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New York Takes an Extra Bite of the Apple: Civil Penalties May Be Assessed for Unlawful Discriminatory Practices

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Recent amendments to the New York State Human Rights Law provide that an employer who is found to have engaged in an unlawful discriminatory practice may face up to \$100,000 in penalties payable to the State of New York in addition to any damages owed to the complaining party. The amendments, which apply to conduct occurring on or after July 6, 2009, were quietly signed into law by Governor David Paterson on April 7, 2009.

The New York State Human Rights Law prohibits discrimination in employment on the basis of race, color, creed, national origin, sex, age, disability, sexual orientation, marital status, military status, predisposing genetic characteristics, or domestic violence victim status.¹

Prior to July 6, 2009, the law provided a variety of possible remedies upon a finding of employment discrimination, including, for example, compensatory damages to the aggrieved party for out of pocket losses and/or pain and suffering; injunctive orders requiring an employer to cease and desist from unlawful discriminatory practices, to hire, reinstate or upgrade employees, with or without backpay, or to train employees; and disgorgement of profits received as a result of unlawful discrimination.²

The recent amendments to the New York State Human Rights Law provide that a penalty of up

to \$50,000 may be assessed against an employer who is found to have engaged in an unlawful discriminatory practice, and that an employer whose violation is found to have been "willful, wanton or malicious" may be penalized up to \$100,000.³

The new penalties imposed by the amendments are to be paid by the employer to the state and are exclusive of any damages or other payments assessed against the employer. The amendments further provide that for employers with fewer than 50 employees, the penalty may be paid in "reasonable installments."⁴

Interpretive Regulations to Be Issued by NYSDHR

The NYSDHR is empowered by the amendments to promulgate regulations governing such "reasonable installments" for payment of the civil penalties. However, the law requires that the installments must be paid over no more than three years and that the regulations impose interest for the delay in payment.⁵ The regulations have not been promulgated as of the date of this article.

Expansion of Powers for the NYSDHR

Previously, the imposition of civil fines and penalties had been limited by the New York State Human Rights Law to cases alleging housing discrimination. The amendments expand the imposition of civil penalties to all cases of discrimination under the New York State Human Rights Law, including cases of employment discrimination, discrimination in educational institutions and discrimination in places of public accommodation. Employment discrimination cases constitute 80% of the cases filed with the NYSDHR.⁶

The NYSDHR has openly declared its intent to use this new enforcement weapon. NYSDHR Commissioner Galen Kirkland stated, "[t]his amendment to our law will provide the Division with a very powerful tool to fight discrimination in the state. Now that we can assess fines and penalties in the majority of the cases received by the Division we will be better equipped to further the agency's mission to protect the rights of all New Yorkers."⁷

Application to Litigation

At first glance the penalty appears to apply only to the decisions of the State Division of Human Rights. However, a preexisting provision of the statute, section 297(9), explicitly provides that the civil penalties provided by section 297(4)(c) may be recovered by any court of appropriate jurisdiction. Therefore the new civil penalties included in the statute may be awarded against an employer in lawsuits alleging a violation of the New York State Human Rights Law as well.

Implication to Employers

By amending the statute to provide for the imposition of civil penalties against employers, the New York State legislature has increased employers' potential exposure in employment discrimination and retaliation claims. Employers should remain vigilant in preventing and correcting discrimination and harassment in the workplace by immediately addressing employee

complaints and by training managers and HR on prevention techniques and compliance with company antidiscrimination policy.

¹ N.Y. Exec. L. § 296.1(a).

² N.Y. Exec. L. § 297.(4)(c)(i) – (iii), (v).

³ N.Y. Exec. L. § 297(4)(c)(vi).

⁴ N.Y. Exec. L. § 297(4)(e).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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