ALERTS AND UPDATES

New York City's Recently Enacted "Workplace Religious Freedom Act" Expands Employers' Obligations to Accommodate Employees' and Applicants' Religious Practices Under NYC Human Rights Law

September 19, 2011

On August 31, 2011, New York City Mayor Michael Bloomberg signed into law Local Law Int. No. 632, known as "The Workplace Religious Freedom Act," that is likely to make it more challenging for New York City employers to decline to accommodate their employees' and applicants' religious practices.

New York City's Human Rights Law ("NYCHRL") has long required employers with four or more employees to accommodate the bona fide religious practices of their employees and applicants, unless doing so would impose an "undue hardship" on the company. Such accommodations typically include permitting employees to wear religious attire, granting time off for religious observance and providing space for prayer. It is important to note that preexisting New York City law contained no definition of "undue hardship." Accordingly, employers often relied on the definition of undue hardship established by the federal courts in Title VII religious discrimination cases. Under Title VII, a religious accommodation would result in an undue hardship if it creates more than a "de minimus cost or burden" to the employer.

The Workplace Religious Freedom Act amends sections 8-102 and 8-107 of the NYCHRL and adopts a stiffer standard for assessing undue hardship. The law now requires employers to make accommodations for religious practices, unless such accommodation requires a "significant expense or difficulty." While the law adopts the "stringent expense or difficulty" standard already set forth in the New York State Human Rights Law, the committee report accompanying this amendment stated that the City Council's intention is "to provide greater protection to workers under the City Human Rights Law than the federal, and even the State, human rights provisions provide." Consistent with this legislative intent, the amendments may create an even higher standard than what currently applies under state law.

Some factors to be considered in determining whether the accommodation would create a significant expense or difficulty include without limitation:

(i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

(ii) the number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and

(iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

The law clarifies that an accommodation that causes significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system law will be deemed to constitute an undue hardship. A bona fide seniority system is typically one provided in a collective bargaining agreement or pursuant to an established employer practice that is consistently and uniformly applied. Similarly, an employer can demonstrate an undue hardship if an employee is unable to perform with or without an accommodation to the essential functions of his or her position.

Potential remedies for violating the law include reinstatement, back pay, compensatory damages, punitive damages and attorneys' fees. Moreover, employers may be subject to a civil penalty of $125,000.

What This Means for New York Employers

New York City employers should take steps now to ensure compliance with the new law. They should review their workplace policies governing equal employment opportunity, discrimination, harassment and reasonable accommodations to ensure they are consistent with the stringent expense or difficulty standard. Employers should also closely review their job descriptions so that they accurately reflect the essential functions of each position, including any limitations on attendance; availability; and personal appearance. Finally, employers should provide training to their supervisors and human resources staff on this new law and the interactive reasonable accommodation process.

For Further Information

If you have any questions about this *Alert*, please contact any of the attorneys in our Employment, Labor, Benefits and Immigration Practice Group or the attorney in the firm with whom you are regularly in contact.