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New York Governor David Paterson has signed into law an amendment to New York State's Human Rights Law, prohibiting covered New York employers from discriminating against employees in compensation or other terms of their employment, or from refusing to hire or terminating an individual because she or he is a domestic violence victim.

New York Amends Its State Human Rights Law to Protect Domestic Violence Victims from Employment Discrimination

By Lisa M. Brauner

Each year approximately 400,000 cases of domestic incidents are reported to law enforcement authorities in New York State alone, according to New York's Division of Criminal Justice Services.¹ More broadly, one in four women has experienced domestic violence in her lifetime, according to the Domestic Violence Resource Center. Not surprisingly, the impact of domestic violence often spills over into the workplace, when victims are absent from work to attend to matters relating to the crime — whether it is meeting with an attorney or domestic violence counselor, appearing in court, or seeking medical attention relating to injuries from the domestic violence. Up to 50 percent of domestic violence victims reported that domestic abuse contributed to a job loss, and nearly 50 percent say they lost their jobs or were forced to quit after they had been assaulted, according to New York-based Legal Momentum, a women's legal advocacy group.²

In light of this, New York State has recently amended its Human Rights Law (NYSHRL) to protect domestic violence victims from employment discrimination.³ The amendment, effective July 7, 2009, seeks to prevent employment discrimination against victims of domestic violence for taking time off from work to go to court, consult with a district attorney, counselor, and/or doctor, and recuperate from injuries. Thus, it is a violation of the law to treat an employee who is a domestic violence victim differently than any other employee because of that employee's status as a domestic violence victim. For instance, if an employer provides personal time off ("PTO") or sick leave for its employees, it may not deny a domestic violence victim use of those policies to attend to issues pertaining to domestic violence, such as court appearances, going to doctors, etc.

The NYSHRL does not — unlike the New York City Human Rights Law and Westchester County Code⁴ — contain an express requirement that employers reasonably accommodate domestic violence victims. However, according to the New York State Division of Human Rights (DHR) — which enforces the NYSHRL — a domestic violence victim's need for medical or mental health leave is protected by the

NYSHRL's disability and reasonable accommodation provisions.⁵ The amendment's purpose is to help protect the economic viability of domestic violence victims and support their efforts to gain independence from their abusers.

It has been a crime for some time in New York State under New York's Penal Law section 215.14 for an employer to discharge or penalize a crime victim who takes time off to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection. But now, with the passage of this amendment to New York's Human Rights Law, New York State follows New York City, Westchester County, and a handful of other states prohibiting employment discrimination against domestic violence victims.

Employers and individuals now face the prospect of having to pay money damages if found liable for taking an adverse employment action against an employee or job applicant because of their status as a domestic violence victim. Employers who discriminate also may face civil penalties of up to \$50,000 payable to the State. If an employer is found to have willfully, wantonly, or maliciously engaged in discrimination, it could face civil penalties of up to \$100,000.⁶

Possible Eligibility for Unemployment Insurance in New York

New York employers also should be aware that an employee who is forced to leave a job because of domestic violence may be deemed eligible by the New York State Department of Labor for unemployment insurance benefits. New York Labor Law Section 593 defines as "good cause" for unemployment insurance benefits: "a voluntary separation due to domestic violence." The DHR also has noted that job performance issues relating to domestic violence like absenteeism or tardiness also may not bar receipt of such benefits.

Recommendations for Employers

New York employers should prepare their workplaces to ensure compliance with this amendment to New York State's Human Rights Law and to minimize potential exposure to liability. To that end, employers should consider taking the following measures:

- Updating their handbooks to include domestic violence victims as a protected category and to reflect that their antidiscrimination/antiharassment policies encompass domestic violence victims. These revised policies should be provided to all employees.
- Ensuring that workplace violence policies are up-to-date and incorporate the issue of domestic violence.
- Ensuring that all supervisors and employees are aware of how to handle a domestic violence situation that spills over into the workplace.
- Incorporating this change in New York's law into antidiscrimination and antiharassment training for supervisors and employees to educate them about the laws pertaining to the protection of domestic violence victims and educating employees regarding the effects of domestic violence, ways to prevent violence, and methods to report such violence to authorities.
- Training supervisors on how to handle interviews with domestic violence victims, requests for accommodation from an employee because of a domestic violence situation, and reports to a supervisor from an employee about a domestic violence situation.
- Posting in a visible place a list of resources for domestic violence victims, including contact information, and information for the New York State Office for the Prevention of Domestic Violence; posting the names and contact information of designated employees who are trained and available to serve as confidential sources of information, support and referral.
- Providing information to employees that New York State law prohibits insurance companies and health maintenance organizations from discriminating against domestic violence victims. The law prohibits these organizations from designating domestic violence as a pre-existing condition. An insurance company may not deny or cancel an insurance policy or require a higher premium or payment because the insured is or has been a domestic violence victim.⁷

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¹ See <http://www.opdv.state.ny.us/statistics/nydata/nys2007data.pdf>.

² See <http://www.legalmomentum.org/our-work/domestic-violence/statistics.html>.

³ N.Y. EXEC. LAW §296(a)(1). New York's Executive Law was also amended to add §292(34). It provides that a "domestic violence victim" is someone who has been a victim to a family offense under section 812(1) of the Family Court Act, which includes harassment, stalking, menacing, criminal mischief and disorderly conduct.

⁴ N.Y.C. Admin. Code §8-107.1(3); Westchester County Code §700.03(8). These laws require a covered employer to reasonably accommodate a domestic violence victim unless doing so would cause an "undue hardship" on the employer's business.

⁵ See http://www.dhr.state.ny.us/pdf/trifold-domestic_violence.pdf.

⁶ N.Y. Exec. Law §297(4)(c)(vi).

⁷ N.Y. INS. LAW §2612.