S566A: The deadline to report any claim of unlawful discrimination to the NYSDHR would be extended from one year to three years.

[1] To be enacted, these bills would need to be approved by the N.Y.S. Assembly and then signed into law by Governor Hochul.

KD IS HERE TO HELP

The experienced Labor and Employment attorneys at Kaufman, Dolowich & Voluck are available to address any questions you may have regarding the above measures. Should you have any questions or need any assistance in revising your employment-related documents to comply with any changes to the law, please contact Keith J. Gutstein, Esq. (KGutstein@kaufmandolowich.com), Rashmee R. Sinha, Esq. (RSinha@kaufmandolowich.com), Edward H. Grimmett, E. (EGrimmett@kaufmandolowich.com) or Victoria E. Massimino, Esq. (VMassimino@kaufmandolowich.com) by email.