



New York Ups the Ante for Employment Discrimination

New York Governor David Paterson (D) recently signed into law amendments to the New York State Human Rights Law that allow civil fines and penalties to be imposed in employment discrimination cases. The new penalty scheme applies to discriminatory employment practices engaged in on or after July 6, 2009.

Background

The New York State Human Rights Law ([NYSHRL](#)) prohibits discrimination in employment and certain other areas on the basis of race, color, creed, national origin, sex, age, disability, sexual orientation, marital status, military status, and other protected categories. The NYSHRL has long provided a broad range of remedies for victims of discrimination, including compensatory damages (e.g., economic damages and damages for emotional distress), cease and desist orders, and requiring employers to hire, reinstate or promote workers with or without back pay. Until recently, however, civil fines and penalties under this law were available only in housing discrimination cases.

New Civil Penalties for New York Employers

Recent amendments to the NYSHRL permit the assessment of civil fines and penalties in employment discrimination cases. The law now allows a penalty assessment of up to \$50,000 against an employer that has engaged in an unlawful discriminatory practice, and up to \$100,000 if the violation is “willful, wanton or malicious.”

The new civil penalties may be assessed by the New York State Division of Human Rights (NYSDHR) in administrative proceedings, as well as in lawsuits against employers for violation of the NYSHRL. Small employers (fewer than 50 employees) will be permitted to pay their penalties in “reasonable” installments (including interest) over a period of no more than three years. The new penalties are payable to the state, and are in addition to any compensatory damages or other payments assessed against the employer.

Although the NYSDHR has not yet provided guidance on determining appropriate penalty amounts in employment cases, its assessment of penalties in housing discrimination cases may be somewhat instructive. In housing cases, the NYSHRL permits the NYSDHR to consider a variety of factors in determining an appropriate penalty, including the nature of the violation and the respondent’s record of violations, financial resources, and level of culpability. Many, if not all, of these same factors would appear relevant in the employment discrimination context.

BUCK COMMENT. *In formulating civil penalty standards for employment discrimination, NYSDHR may also look to those established under the [New York City Human Rights Law](#). Under that law, an employer can reduce its penalties by proving that it had in place policies and procedures to detect and prevent discriminatory practices and did not have a record of discriminatory conduct. Regardless of the standards NYSDHR ultimately adopts, employers will be well served by having in place effective human resources policies and programs designed to avoid and address discrimination in the workplace.*

Effective Date. The amendments to the New York State Human Rights Law apply to employment practices engaged in on or after July 6, 2009.

Conclusion

New York's new penalty scheme increases potential employer liability for employment discrimination. To minimize risk exposure, New York employers should revisit their human resources policies to make certain that appropriate anti-discrimination and harassment policies are in place, have been effectively communicated to employees, and are being followed. As part of this review, employers should also confirm the adequacy of their internal employee complaint procedures, and ensure that their supervisors and human resources representatives have been properly trained on fair employment practices.

Buck's consultants are available to assist you in this process.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.