

## NY Increases Workplace Protections for Women

NY Governor Andrew Cuomo recently signed the so-called Women's Equality Agenda — a group of bills that expand protections for women who work in the state. The new laws will increase existing equal pay protections, expand employer coverage for sexual harassment, prohibit employment discrimination based on familial status, allow recovery of attorneys' fees in sex discrimination cases, and require employers to reasonably accommodate pregnancy-related conditions. Employers in the state will want to update their employment policies and pay practices to reflect these changes, all of which will take effect on January 19, 2016.

### Background

On October 21, New York Governor Andrew Cuomo [signed](#) into law a group of bills — the so-called Women's Equality Agenda — affecting women's rights in the workplace among other things. The bills were part of the Women's Equality Act that was originally introduced in the state legislature in 2012 to strengthen and expand protections against gender-based pay disparity and sex discrimination.

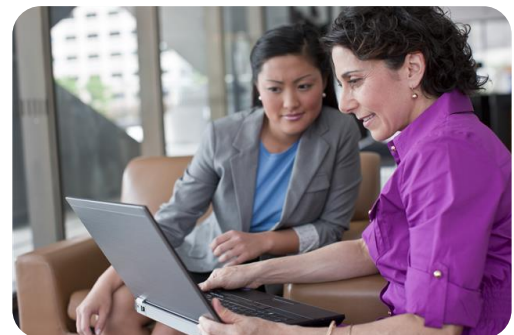
### The New Laws

Five new employment-related laws will amend the New York Labor Law (Labor Law) and the New York Human Rights Law (NYSHRL) to expand protections for women in the workplace. All of these new laws will take effect January 19, 2016.

#### Pay Equity

Like the federal Equal Pay Act, the Labor Law prohibits employers from paying women less than men for performing "equal work" in the "same establishment" unless the employer can show that the disparity is based on: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or any factor other than sex. The Achieve Pay Equity bill signed by the governor ([S. 1 / A. 6075](#)) amends the law in several significant ways.

**"Same establishment."** The law broadens the definition of "same establishment" for purposes of an unequal pay claim. Because the definition will now include workplaces in the same geographic region



(no larger than a county), pay rates of employees who work for the same employer at different locations within a city or county can be compared to determine whether prohibited pay differentials exist.

**“Any factor other than sex.”** The law qualifies the “any factor other than sex” exception, requiring employers to show a *bona fide* factor such as education, training or experience” to support a gender-based pay differential. The factor must also be job-related and consistent with business necessity. Even if the employer shows a *bona fide* factor, the exception will not apply if the employee can prove that: (1) the employer’s practice has a disparate impact on the basis of sex; (2) a viable alternative exists that would serve the same business purpose without a wage differential; and (3) the employer refused to adopt it.

**Pay transparency.** The new law also contains pay transparency protections, similar to those that apply to employees of federal contractors and employers covered by the National Labor Relations Act. With certain limited exceptions, employers may no longer prohibit employees from inquiring about, discussing, or sharing wage information with other employees.

**Larger liquidated damages.** The law also increases the amount of liquidated damages that may be awarded for a willful failure to pay wages from 100% to 300% of wages owed.

### Employment Discrimination Based on Family Status

The End Family Status Discrimination bill ([S. 4 / A. 7317](#)) amends the NYSHRL to prohibit employment discrimination based on familial status. “Familial status” refers to a pregnant person, or to a parent or guardian of a child under age eighteen.

**Comment.** New York employers should update their handbooks and policies to reflect that family status is now a protected category. As such, employment decisions cannot be based on an employee’s family status and obligations.

### Expanded Coverage for Sexual Harassment

The NYSHRL does not currently apply to employers with fewer than four employees. The Protect Victims of Sexual Harassment bill ([S. 2 / A. 5360](#)) amends the law to expand its coverage to all workplaces by eliminating the four-employee threshold. Although sexual harassment claims will be able to be brought against employers of any size, the NYSHRL will continue to protect against discrimination or other forms of harassment only in workplaces with four or more employees.

### Attorneys’ Fees for Sex Discrimination Claims

While Title VII and the New York City Human Rights Law allow a prevailing party to recover attorneys’ fees in discrimination cases (including sex discrimination cases), the NYSHRL does not. However, the Remove Barriers to Remediating Discrimination bill ([S. 3 / A. 7189](#)) changes that by amending the NYSHRL to permit an award of reasonable attorneys’ fees to a prevailing plaintiff — but only in employment and credit discrimination cases based on sex. The bill also allows a prevailing defendant in such cases to recover attorneys’ fees, but only if it can show that the action was frivolous. Attorneys’ fees remain unavailable to either party under the NYSHRL for other types of employment discrimination claims.

### Reasonable Accommodations for Pregnant Employees

The Protect Women from Pregnancy Discrimination bill ([S. 8 / A. 4272](#)) amends the NYSHRL to require employers to provide reasonable accommodations for pregnancy-related conditions, unless it would impose an undue

hardship on the employer. The new law clarifies that employers must perform a reasonable accommodation analysis for employees with such conditions.

**Comment.** Under the New York City Human Rights Laws, New York City employers already have a reasonable accommodation requirement for pregnant employees and for those who suffer medical conditions related to pregnancy or childbirth. (See our [May 29, 2014 For Your Information](#).)

For these purposes, a pregnancy-related condition is defined as a medical condition related to pregnancy or childbirth, but the term is limited to conditions that would not prevent the employee from performing her job when provided reasonable accommodation. Under the new law, pregnancy-related conditions are to be treated as temporary disabilities, and an employee must cooperate in providing medical or other information if the employer requests to verify the existence of a pregnancy-related condition and the need for an accommodation.

## In Closing

The new laws will expand employment-related protections for women who work in New York state. In light of the new equal pay standard and increased damages for violations, employers may want to review their existing pay structure and address any unsupportable pay disparities. Employers will also want to update their employment policies and pay practices to ensure compliance with the changes, which will take effect on January 19, 2016.

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