



**NYS Legislative Update – Workplace Protection Reform
July 11, 2019**

In June 2019, the New York State Senate and Assembly passed several bills, which await the Governor’s signature:

- S 6577/A 8421 and S 6594/A 8424 (together, the “NYS Amendment”) that amends the NYS Human Rights Law (NYSHRL), the NYS Labor Law and a variety of other NYS statutes to provide greater harassment and discrimination protections in the workplace.
- S 6209/A 7797 (the “Hairstyle Discrimination Amendment”) that expands the definition of “race” under the NYSHRL and NYS Education Law to include certain hairstyles.

On July 10, 2019, the Governor signed the following new bills into law:

- S 6549/A 5308-B (the “Wage History Amendment”) that amends the NYS Labor Law regarding wage history in determining job offers or wages.
- S 5248-B/A 8093-A (the “Equal Pay Amendment”) that amends the NYS Labor Law to prohibit wage differentials based on an employee’s protected class status.

These measures provide the following expanded protections:

Coverage of the NYSHRL

<p>How does the NYS Amendment expand who is an “employer” under the NYSHRL?</p>	<p>An “employer” under the NYSHRL is amended to include all employers, even if the employer has fewer than 4 employees. (Previously, this expanded definition applied only to cases of sexual harassment.)</p> <p><i>This law is effective 180 days after signed by the Governor, and shall only apply to claims filed on or after the effective date.</i></p>
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Harassment under the NYSHRL

<p>How does the NYS Amendment lower the burden of proof for plaintiffs claiming</p>	<p>Unlawful harassment may be established <i>regardless of whether such harassment would be considered “severe or pervasive”</i>. Now, the standard is whether it <i>subjects an individual to inferior terms, conditions or privileges</i> because of the individual’s membership in a “protected category” under the NYSHRL.</p>
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<p>harassment under the NYSHRL?</p>	<p>The fact that an individual did not make a complaint about the harassment to the employer is not determinative.</p> <p>The employee does not have to demonstrate the existence of another individual as a comparison in the employee’s harassment claim. However, an employer does have the affirmative defense that the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic(s) would consider “petty slights or trivial inconveniences”.</p> <p><i>This law is effective 60 days after signed by the Governor, and shall only apply to claims filed on or after the effective date.</i></p>
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Independent Contractors and Vendors

<p>How does the NYS Amendment expand who is protected against workplace discrimination and retaliation?</p>	<p>Under the NYSHRL, non-employees are now protected against “unlawful discrimination”. (Previously, this prohibition only applied to sexual harassment of non-employees.)</p> <p>Non-employees include a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract, or who is an employee of such contractor, subcontractor, vendor, consultant or other person.</p> <p><i>This law is effective 60 days after signed by the Governor, and shall only apply to claims filed on or after the effective date.</i></p>
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Employer Liability in Employment Discrimination

<p>How does the NYS Amendment expand an employer’s liability in cases of employment discrimination?</p>	<p>Under the NYSHRL’s procedures, in cases of employment discrimination, the NYS Division of Labor may award punitive damages. Additionally, a person with a claim of employment discrimination will have a cause of action in any court for punitive damages. The NYS DOL Commissioner or court may award reasonable attorney’s fees with</p>
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	<p>respect to all claims of employment discrimination to the prevailing party.</p> <p><i>This law is effective 60 days after signed by the Governor, and shall only apply to claims filed on or after the effective date.</i></p>
<p>How does the NYS Amendment affect the statute of limitations for bringing claims?</p>	<p>The NYSHRL is amended to extend the statute of limitations for filing a complaint of sexual harassment in employment with the NYS Division of Human Rights to 3 years. (The statute of limitations for claims of other unlawful discriminatory practice is 1 year.)</p> <p><i>This law is effective 1 year after signed by the Governor, and shall only apply to claims filed on or after the effective date.</i></p>
<p>What enforcement powers does the NYS Amendment grant to the Attorney General?</p>	<p>The NYS Attorney General is empowered to prosecute upon request of the Commissioner of Labor or the State Division of Human Right any <u>civil</u> action for unlawful discrimination. The Attorney General is also empowered to prosecute any <u>criminal</u> offense of unlawful discrimination if the Attorney General feels that the county district attorney cannot effectively carry out the prosecution or has erroneously failed or refused to prosecute.</p> <p><i>This law is effective immediately after signed by the Governor.</i></p>

