

New York Extends Statute of Limitations For Discrimination Claims Under NYSHRL and Expands Restrictions on Settlement Agreements Involving Claims of Discrimination, Harassment, or Retaliation

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New York State recently enacted two new employment law bills. The first law extends the statute of limitations for claims of discriminatory practices under the New York State Human Rights Law. The second law expands restrictions on non-disclosure provisions in settlement agreements for claims of discrimination, harassment, or retaliation.

1. New York State Human Rights Law Statute of Limitations

Governor Kathy Hochul signed a bill into law, extending the statute of limitations for filing discrimination claims with the New York State Division of Human Rights from one to three years.

Previously, sexual harassment claims were subject to a three-year statute of limitations, and all other discriminatory claims had a one-year statute of limitations. This law will go into effect on February 15, 2024, and will “apply to all unlawful discriminatory practice claims arising on or after such effective date.”

2. Non-Disclosure Provisions in Settlement Agreements

In addition, Governor Hochul signed a bill into law amending New York General Obligations Law § 5-336 regarding settlement agreements between an employer and employee involving claims of discrimination, harassment, or retaliation.

The law provides that “no release of any claim, the factual foundation for which involves unlawful discrimination, including discriminatory harassment, or retaliation, shall be enforceable, if as part of the agreement resolving such claim:

- a) the complainant is required to pay liquidated damages for violation of a non-disclosure clause or non-disparagement clause;
- b) the complainant is required to forfeit all or part of the consideration for the agreement for violation of a non-disclosure clause or non-disparagement clause; or
- c) it contains or requires any affirmative statement, assertion, or disclaimer by the complainant that the complainant was not in fact subject to unlawful discrimination, including discriminatory harassment or retaliation.”

The law also amends the waiting period required before a complainant can sign a non-disclosure agreement. Previously, a complainant had to wait 21 days before signing a non-disclosure agreement. Now, a complainant has “up to” 21 days to consider signing a non-disclosure agreement and can sign it earlier if they choose. The law still requires that a complainant be provided with at least seven days to revoke the agreement before it becomes effective.

In addition, the law expands protections to independent contractors who enter into a contract with their employer. Specifically, the law, which previously applied to employees (or potential employees), declares that a contract is void and unenforceable if it prevents the disclosure of factual information related to any future claim of discrimination unless the provision notifies the employee (or potential employee) or independent contractor that they are permitted to speaking with law enforcement, the EEOC, state division of human rights, the attorney general, a local commission on human rights, or a retained attorney.

Next Steps for Employers

This law has already gone into effect, so New York employers should:

1. Check that any settlement agreement involving claims of discrimination, harassment, or retaliation complies with this law.
2. Remove any provision providing for liquidated damages in the event of a breach of a non-disclosure agreement and any affirmative statement that the complainant was not subject to unlawful discrimination.

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