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Updates

Employment & Discrimination Law

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Employment Discrimination Law Expanded and Penalties Increased

New York's Human Rights Law was recently amended to expand the categories of protected classes to include victims of domestic violence. Under the new statute, a "domestic violence victim" is defined as an "individual who is a victim of a family offense under New York's Family Court Act" such as disorderly conduct, harassment, stalking, reckless endangerment or assault between spouses or former spouses, or between parent and child. As with other protected classes, the new law prohibits employers from discriminating against employees in compensation or other terms of their employment, or for refusing to hire or terminating someone because they are a victim of domestic violence.

The new law breaks with federal antidiscrimination laws which do not provide a similar protection for victims of domestic violence. New York's Human Rights law now boasts eleven (11) protected classes from workplace discrimination and retaliation including race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, and domestic violence victims.

The Human Rights law was further amended to provide for civil fines and penalties of up to $50,000 for unlawful discriminatory acts (that occur after July 6, 2009), and for penalties and fines up to $100,000 for discrimination that is willful, wanton, or malicious. These fines and penalties are in addition to the damages for which employers can already be held responsible, including back-pay, front-pay, and other compensatory damages.

We recommend that all employers revise their employment policies to incorporate appropriate references to the new law. We also recommend that any employee having supervisory authority over other employees be informed about the new requirements and, if appropriate, trained on HR policies.

Written Notice and Employee Acknowledgement of Pay Rates Now Required

As of October 26, 2009, New York employers are now required to provide their employees with written notice of their regular rate of pay and, if they are not exempt from the overtime laws, their overtime rate of pay. The new law also mandates that employers obtain from their employees a written statement acknowledging their receipt of the required notice. Written notice must also be provided to employees of all policies pertaining to sick time, vacation, personal leave, and holidays. Also, termination notices must explicitly state the date on which employee benefits are cancelled and must be provided within five (5) days of the date of termination.

A new labor law has also gone into effect increasing the minimum and maximum civil penalties that a court may impose on an employer for retaliating against an employee who makes a complaint to the Department of Labor alleging a violation of New York's labor law. Under the new law, the minimum penalty is now $2,000 and the maximum penalty $10,000. This penalty is an addition to other remedies that are available to the complaining employees.

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We recommend that employers revisit their hiring and termination practices to ensure compliance with the new rules. We also recommend that employers obtain a signed acknowledgment from employees regarding their rates of pay, even if they were hired before the effective date of the statute.

United States Supreme Court Expands Scope of Title VII Retaliation Clause

Title VII of the Civil Rights Act of 1964 not only protects certain classes of individuals from discrimination, but protects all individuals who "oppose" any unlawful employment practice. Consequently, even individuals who are not in any identified protected category (i.e., white males), are protected by Title VII if they "oppose" any unlawful act of workplace discrimination prohibited by Title VII.

Very few cases have examined this protected category of employees. Moreover, Title VII itself does not define the term "opposed." In a recent United States Supreme Court case, however, the Supreme Court broadly construed Title VII's opposition clause by holding that it extends not only to those employees who speak out against discrimination, but even those who engage in any act that might be deemed supportive of another employee's discrimination complaint.

In the case of Crawford v. Metropolitan Government of Nashville, a thirty year employee of the government, Mrs. Crawford, was terminated for alleged drug use and embezzlement, but claimed her termination resulted from responses she gave to questions during an investigation about a male supervisor who may have created a hostile work environment. Although Crawford was not even the employee who filed a complaint against the male supervisor, she provided information in the investigation which suggested the supervisor did, indeed, create a hostile work environment and sexually harassed other employees. Shortly after the male supervisor was exonerated from any charges, Crawford was terminated. The lower court dismissed Crawford's claim of retaliation by stating her conduct was not covered or protected by Title VII's anti-retaliation provision.

The United States Supreme Court unanimously overruled the lower court's decision. The Supreme Court broadly defined the concept of "opposition" to include any act reflecting disapproval and remanded the case for further proceedings.

The message for employers is clear. Merely because someone does not fit into one of the traditional protected categories does not mean that that person is unprotected by antidiscrimination laws. If an employee has taken any action to demonstrate their opposition to workplace discrimination, they are still protected by Title VII, even if the underlying claim of discrimination is unfounded and no workplace discrimination occurred (so long as the employee had a reasonable good faith belief that they were opposing unlawful discrimination). Consequently, whenever an adverse employment action is contemplated against an employee who may have opposed workplace discrimination, care should be exercised in determining whether the action is appropriate for legitimate business reasons.

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