

## Governor Cuomo Signs Amendments to Equal Pay and Human Rights Laws

On October 21, 2015, New York Governor Andrew Cuomo signed legislation amending New York State's Human Rights Law and New York Labor Law to expand protections available to employees. The amendments will become effective January 19, 2016.

### New York Equal Pay Law

New York's equal pay law (N.Y. Lab. Law §§ 194, 198), which currently allows employers to justify a pay difference between employees of opposite genders based on a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or "any other factor other than sex," has been amended in three ways. First, the new law ([S.1/A.6075](#)) removes the last permissible basis for differentiation, replacing it with narrower language that allows a pay differential to be based on "a bona fide factor other than sex, such as education, training, or experience." Under the amended law, a "bona fide factor" cannot be based on a "sex-based differential in compensation" and must be "job-related with respect to the position in question" and consistent with business necessity. An employee may challenge a "bona fide factor" defense by showing that the employer's practice causes a disparate impact on the basis of sex, that an alternative practice exists that would serve the same business purpose, and that the employer has refused to adopt the alternative practice.

Second, the bill bans employers from retaliating against employees for discussing their wages with one another. Employers may, however, establish reasonable time, place and manner prohibitions on such discussions, such as "prohibiting an employee from discussing or disclosing the wages of another employee without such employee's permission." This retaliation prohibition and the new "bona fide factor" exception closely follow language in the so-called "[Paycheck Fairness Act](#)," a long-proposed amendment to the federal Equal Pay Act.

Third, the bill provides for additional "liquidated" damages of up to 300% of the wages due in cases where an employer is unable to prove that it acted in good faith when violating the law. This is a significant increase from the current version of New York's equal pay law, which, like the

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federal Equal Pay Act, only provides for liquidated damages of up to 100% of wages due.

### New York Human Rights Law

The New York State Human Rights Law has been amended in four ways. First, [S.2/A.5360](#) amends N.Y. Exec. Law § 292 to allow sexual harassment suits against employers regardless of the number of employees employed by the company. Under existing law, employers with fewer than four employees are excluded from the definition of "employer." This amendment creates a limited exception to this definition for sexual harassment suits.

Second, [S.3/A.7189](#) amends N.Y. Exec. Law § 297 to grant courts and the state Commissioner of Human Rights the discretion to award reasonable attorneys fees to the prevailing party in claims of employment or credit discrimination on the basis of sex. Under existing law, attorneys fees may only be awarded in housing discrimination cases.

Third, [S.4/A.7317](#) amends N.Y. Exec. Law § 296 to prohibit employment discrimination on the basis of "familial status."

Fourth, [S.8/A.4272](#) amends N.Y. Exec. Law §§ 292 and 296 to require reasonable accommodations for employees with a "pregnancy-related condition." The amendment defines the term "pregnancy-related condition" 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." The term is limited, however, to conditions that may be reasonably accommodated without preventing the complainant from performing in a reasonable manner the activities associated with the job in question. The term "reasonable accommodation" is defined to exclude actions that would "impose an undue hardship" on the employer. The amendment also requires employees seeking an accommodation for their disability or pregnancy-related accommodation to cooperate in providing medical and other information necessary to verify the disability or pregnancy-related condition or for the consideration of the accommodation.

Employers should evaluate their current workplace policies to ensure they are consistent with these amendments.

This post was authored by [Matt Lampe](#), [Emilie Hendee](#), [Michael Casertano](#), and [Michael Ferruggia](#) of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

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