

## **HNRK CLIENT ALERT: NEW YORK CITY AND STATE LAW CHANGES IMPACTING ALL NEW YORK EMPLOYERS**

Recent and upcoming sweeping, employee-friendly changes to New York State and City employment laws affect ALL employers regardless of size. These changes relate to:

- An employer's ability to require employees to enter in nondisclosure or arbitration agreements;
- Employment discrimination
- New categories that are protected from discrimination and other expanded protections;
- Changes to compensation and hiring practices;
- Adjustments to required time off;
- Insurance obligations;
- Data privacy; and
- Expanded application of other laws.

This Client Alert highlights many of these changes.

### *Nondisclosure and Arbitration Agreements with Employees*

- Employers are now prohibited from requiring employees to enter into nondisclosure agreements when settling any type of discrimination complaint, unless the condition of confidentiality is at the preference of the employee. (Previously, this prohibition covered only complaints of sexual harassment.)
- Beginning in January 2020, any provision in an employment contract or agreement limiting the disclosure of factual information related to a future discrimination claim must notify the employees that it does not prohibit them from speaking with law enforcement agencies, state or local human rights agencies or their own attorneys.
- Under New York state law, employers are now prohibited from requiring employees to arbitrate any

type of discrimination claim, not just sexual harassment claims. However, this state law is likely pre-empted by the Federal Arbitration Act, meaning that provisions in employment agreements that require arbitration of discrimination and harassment claims are, likely, still valid and enforceable.

### **Employment Discrimination**

Recent legislation significantly increases workers' rights. The reach of the employment laws and the categories of protected workers expand, while employers' defenses and their ability to use nondisclosure provisions in settlement agreements diminish. A summary of these laws follows.

#### **New Categories Protected from Discrimination:**

- Lactation;
- Traits historically associated with race, including (but not limited to) hair texture and hairstyles such as braids, locks and twists;
- Religious attire, clothing and facial hair;
- Sexual and reproductive health decisions;
- Victims of domestic violence
  - Employers must also allow them to take time off to obtain services from medical or other providers.

#### **Expanded Protections for Workers:**

- Non-employees in the workplace, such as contractors, subcontractors, vendors, and consultants, are now protected from all types of discrimination, not just sexual harassment.
- All private employers, regardless of size, are now subject to the New York State Human Rights Law.

- New York's Equal Pay Law now prohibits wage discrimination based upon any protected class status under the New York State Human Rights Law, not just gender.
- Employers are prohibited from reporting or threatening to report the suspected citizenship or immigration status of an employee or an employee's family or household member.
- Beginning in November 2019, employers may not retaliate against employees based on their request for a reasonable accommodation.

## Litigating Employment Claims Will Become Easier for Employees

A recent New York state statute has changed the way employment discrimination claims will be litigated.

- Employees no longer have to prove that harassment was "severe or pervasive." Employers can still prevail by proving that the allegedly harassing conduct was a "petty slight or trivial inconvenience."
- Employees no longer need to prove that they were treated less well than an employee who is outside of their protected class.
- Beginning in August 2020, an employee will have three years (not just one) to file a complaint of sexual harassment with the New York State Division of Human Rights.
- An employer is no longer able to escape liability for harassment by demonstrating that the employee failed to complain about it. Therefore, employers must be more vigilant in seeking out and rectifying harassment and discrimination in the workplace.
- The New York State Human Rights Law now authorizes punitive damages against private employers and attorneys' fees for all types of employment discrimination claims in both administrative proceedings and court cases.

## Sexual Harassment Prevention

- Over the past 18 months, New York State and New York City have enacted detailed laws requiring that all

employers provide annual sexual harassment training and distribute sexual harassment prevention policies, notices and fact sheets.

- By now, employers should have provided the first such annual training to their employees, and distributed the required documents. If you have not done so, please contact us and we will assist you.
- Please note that despite significantly enhanced protections, none of the recent or upcoming laws require employers to have general anti-discrimination policies or training (although it seems likely to follow). But employers must notify employees of their rights regarding discrimination by posting a poster designed by the Division of Human Rights.

## Compensation and Hiring

- Most minimum wage rates in effect throughout the state will increase on December 31, 2019.
- On January 1, 2020, the minimum salary required for an employee to be considered exempt from federal overtime requirements will go up to \$684 per week from \$455. This should not affect most New York employers, as the New York minimum salary requirement for the administrative and executive exemptions is already higher than the federal minimum salary.
- The state minimum salary requirement for the administrative and executive exemptions from overtime in New York City will increase to \$1,125 per week for small employers on December 31, 2019.
- The state minimum salary requirement for large employers in New York City, which is currently \$1,125, will not change.
- Beginning in January 2020, all New York employers are prohibited from inquiring about an applicant's salary history; although the applicant may disclose salary history voluntarily and without prompting. Employers in New York City are already subject to this restriction.
  - Additionally, employers may not base hiring and promotion decisions on an applicant's or current employee's salary history.

- Beginning in May 2020, employers in New York City may not require prospective employees to submit to marijuana testing.

## Time Off

- New York's Election Law now gives all employees the right to three hours of paid time off (rather than two) in order to vote in any election.
- The requirement that employees are only entitled to voting leave if they do not have sufficient time to vote outside of working hours has been eliminated.

## Insurance

- Benefits payable under New York's Paid Family Leave Law increase from 55% of an employee's weekly salary to 60% of the current statewide Average Weekly Wage, which is \$1,401.17 beginning January 1, 2020. These benefits are paid by the employer's short term disability insurance carrier.
- All group health policies issued, amended, renewed, effective or delivered on or after January 1, 2020, must provide certain contraceptive coverage and may not impose deductibles, coinsurance, or copayments on contraceptive coverage.

## Data Privacy

Effective October 23, 2019, New York's Stop Hacks and Improve Electronic Data Security Act (SHIELD Act) significantly expands state data breach notification provisions.

- These provisions are complicated, and it is too soon to predict their potential impact on employers.
- However, it is clear that companies with 50 or more employees must adopt "reasonable safeguards to protect the security, confidentiality and integrity" of private information.

## Other Localities

- Westchester County now has an Earned Sick Leave Law, which will soon include "safe leave" for victims of domestic violence and human trafficking.

- Employers must provide employees with written notice of their right to take safe and sick leave and must also post a notice on their premises.

- Suffolk County has a law banning salary history inquiries.

If you would like to discuss any of these changes please contact Randi B. May or Damian Cavaleri.

## For Questions Relating to This Client Alert, Please Contact:



**Randi B. May**  
212.689.8808  
rmay@hnrklaw.com

On behalf of employers, Ms. May's counseling experience includes advising a broad range of clients concerning all aspects of the employment relationship to avoid litigation. She advises employers about hiring and termination of employment, policies and practices, employee misconduct, restrictive covenants, leaves of absence and compliance with federal, New York state and New York City laws governing employment. Ms. May also regularly drafts, reviews and negotiates employment and executive compensation agreements, restrictive covenants and separation agreements.



**Damian R. Cavaleri**  
212.689.8808  
dcavaleri@hnrklaw.com

Mr. Cavaleri represents clients in all capacities and has experience litigating and arbitrating a wide breadth of business and employment-related disputes. He handles all aspects of litigation, including discovery, motion practice, trial, and appeal, and has litigated in federal and state courts in New York. He also provides counsel to clients relating to employment agreements, employment separation agreements, and non-competition restrictions and covenants.