



## Employment & Labor Practice Group

### New York Expands Scope of its Workplace Discrimination Laws

Syracuse, New York

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New York Governor Andrew Cuomo has signed into law several bills that expand protections against gender discrimination, sexual harassment, and domestic violence. This comprehensive legislation amended several New York laws that directly impact New York employers. A summary of the recent changes and how it affects employers is provided below.

1. The remedies available to employees in gender-based employment discrimination cases were expanded to include the employee's reasonable attorneys' fees. Under prior New York law, attorneys' fees were not recoverable by litigants in sex-based discrimination cases. This change will likely make it more expensive for employers to settle sex discrimination claims with their existing and former employees, and will substantially increase monetary awards to successful plaintiffs. Interestingly, under the new law an employee can be held responsible for the employer's reasonable attorneys' fees, but only if the employer can demonstrate that the employee's claims were frivolous.

2. An employee's "familial status" was added as a protected category under the New York State Human Rights Law. Consequently, employers may not consider any factor relating to an employee's (or prospective employee's) family status, such as their parental responsibilities, when making any decisions affecting the employee's employment.

3. New York's Executive Law, which outlaws many forms of discrimination and retaliation, was expanded to apply to all New York employers, regardless of the size of their workforce. Previously, employers with fewer than four employees were exempt from coverage under New York's Human Rights Law.

4. The legislation amends the current Equal Pay Law, which prohibits 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 at a job that requires equal skill, efforts and responsibility. Historically, employers could defend against such claims by proving that their decision was motivated by any other lawful factors. The new law limits the "other lawful factors" that employers can use by mandating that the defense only apply for reasons that are "job related and consistent with business necessity." Additionally, the defense is unavailable where it can be shown that the employer's practice caused a "disparate impact" on the basis of sex.

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5. The Equal Pay Law was also amended to prohibit employers from mandating that their employees not discuss their wages with other employees. Previously, such a rule might have violated the National Labor Relations Act, but its application was more narrow and many employers continued to impose such a restriction on their employees. Now it will be illegal for all New York employers to have such a work place rule or policy.

6. The new legislation amends existing law by requiring that all employers provide "reasonable accommodations" to employees with pregnancy-related conditions, which is defined as "a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques." Prior to the change, employers were only required to provide reasonable accommodation in the event of a "disability." As a result, many pregnancy-related conditions did not qualify. Under the new law, employers must now provide "reasonable accommodations" to their pregnant employees for any reason relating to the employee's medical condition, regardless of whether the employee is disabled.

The foregoing laws become effective on **January 10, 2016**. By that time, employers should ensure that their policies have been amended to comply with the new legislation, and that their HR professionals are educated on the new requirements imposed by New York Law. **If you need assistance to ensure that your policies are compliant, please call John Valentino at 315.701.6308.**

## Bousquet Holstein Employment and Labor Practice *How may we be of service?*



The Employment & Labor Practice Group at **Bousquet Holstein PLLC** provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives. If we can provide you with additional insight and information regarding how these changes in NYS law may impact your business, please contact **John L. Valentino**.

John Valentino is a Managing Partner at Bousquet Holstein PLLC, and concentrates his practice in the areas of Employment Law and Business Transactions. He can be reached directly at **315.701.6308** or **jvalentino@BHLAWPLLC.com**.