

One Minute Memo®



New York Legislature Approves “Fair Pay” Legislation

By Robert S. Whitman and Maria Papasevastos

The New York Legislature has approved amendments to the New York Labor Law aimed at easing the ability of plaintiffs to pursue claims of “equal pay for equal work.” The legislation narrows the exceptions to the prohibition against gender discrimination in pay; disallows employer policies that prevent employees from inquiring about, discussing, or disclosing wage information; and increases liquidated damages for willful violations of the Labor Law’s prohibition against sex-based pay disparities.

The Assembly passed the bill on April 27, 2015, following approval by the Senate back in January. Governor Andrew Cuomo has pledged to sign the legislation, stating, “[T]he Empire State is taking a firm stand in support of equal pay for women in the workplace, and I look forward to signing this legislation as we continue to advance and ensure the rights of women across New York State.” The bill will take effect 90 days after the Governor’s signature.

In its current form, Labor Law § 194 – the State’s counterpart to the federal Equal Pay Act – provides:

No employee shall be paid a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions, except where payment is made pursuant to a differential based on: (a) a seniority system; (b) a merit system; (c) a system which measures earnings by quantity or quality of production; or (d) any other factor other than sex.

The new amendment makes four key revisions affecting claims under this statute:

First, it replaces the “any other factor other than sex” language with a requirement that the differential in pay rate be based on “a *bona fide* factor other than sex, such as education, training or experience” (emphasis added). This factor must be job-related and consistent with business necessity, but will be disallowed if there is an alternative employment practice that would serve the same business purpose but not produce the same sex-based pay differential.

Second, the amendment further specifies that employees will be considered to work in the “same establishment” as long as their workplaces are in the same geographic region. Thus, a pay differential may be found to exist even between employees who work in different physical locations provided those locations are in the same region. The statute does not specify what constitutes a region for purposes of this analysis.

Third, the amendment provides that an employer may not prohibit employees from inquiring about, discussing, or disclosing wage information. However, an employer may maintain a written policy that establishes “reasonable workplace and workday limitations on the time, place and manner for inquiries about, discussion of, or the disclosure of wages,” and may prohibit an employee from discussing the wages of another employee without such employee’s prior permission.

Fourth, the statute amends the Labor Law to increase liquidated damages for willful violations of section 194 to 300% of wages due. (Other Labor Law provisions trigger “only” 100% liquidated damages.)

These amendments were first proposed in 2013 as part of a ten-part bill referred to as the Women’s Equality Act. Although the Act passed the Assembly, it failed in the Senate due to a controversial provision on abortion rights. The Senate divided the Act into separate bills and passed all but the abortion bill.

In addition to approving these amendments last week, the Assembly also passed the “New York State Fair Pay Act,” which would prohibit discriminatory wage practices based on sex, race and national origin. This bill is currently being considered by the Senate Labor Committee, so whether it will be enacted into law remains to be seen.

[Robert S. Whitman](#) is a partner in Seyfarth Shaw’s New York office and [Maria Papasevastos](#) is an associate in the firm’s New York office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Robert Whitman at rwhitman@seyfarth.com or Maria Papasevastos at mpapasevastos@seyfarth.com.

www.seyfarth.com



Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP One Minute Memo® | May 8, 2015

©2015 Seyfarth Shaw LLP. All rights reserved. “Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.