New York State Senate Introduces New Wrongful Discharge Law

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On March 6, 2023, the New York State Senate introduced Senate Bill S05459, the Safeguarding Employees and Accountability for Termination ("SEAT") Act, which, if enacted, will eliminate at-will employment in the State of New York. The Act, which would take effect ninety (90) days after its codification, creates a private cause of action for "wrongful discharge," under a newly drafted Article 20-D of the New York Labor Law.

Under the current version of the Bill, a "discharge includes a constructive discharge (as defined in the Bill)…and any other termination of employment, including resignation, elimination of the job, failure to recall or rehire and any other cutback in the number of employees for a legitimate business reason." The Bill defines "constructive discharge" as "the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which a reasonable person would find so intolerable that voluntary termination is the only reasonable alternative."

Under the current version of the Bill, a discharge is considered "wrongful" if:

1. it is not made for "good cause" and the employee has completed a "probationary period" of employment; or
2. the employer materially violated an express provision of its written personnel policy prior to the discharge and the violation deprived the employee of a "fair and reasonable opportunity" to remain employed.

As presently drafted, the SEAT Act broadly defines "good cause" as "any reasonable job-related grounds" to support the employee's discharge, including failure to satisfactorily perform the employee's job duties, the employee's material or repeated violation of the employer's policies, the employee's disruption of the employer's operations (except when engaging in protected activity) and other legitimate business reasons as determined by the employer while exercising reasonable business judgment. Discharges occurring during a "probationary period" (as defined by the bill) are not subject to the "good cause" requirement. The "good cause" requirement further gives employers wide-ranging discretion when making decisions regarding the discharge of any managerial or supervisory employee.

Under the current form of the Bill, the statute of limitations is six (6) years from the date of discharge. Significantly, if the employer maintains written internal procedures under which an employee may appeal the discharge, such internal remedies must be exhausted before suit can be

filed under the Act. An employee's failure to initiate or exhaust available internal remedies is a defense to any action subsequently filed. Nevertheless, if an employer's internal process is not completed within 90 days from the date initiated, the employee may proceed with filing an action. The six-year statute of limitations on SEAT Act claims is tolled until an organization's internal procedures are exhausted, for a maximum of 120 days.

Remedies for wrongful discharge include lost wages and fringe benefits, with interest, for a period not to exceed four (4) years from the date of discharge. The Act imposes upon the employee a duty to mitigate damages, and any lost wages award may be reduced by the employee's interim earnings, including amounts the employee could have earned with "reasonable diligence."

The SEAT Act does not apply to discharges subject to any other state or federal statutes which provide a procedure or remedy for contesting the discharge, or to employees covered by a collective bargaining agreement or written employment contract.

If passed, the SEAT Act will effectively eliminate at-will employment in New York State as well. We note that at the end of 2022, the New York City Council introduced Int 0837-2022, a similar bill to the SEAT Act, which, if passed, will prohibit employers from terminating employees without just cause in New York City.