

New York Enacts Gender Equity Laws

By **Susan M. Corcoran**, **Richard I. Greenberg**, **Michelle E. Phillips** and **Ellen M. Bandel**

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New York State Governor Andrew Cuomo has signed into law a number of bills intended to protect and advance women's equality, particularly in the workplace. These laws, signed on October 21, will go into effect on January 19, 2016.

Wages

In line with recent legislation enacted in other jurisdictions (see, e.g., our article, [District of Columbia Passes Legislation Allowing Employees to Discuss Wages](#)), and effectively closing a loophole in the current state law permitting employers to prohibit salary-related discussions, an amendment to New York Labor Law Sec. 194 allows employees to discuss wages freely. Employees covered by the National Labor Relations Act already have the right to engage in such discussions.

Further, New York Labor Law Sec. 194 (1) will prohibit an employee from being paid a lower wage than another employee of the opposite sex working in the same establishment, when they perform equal work in a job that requires equal skill, effort, and responsibility, and that is performed under similar working conditions. Exceptions to this mandate are permitted where payment is pursuant to a differential based on seniority and merit systems, systems in which an employee's earnings are measured by quality or quantity of production, and bona-fide factors such as education, training, and experience that are job-related and consistent with business necessity.

Sexual Harassment

An amendment to the definition of "employer" in Sec. 292 (5) of New York's Executive Law expands sexual harassment protection to employees of employers with fewer than four employees. This change, therefore, permits employees of a New York employer of any size to file workplace sexual harassment complaints with the New York State Division of Human Rights and bring an action in court. The Law's four-employee coverage threshold is retained for other kinds of alleged discrimination.

Discrimination Cases

Under an amendment to Sec. 297 (10) of New York's Executive Law, which did not allow recovery of attorneys' fees at trial or an administrative hearing for employment discrimination cases, successful litigants can recover attorneys' fees in cases involving employment or credit discrimination on the basis of sex.

Familial Status

An amendment to Sec. 296 (1) and (1a) of New York's Executive Law extends protection against familial status discrimination to the workplace. Currently, such protection exists only in housing and credit cases under New York law.

With limited exceptions, the law prohibits employers, licensing agencies, employment agencies, and labor organizations from:

- discriminating on the basis of familial status.

Meet the Author



Susan M. Corcoran

Shareholder
White Plains

914-872-6871
Susan.Corcoran@jacksonlewis.com



Richard I. Greenberg

Shareholder
New York

212-545-4080
GreenbeR@jacksonlewis.com



Michelle E. Phillips

Shareholder
White Plains

914-872-6899
Michelle.Phillips@jacksonlewis.com



- discriminating on the basis of familial status;
- printing or circulating any material that directly or indirectly expresses a limitation, specification, or discrimination on the basis of familial status, or
- inquiring on an application or otherwise making an inquiry in the context of prospective employment so as to directly or indirectly express a limitation, specification, or discrimination on the basis of familial status.



Ellen M. Bandel

Associate
New York

212-545-4000
Ellen.Bandel@jacksonlewis.com

Pregnancy

The final piece of legislation, amending Sec. 292 (21e) of New York's Executive Law, which is similar to current New York City law, expands protection for pregnant workers under state law. State law will require employers to provide reasonable accommodations for employees with pregnancy-related conditions, unless the proposed accommodation would impose an undue hardship on the employer's business.

Next

What's on the horizon? Given the absence of legislation in certain areas related to gender equality and gender identity, we anticipate Governor Cuomo will direct the State Division of Human Rights to issue regulations extending protections against discrimination based on gender identity, gender expression, transgender status, and gender dysphoria. Governor Cuomo reportedly announced on October 22 that he will seek to prohibit harassment and discrimination on the basis of transgender identity, gender expression, and gender dysphoria in the areas of public and private housing, employment, credit, education, and public accommodations. The regulations are likely to be published in the state registry soon, and will be subject to a 45-day comment period before taking effect.

Employers should familiarize themselves with their new obligations and consult with employment counsel to determine whether and how their particular organizations are affected by the new laws. At a minimum, employers are strongly encouraged to review their Harassment and Equal Employment Opportunity Policies for compliance with these new laws.

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