



New York State Anti-Sexual Harassment Legislation Has Begun To Take Effect – Are You in Compliance?

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As discussed in a [previous post](#), the New York State budget bill for the 2019 fiscal year, approved by the New York State Legislature and Governor Andrew Cuomo on April 12, 2018 (the “Budget”) revised New York State law to require employers to take various steps to prevent and respond to instances of sexual harassment in the workplace. Today, several of the mandates under this legislative documents have taken effect.

Mandatory Arbitration Clauses:

As of July 11, 2018, the Budget’s prohibition against mandatory arbitration clauses for claims of sexual harassment (codified at New York Civil Practice Law and Rules (“CPLR”) section 7515) has taken effect. This means that contractual provisions mandating arbitration for any allegations or claims of sexual harassment, except where inconsistent with federal law, will be prohibited, unless such arbitration clauses are contained in a collective bargaining agreement. Any such provision included in a contract as of today will be considered null and void, but will not impact the enforceability of other provisions in the contract. While it has yet to be determined how this new law will stand up to the Federal Arbitration Act and to what extent, employers are advised to review their contracts to determine whether this new law may pose an issue in the future, and to revise any form documents/contracts as necessary.

Release and Confidentiality Agreements:

Also, as of July 11, 2018, the Budget’s requirements concerning release agreements (codified at CPLR 5003-b) take effect. Thus, if an agreement (1) involves the settlement of a claim for sexual harassment, and (2) requires non-disclosure of the underlying facts and circumstances of that claim, then the complainant must (a) be provided with a twenty-one (21) day period within which to consider whether to agree to the non-disclosure, (b) be given an additional seven (7) day revocation period, and then (c) must specifically affirm a preference for non-disclosure *after* the twenty-one (21) days has expired. It is recommended that employers discuss these requirements with their legal counsel and implement these newly required clauses into their settlement agreements going forward.

Responsibility for Harassment by Non-Employees:

Finally, New York State employers should be aware that the Budget's changes to the New York State Human Rights Law section 296-d took effect on April 12, 2018. Under this revision, New York State employers may be liable for the sexual harassment of non-employees where the employer (a) knows or should have known that the harassment was/is occurring in its workplace, and (b) failed to take immediate and appropriate corrective action. Employers should discuss this change with legal counsel to ensure that they have a procedure in place to handle these types of claims without making non-employees employees under the law.

Please note that this is a general overview of developments in the law, and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of employment law, please contact Thomas B. Wassel at (516) 357-3868 or twassel@cullenanddykman.com.

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