Interpretation of NYSHRL

<p>How does the NYS Amendment affect the interpretation of the NYSHRL?</p>	<p>The NYSHRL is to be construed liberally, regardless of whether federal civil rights laws have been so construed.</p> <p><i>This law is effective immediately after signed by the Governor, but shall only apply to claims filed on or after the effective date.</i></p>
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Settlements and Releases

<p>How does the NYS Amendment impact the</p>	<p>Nondisclosure clauses are now forbidden in any settlement, agreement or other resolution of any claim of discrimination, unless the</p>
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<p>settlement of a claim and severance agreements?</p>	<p>confidentiality is the individual's preference. (Previously, this prohibition only applied to nondisclosure clauses in any settlement, agreement or other resolution of any claim of sexual harassment.)</p> <p>Any such nondisclosure term or condition must be provided in writing, in "plain English" and, if applicable, the individual's primary language, and the individual will have 21 days to consider the term prior to signing, and 7 days after signing to revoke the agreement.</p> <p><i>This law is effective 60 days after signed by the Governor.</i></p>
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Confidentiality Agreements

<p>How does the NYS Amendment impact an employer's confidentiality policies and/or agreements?</p>	<p>Contracts entered into on or after January 1, 2020, that prevent the disclosure of factual information related to any future claim of discrimination are void and unenforceable unless such provision notifies the employee/potential employee that it does not prohibit him or her from speaking with law enforcement, the Equal Employment Opportunity Commission, the NYS Division of Human Rights, a local commission on human rights, or an attorney retained by the employee or potential employee.</p> <p><i>This law is effective 60 days after signed by the Governor.</i></p>
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No Arbitration

<p>How does the NYS Amendment impact the arbitration of discrimination claims?</p>	<p>Mandatory arbitration clauses are now prohibited in any agreement to resolve any allegation or claim of discrimination, including any discrimination prohibited under the NYSHRL. (Previously, this prohibition only applied to mandatory arbitration clauses to resolve any allegation or claim of sexual harassment.) Note: this provision has been challenged under the Federal Arbitration Act, and it's unclear if it will be pre-empted by federal law.</p> <p><i>This law is effective 60 days after signed by the Governor.</i></p>
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Sexual Harassment Policy and Training

<p>How does the NYS Amendment expand an employer's obligations to provide sexual harassment policy and training?</p>	<p>Employers must now provide all employees with a written sexual harassment prevention policy and the information presented at the employer's sexual harassment prevention training, <i>both in English and in the primary language of each employee</i>, at the time of hiring and at every annual sexual harassment prevention training.</p> <p>The NYS Department of Labor (NYSDOL) Commissioner will prepare templates in languages other than English, as determined by the NYSDOL Commissioner.</p> <p><i>This law is effective immediately after signed by the Governor.</i></p>
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Hairstyle Discrimination Amendment

<p>How does the Hairstyle Discrimination Amendment affect an employer's practices?</p>	<p>The Hairstyle Discrimination Amendment expands the definition of "race" in the NYSHRL and NYS Education Law to include "traits historically associated with race, including but not limited to, hair texture and protective hairstyles". "Protective hairstyles" is defined to include without limitation "braids, locks, and twists".</p> <p><i>This law is effective immediately after signed by the Governor.</i></p>
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Wage or Salary History

<p>How does the Wage History Amendment affect an employer's practices?</p>	<p>Similar to a 2017 NYC law, the Wage History Amendment amends the NYS Labor Law to prohibit an employer from relying on wage history in determining job offers or wages. An employer may not request salary history from the applicant/employee or from the employee's former or current employer. An employer may not refuse to hire or retaliate based on salary history.</p> <p><i>This law is effective January 6, 2020.</i></p>
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Equal Pay

<p>How does the Equal Pay Amendment affect an employer's practices?</p>	<p>The Equal Pay Amendment amends the NYS Labor Law to prohibit any employee who is in a "protected class" from being paid less than an employee not in that protected class. (Previously, this prohibition only applied to wage differentials based on gender.)</p> <p><i>This law is effective October 8, 2019.</i></p>
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