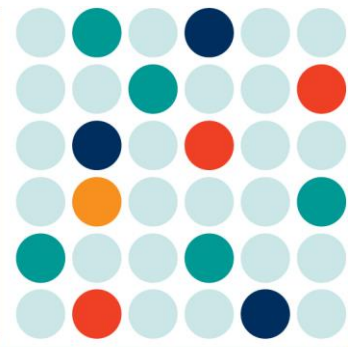


# LEGAL UPDATE

November 2015

By Pryor Cashman's Labor and Employment Group



## THE WOMEN'S EQUALITY ACT EXPANDS GENDER EQUALITY PROTECTIONS IN NEW YORK STATE

On October 21, 2015, Governor Cuomo signed into law a series of bills that are collectively known as the Women's Equality Act ("WEA"). The WEA will affect every employer in New York State. Most of the bills comprising the WEA expand existing New York laws to provide greater protections to women in the workplace. These parts of the WEA strengthen New York's pay equity laws, create new protected classes under the New York Human Rights Law, expand the number of New York employers covered by the sexual harassment laws, enhance penalties for violation of the sex discrimination laws, and require accommodations for pregnant employees. Other parts of the WEA amend the housing discrimination laws to protect victims of domestic violence and strengthen existing laws to combat human trafficking. The parts of the WEA affecting the workplace become effective on January 19, 2016.

### The New Pay Equity Provisions

At present, the New York State Labor Law requires employers to pay men and women equal pay for equal work unless there is a showing that the difference in pay is based on a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or "any factor other than sex." The WEA makes the following principal changes to the pay equity law:

- The WEA deletes the "any factor other than sex" part of the definition and replaces it with "a bona fide factor other than sex, such as education, training or experience." Further, the "bona fide factor" must be job-related with respect to the position and based on business necessity. The effect of this change is that where pay differentials exist between genders employers will have a higher threshold of proof in establishing

that the wage differential is not discriminatory.

- New York employers may not prohibit employees from inquiring about, discussing or disclosing their own or another employee's wages. However, the law does not require employees to disclose their own wages. The WEA will permit employers to issue written policies establishing reasonable workplace and workday limitations on the time, place, and manner of wage discussions and disclosures, and to prohibit an employee from discussing another employee's wages without prior permission. The New York Commissioner of Labor will issue standards as to acceptable written policies. This WEA amendment is designed to permit employees greater access to wage information to determine whether potential discriminatory pay practices exist.
- The WEA will increase liquidated damages for violations of the pay equity law from 100% to 300% of unpaid wages.

### Sexual Harassment

The New York State Human Rights Law ("NYHRL") applies to employers of four or more employees in New York State. The WEA expands coverage of the sexual harassment provisions of the NYHRL, but not the sex discrimination provisions, to all employers within the state. Therefore, starting on January 19, 2016, an employee of a business of any size will be able to file a workplace sexual harassment complaint. Since prohibitions on other forms of discrimination and harassment have not been extended to employers of fewer than four individuals, it is not clear how actions alleging both

sex discrimination and sexual harassment against small employers would be handled.

### **New Penalties For Sex Discrimination Claims**

The WEA amends the NYHRL to permit the recovery of attorneys' fees by a prevailing party in employment discrimination claims based on sex. The NYHRL does not otherwise provide for the recovery of attorneys' fees by prevailing parties in employment discrimination claims. Under the WEA, for a prevailing employee to recover attorneys' fees, the employer must be found to have committed an unlawful discriminatory practice based on sex. For a prevailing employer to recover attorneys' fees, the employer must show that the claim was frivolous.

### **Familial Status Discrimination**

The WEA amends the NYHRL to prohibit employment discrimination based on familial status. Familial status was already a protected category under the housing discrimination sections of the NYHRL. "Familial status" means "(a) any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, or (b) one or more individuals (who have not attained the age of eighteen years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals, or (2) the designee of such parent." Thus individuals who believe that they have been denied employment or have been adversely affected in their terms and conditions of employment because of their status as a parent or for being pregnant may now bring a discrimination claim under the NYHRL.

### **Pregnancy Accommodation**

The WEA requires employers to provide reasonable accommodations for employees with pregnancy-related conditions. A "pregnancy-related condition" is a medical condition related to pregnancy or childbirth that would not prevent the individual from performing the duties of the position if reasonable accommodations were provided. A "reasonable accommodation" is an action that would allow an individual to perform the job duties in a reasonable manner. Further, pregnancy-related conditions are treated as temporary disabilities for purposes of the NYHRL. In addition, if an employee requests an accommodation, the employer may ask the

employee to provide information to verify the pregnancy or other disability. However, the employee may demand that such medical information be kept confidential.

### **Conclusion**

In anticipation of the January 19, 2016 effective date of the WEA, employers should (1) review and update their policies and handbooks to add familial status as a protected category to their anti-discrimination and anti-harassment policies and to provide reasonable accommodations for pregnant employees, (2) review their policies concerning wage discussion and disclosure, and (3) analyze their wage policies with respect to the WEA pay equity law amendments. It is therefore recommended that employers consult with counsel to ensure that they are compliant with the WEA. Please feel free to reach out to Pryor Cashman with any questions that may arise.

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*The foregoing is merely a discussion of the Women's Equality Act. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Alice Stock at (212) 326-0480, [astock@pryorcashman.com](mailto:astock@pryorcashman.com) or Joshua Zuckerberg at (212) 326-0885, [jzuckerberg@pryorcashman.com](mailto:jzuckerberg@pryorcashman.com).*

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