

## What New York's Anti-Sexual Harassment Legislation Means for New Jersey Employers

Under the new legislation, workplace harassment no longer needs to be "severe or pervasive" in New York to establish employer liability

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Governor Cuomo is expected to sign legislation that would make it easier for plaintiffs to prevail in litigation involving issues of sexual harassment and other forms of discrimination. The omnibus bill passed by the New York State Assembly and Senate ([A08421/S06577](#)) makes sweeping changes to the New York State Human Rights Law that dramatically impacts employers in New York.

Perhaps the most notable aspect of the legislation is its elimination of the requirement that workplace harassment be "severe or pervasive" to be actionable. Instead, harassment will be considered "an unlawful discriminatory practice" and actionable so long as the individual is subjected to "inferior terms, conditions or privileges of employment" because of an individual's membership in a protected category, such as age, race, or sex. This new standard is significantly more "plaintiff friendly" than the "severe or pervasive" standard. As if to remove any doubt as to the sweeping effect of the amendment, the new law makes clear that it is intended to be construed liberally for remedial purposes and that any "[e]xceptions to and exemptions from" the law "shall be construed narrowly in order to maximize deterrence of discriminatory conduct."

Another significant aspect of the new legislation is its curtailment of the *Faragher-Ellerth* defense, which shields employers from liability if they "exercised reasonable care" to prevent and remediate sexual harassment and if the plaintiff "unreasonably failed to take advantage of any preventative or corrective opportunities" provided by the employer. Under the new law, the fact that an employee did not make a formal complaint regarding harassment is no longer "determinative" of employer liability.

New York's anti-sexual harassment legislation may be significant for New Jersey employers. In the past year alone, New Jersey has passed several pieces of legislation in the wake of similar legislation or guidance from New York, such as [the \\$15 minimum wage law](#), [a law to prohibit certain waiver and non-disclosure provisions in employee contracts and settlement agreements](#), and [a law banning discrimination based on hair and hairstyle](#). Employers in New Jersey should be prepared for potential amendments to the State's anti-discrimination laws, which may make it easier for plaintiffs to establish employer liability, and be proactive in eliminating instances of harassment and discrimination in the workplace through the use of proper policies and training.

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If you have any questions concerning New York's proposed legislation, or any other federal or state employment laws, please feel free to contact [Jennine DiSomma](#) or [Vincent C. Cirilli](#) of Saiber LLC's Employment and Labor Law practice.