

**MANAGEMENT RIGHTS NEWSLETTER  
SUMMER 2019  
BONUS EDITION**

In our Summer 2019 newsletter, we provided information regarding pending legislation of interest. One of those bills was passed and signed by the Governor on August 12, 2019. The new law expands protections against discrimination and harassment. These are significant changes which will require administrative changes to your existing Anti-Harassment policies, as well as modifications to the related training component. Here is a quick summary of the law and when the various provisions take effect. Most of the significant changes are effective in October 2019. The relevant changes applicable to public sector employers are **bolded**.

**The following sections are effective immediately:**

- Requires courts to interpret Human Rights Law (“HRL”) liberally and exceptions construed narrowly, regardless of whether similarly worded federal laws have been interpreted liberally
  - Applies to claims filed on or after the date this section takes effect
- Expands the power of the NYS Attorney General to enforce the HRL based on any protected class/category
- **Requires employers to provide employees with notice of employer’s sexual harassment policy in English and in employee’s primary language**
- Requires a study on expanding harassment policies to all types of discrimination
- Requires review of the state model sexual harassment policies every four years beginning in 2022

**The following sections are effective on or about October 8, 2019 and apply to claims filed on or after that date:**

- **Eliminates the requirement that harassment be “severe and pervasive” in order to rise to the level of a violation of state law.**
  - This was the standard previously applied by courts to analyze harassment complaints. The new standard to be used is whether the conduct “subjects an individual to inferior terms, conditions or privileges of employment because of the individual’s membership in one or more protected category.”
- **An employer can be liable even if the individual did not make a complaint of discrimination or harassment to the employer.** (This erodes what was previously known as the “Farragher/Ellerth defense” which provided an affirmative defense for employers who had consistent and accessible harassment complaint procedures where the employee failed to avail themselves of those procedures. That defense may not now apply.)
  - The law instead provides a new affirmative defense for employers, where the employer can show that “the harassing conduct did not rise above the level of what a reasonable victim of discrimination with the same protected characteristic would consider petty slights or trivial inconveniences.”
- Expands protections against discrimination and harassment to domestic workers

- **Expands the protections against discrimination and harassment *on any basis* to non-employees (currently this applied only to sexual harassment)**
- Allows punitive damages to be awarded *against private employers* in discrimination and harassment cases (“Private employer” does not include the state or local subdivisions, boards, agencies or commissions.)
- **Allows for attorney’s fees to be awarded against any employer in employment discrimination cases**
- **Expands the prohibition on non-disclosure agreements to all types of harassment (not just sexual harassment)**
- **Prohibits non-disclosure agreements from prohibiting the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is in the plaintiff’s preference in all types of harassment cases**
- **Prohibits mandatory arbitration to resolve cases of harassment (not just sexual harassment)**

**The following section is effective on or about February 5, 2019 and applies to claims filed on or after that date:**

- Provides that the Human Rights Law covers all employers in the state, regardless of size, and specifically includes state and political subdivisions of the state (removing the prior 4-employee minimum)

**The following section is effective 1 year from date enacted (on and after 8/12/20)**

- **Expands the time for filing a complaint with the Division of Human Rights from one year to three years**