

January 2016

LABOR & EMPLOYMENT LAW ALERT

NEW REGULATIONS BAN EMPLOYMENT DISCRIMINATION, HARASSMENT AGAINST TRANSGENDER INDIVIDUALS UNDER NEW YORK STATE, NEW YORK CITY LAWS

Over the last few weeks, both the State of New York and City of New York have vastly expanded legal protections to transgender persons in the workplace. Employers in these jurisdictions should take notice of these new regulations and policies.

NYS: Expanded Definitions for Protected Categories

On January 20, 2016, the New York State Division of Human Rights adopted new regulations¹ to include gender identity, transgender status and gender dysphoria as protected categories under the New York State Human Rights Law ("NYSHRL"). The NYSHRL now applies specifically to individuals:

- having or being perceived as having a gender identity, self-image, appearance, behavior or expression -- whether or not it is different from that traditionally associated with the sex assigned to that person at birth;
- who have a gender identity different from the sex assigned to that individual at birth (a "transgender person"); and
- with gender dysphoria (defined as a "medical condition related to an individual having a gender identity different from the sex assigned at birth").

The regulations include gender identity and transgender status within the NYSHRL definition of "sex," such that discrimination or harassment in employment against individuals in those protected categories will constitute sex discrimination or sexual harassment under the NYSHRL. Similarly, discrimination or harassment in employment against, or failure to provide reasonable accommodation for, persons with gender dysphoria where requested and necessary are covered by the definition of "disability" discrimination or harassment under the NYSHRL. Accordingly, violations may be addressed in administrative or court actions and carry the same remedies as available for "traditional" violations of the NYSHRL. The Commissioner of Human Rights may also impose civil fines and penalties of up to \$100,000 for willful discrimination.

NYC: Rights and Responsibilities For Gender Identity and Expression -- Preferred Pronouns and More

The New York State regulations come on the heels of last month's sweeping enforcement guidance from the New York City Commission on Human Rights that addressed transgender employee rights and employer responsibility in New York City employment under the New York City Human Rights Law ("NYCHRL").² The protections afforded employees under the NYCHRL are independent of, and greater than, those currently provided under state or federal law. Some examples include:

- an employee's right to use a preferred name, pronoun (including gender neutral pronouns) or title, regardless of the person's actual name, sex at birth, anatomy, gender, medical history, appearance or sex indicated on identification;

¹ The regulations are codified at 9 N.Y.C.R.R. §466.13.

² See www.nyc.gov/html/cchr/downloads/pdf/publications/GenderID_InterpretiveGuide_2015.pdf

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- an employee's right to use single sex facilities (including restrooms and locker rooms) consistent with their gender identity or expression;
- prohibiting an employer from imposing differing dress codes, uniform requirements or grooming standards (including requiring different, or gender specific, uniforms for men and women, requiring short hair only for those who identify as male and permitting jewelry to be worn only by those who identify as female);
- prohibiting an employer from providing health benefits or services on the basis of gender or offering such benefits or services only to opposite-sex couples; and
- prohibiting an employer from retaliating against employee for opposing discrimination or requesting a reasonable accommodation.

As with other alleged violations of the NYCHRL, employees may file a complaint in New York State court or with the New York City Commission on Human Rights (which may impose an additional civil penalty of up to \$250,000 for willful violations).

Employers located in New York State and/or New York City should review their employment policies, practices and benefits statements to ensure they do not contain provisions contrary to these regulations and be sure to train their human resources professionals and supervisory personnel as to the protections afforded employees by the regulations. Additionally, employers may choose to specifically reference protections for gender identity and other gender-based concerns in connection with their anti-discrimination and anti-harassment policies.

We are available to provide counsel and guidance concerning these issues, as well as other management labor and employment law concerns. For additional information, please contact one of the attorneys named below or the attorney with whom you have a primary relationship.

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