

# Management Alert



## Governor Cuomo Signs Landmark Legislation Impacting Anti-Discrimination and Anti-Harassment Laws

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***Seyfarth Synopsis:** As expected, Governor Cuomo signed another landmark piece of legislation amending New York's anti-discrimination and sexual harassment laws. Not only does the law significantly expand the protections afforded to employees, but its varying effective dates, some requiring immediate attention, require employers to reevaluate existing policies and practices.*

On June 19, 2019, the New York State Legislature passed [S6577/A8421](#). Our previous [Management Alert](#) provided a comprehensive overview of the provisions that were expected to become law. Unsurprisingly, based on the political climate and the pace with which [sexual harassment laws in the wake of the #Me Too era](#) have been enacted, Governor Cuomo signed the bill into law yesterday, August 12, 2019. The law contains a series of staggered effective dates, as outlined below:

### Effective Immediately

Effective immediately, the New York State Human Rights Law (NYSHRL) is to be construed "liberally". This appears to be a legislative effort to ensure that the NYSHRL is interpreted similarly to the New York City Human Rights Law (NYCHRL), as opposed to Title VII.

Also effective immediately, employers are required to distribute to new-hires and to existing employees annually at each sexual harassment prevention training, written notice regarding the employer's sexual harassment prevention policy and information presented at the training. Notice must be available in English and the primary language of the employee, provided that a model State notice exists in that language.

### Effective 60 Days After Enactment (October 11, 2019)

Under the new law, the following seven changes will take effect in sixty days:

1. Elimination of the "severe or pervasive" standard in favor of the lower legal standard applicable under the NYCHRL.
2. Elimination of the *Farrager/Elleth* defense in cases of alleged supervisor harassment.

3. Extension of anti-discrimination protections to “non-employees” including contractors, vendors, and consultants.
4. Allowance of punitive damages as remedy for discrimination cases brought against private employers under the NYSHRL.
5. Mandatory award of attorneys’ fees for a prevailing party, irrespective of the forum in which the complaint is brought, except that if the employer is seeking attorneys’ fees it must show that the action brought by the plaintiff was frivolous.
6. Prohibition of nondisclosure agreements in settlement agreements relating to facts and circumstances underlying claims of discrimination, unless confidentiality is the complainant’s preference.
7. Prohibition of mandatory pre-dispute arbitration for all claims of discrimination.

## Contracts Entered Into On or After January 1, 2020

After the new year, blanket provisions limiting employees’ abilities to disclose factual information related to future claims of discrimination will be void and unenforceable. However, these provisions may still be included so long as they inform the employee that they may speak with law enforcement, government agencies, and attorneys.

## Effective 180 Days After Enactment (February 8, 2020)

Under the new law, all private employers, regardless of size, may be liable for violations of the NYSHRL. Significantly, this will impact businesses with less than four employees who were previously outside the NYSHRL’s coverage.

## Effective 1 Year After Enactment (August 12, 2020)

Next year, employees will no longer be limited to a one-year statute of limitations for filing sexual harassment claims. Instead, under the new law, the statute of limitation for those claims has been extended to three years at the New York State Division of Human Rights.

## Employer Takeaways

Employers should immediately assess whether their policies and practices are in compliance with the new law. As always, Seyfarth Shaw LLP and its attorneys are available to assist employers with ensuring compliance with this new law.

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