



LYONS MCGOVERN LLP LABOR & EMPLOYMENT ALERT

NEW YORK STATE AMENDS HUMAN RIGHTS LAW TO EXPRESSLY PROHIBIT DISCRIMINATION ON THE BASIS OF GENDER IDENTITY OR EXPRESSION

Effective February 24, 2019, New York Governor Andrew Cuomo has delivered on his promise to sign into law the Gender Expression Non-Discrimination Act (“GENDA”). GENDA amends the New York State Human Rights Law to expressly prohibit discrimination on the basis of gender identity or expression.

In 2018, New York City enacted similar amendments to the New York City Human Rights Law to make it unlawful to discriminate against a person based upon gender identity or expression. GENDA amends Section 296(1) of New York’s Executive Law to make it an unlawful discriminatory practice for an employer with four or more employees to discriminate against an individual because of that person’s “gender identity or expression.” GENDA also adds a new Subsection 35 to Section 292 of the Executive Law, defining “gender identity or expression” as a “person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.”

New York joins 20 other states and the District of Columbia that have statutes prohibiting gender identity discrimination in the workplace.

KEEPING AN EYE ON

On April 22, 2019 the United States Supreme Court announced it will decide whether it is illegal under federal law for employers to discriminate against gay and transgender workers. The case centers around Title VII of the Civil Rights Act of 1964, which bans discrimination on the basis of race, color, religion, national origin, or sex. The Supreme Court will determine whether “sex” applies to sexual orientation and gender identity as well. If the Supreme Court rules in favor of the employees claiming discrimination, it will be an important win for LGBT advocates who have been advocating for protections under the Civil Rights Act for decades. It would also be a major blow for the Trump administration, which has openly advocated against the Civil Rights Act applying to LGBT individuals in hearings and briefs. We will keep you updated on this potential landmark decision and its impact on Employers.

NYC LOOKS TO PROHIBIT PRE-EMPLOYMENT SCREENING FOR MARIJUANA

On April 9, 2019, the New York City Council passed a bill prohibiting pre-employment drug testing for the presence of marijuana or tetrahydrocannabinols (THC), the active ingredient in marijuana. This first-of-its-kind bill is expected to be signed into law by Mayor de Blasio and would take effect one year after enactment. The law would not prohibit drug-testing provisions in collective bargaining agreements, or pre-employment drug-testing required by federal and state regulations, contracts and grants.

Several categories of applicants, primarily those applying to work in areas involving public safety, would be exempt from the law, including: (1) law enforcement personnel; (2) individuals working on construction sites (not just those operating heavy machinery); (3) positions requiring a commercial driver's license; and (4) positions requiring the supervision or care of children, medical patients or people with disabilities.

We will continue to monitor further developments and provide updates once the legislation is signed into law.

WESTCHESTER COUNTY RELEASES POSTER FOR EARNED PAID SICK LEAVE LAW

As we reported in our last Labor & Employment alert, as of March 30, 2019, Westchester County requires covered employers to provide eligible employees with earned paid leave for their own medical needs, those of a family member, or other covered reasons.

Westchester County has now released a poster for the Westchester County Earned Sick Leave Law. By July 10, 2019, all employers covered by the law must post the poster in English, Spanish and any other language deemed appropriate by the County of Westchester, in a conspicuous location. The English version can be accessed here: <https://humanrights.westchestergov.com/images/stories/pdfs/2019slposter.pdf>.

We will provide an update when the Spanish version is released by Westchester County, including a link to the poster.

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