

EMPLOYMENT LAW ALERT

June 2010

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State Moves to Outlaw Bullying

By: Jeffrey M. Schlossberg and Kimberly B. Malerba



Consider this scenario: An employee approaches you, stating she is feeling "harassed" by her supervisor. When you inquire about the circumstances, she reports that the supervisor is shouting at her and making derogatory comments toward her. You know that unless the harassment is sexual in nature or based on a protected classification (gender, race, religion, etc.) there is no legal claim the employee can assert. However, you should be aware that may all change in the near future.

The New York State Senate recently passed a bill to establish a cause of action for employees subjected to an "abusive work environment." Known as the "anti-bullying law," it will provide remedies to those who have "been harmed psychologically, physically or economically by being deliberately subjected to abusive work environments." The legislature intends for the law to "provide legal incentives for employers to prevent and respond to mistreatment of employees at work." The bill specifically states that abusive work environments "should not be limited to behavior grounded in a protected class status as required by employment discrimination statutes."

It is quite certain that, should this bill become law, the number of claims alleging an abusive work environment will increase substantially because attorneys will no longer be required to pigeonhole a harassment claim into a protected classification. Further, the bill does not set forth clear standards for what type of comments could result in a finding of an "abusive work environment." Would shouting be enough to create liability? Would a supervisor have to employ a specific derogatory remark? Would an aggressive sales manager subject your company to liability for riding his staff to increase sales?

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In addition, the remedies available to aggrieved employees will incentivize attorneys to file claims under this new law. In addition to attorney's fees, punitive damages without a cap are available along with back pay and compensatory damages for emotional distress. Notably, New York's Human Rights Law does not provide for attorney's fees or punitive damages in employment discrimination cases. Thus, the anti-bullying law would enable plaintiffs to obtain significantly greater damages than if the conduct was based on a protected classification. The text of the bill can be seen by clicking the following link: [NY Anti-Bullying Law](#)

Should the bill become law, employers will need to make sure that they are prepared by amending their employment manuals, including their harassment policies, to prohibit the abusive conduct described in the bill. This is a critical step, because the bill provides an employer with an affirmative defense if it used reasonable care to prevent and promptly correct the abusive conduct and the plaintiff unreasonably failed to take advantage of preventive or corrective opportunities.

Impact of the Nanny Law

Earlier this month the New York State Senate passed its version of the Nanny Law (the Assembly passed a similar bill last year). If Governor Paterson signs the Nanny Law, the first in the country of its kind, there may be significant changes on the horizon for employers in ways that you likely have not considered.

The proposed law requires employers to give domestic workers paid sick days, vacation days and holidays, overtime pay, protection under New York State minimum wage and discrimination laws, as well as the right to 14 days' notice before termination of employment (except in cases of suspected abuse) or 14 days' pay in lieu of notice. The benefits would apply to the estimated 200,000 legal and illegal immigrants employed as domestic workers in New York. In essence, domestic workers would be afforded rights that the average corporate employee - who is typically employed "at-will" - does not have.

Once enacted, the Nanny Law also has the potential to impact employers' corporate workforces. The additional obligations imposed upon working families with domestic employees have the potential to create a serious disruption in the workplace. Many families that have two working parents (or single parent families where the sole parent works outside the home) rely upon domestic workers to care for their children so that they are able to leave the house and go to work each day. If this new law has the effect of making it more difficult for working parents to continue to employ domestic help because of the increased financial obligations, there exists the potential that some working parents will not be able to continue working outside of the home. This will, of course, affect employers for whom maintaining a steady, stable workforce is a top priority.

New Workplace Posting Requirement

Effective June 21, 2010, an Executive Order requires federal contractors and subcontractors to post a notice to their employees of their rights under the National Labor Relations Act (NLRA). Covered entities are not required to post the notice until the entity signs a new contract, subcontract or modification. A copy of the notice can be found by clicking on the following link: [Federal Contractor Poster](#)

If we can be of assistance on these or any other employment law issues, please do not hesitate to contact us.



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