

LABOR & EMPLOYMENT LAW ALERT

New York State Passes Protections for Transgender Employees

On January 25, 2019, Governor Cuomo signed the Gender Expression Non-Discrimination Act (“GENDA”) which bans discrimination based on both gender identity and gender expression. Although there is growing uncertainty as to the protections for transgender individuals on the federal level, employers in New York State must ensure compliance with GENDA, which applies to employers in both the private and public sectors.

GENDA amends the New York State Human Rights Law to prohibit discrimination in the ability to obtain either employment or education based on a person’s gender identity or expression. The new law defines gender identity or expression as “a person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.”

The new legislation also changes other provisions of New York law. For example, GENDA amends the Education Law to prohibit the exclusion, limitation or discrimination against people seeking access to education in New York State colleges or universities based upon gender identity or expression. It also expands the Penal Law to include crimes against people based upon their gender identity or expression as a hate crime.

The changes to the New York State Human Rights Law and Education Law will become effective on February 24, 2019, while the changes to the Penal Law will take effect on November 1, 2019.

The above changes should not come as a surprise to most employers, as the New York State Division of Human Rights, through its own regulations, has banned employment discrimination and harassment against both transgender individuals and individuals with gender dysphoria since 2016. Additionally, the final model sexual harassment policy issued by New York State in October 2018 (as part of the recent changes to New York’s sexual harassment laws), included both “self-identified or perceived sex” and “gender expression” as bases for sexual harassment. Regardless, employers are strongly encouraged to review their harassment and discrimination policies and training programs to ensure that both gender identity and gender expression are included and discussed as protected classes.

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If you have any questions or would like more information on the issues discussed in this communication, please contact any of our Firm's labor and employment law attorneys listed below.

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