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## *New York State Human Rights Law: Changes to Know*

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New York employers should be aware of recent amendments to the New York State Human Rights Law (NYSHRL) and the NY Labor Law. These amendments, enacted by Senate Bill 6577 and referenced below, will afford greater protections to employees and align the NYSHRL more closely with the New York City Human Rights Law (NYCHRL). Additionally, the NYSHRL must now be construed liberally to “maximize deterrence of discriminatory conduct.”

Here are the major changes to be mindful of:

### ***Already Effective***

#### 1. Lowered Standard to Prove Discriminatory Harassment

The New York Legislature has lowered the standard for plaintiffs to prove unlawful harassment. Before this change, employees had to show that harassment altered the conditions of their employment under a “severe or pervasive” standard, similar to federal law.

Now, employees need only show that they were subjected to “inferior terms, conditions or privileges of employment because of the individual’s membership in one or more [] protected categories.” This lowered employee burden brings the state law more in line with New York City law, where discriminatory harassment can be shown if employees can demonstrate they were “treated less well” than other employees due to their membership in a protected category. N.Y. Exec. Law § 296(1)(h).

#### 2. Required Distribution of Anti-Harassment Policy in English or Primary Language

Employers must now provide their written sexual harassment prevention policy and the information they present at their annual sexual harassment prevention training program to employees in either English or the employee’s primary language (as indicated by the employee), at the time of hire and at every annual sexual harassment prevention training. N.Y. Lab. Law § 201-g(2-a)(a).

#### 3. Eliminating One Employer Defense but Adding Another

The new law prevents employers from avoiding NYSHRL liability by claiming an employee unreasonably failed to take advantage of any preventive or corrective measures offered by the employer, similar to New York City law. The statute, however, allows employers an affirmative defense



to liability if they can show that “the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic would consider petty slights or trivial inconveniences.” N.Y. Exec. Law § 296(1)(h).

#### 4. No Need for Plaintiffs to Identify Comparators

New York State has also amended its Human Rights Law to make it explicit that, while the employee must show that he or she was subjected to “*inferior* terms, conditions or privileges of employment,” the employee does *not* have to show “the existence of an individual to whom the employee’s treatment must be compared.” N.Y. Exec. Law § 296(1)(h).

#### 5. Prevailing Plaintiffs Can Now Recover Punitive Damages & Attorneys’ Fees

Under the new law, prevailing employees in court, and in agency actions before the New York State Division of Human Rights, may now recover punitive damages and attorneys’ fees. N.Y. Exec. Law § 297(9) and (10).

The standard for establishing punitive damages under state law has yet to be established by the courts. That said, under the New York City law, case law has established that punitive damages may be awarded if it is shown that an employer discriminated with “willful or wanton negligence, or recklessness,” or where there is a “conscious disregard of the rights of others or conduct so reckless as to amount to such disregard.”

#### 6. Unlawful Discrimination Against Non-Employee Service Providers Now Prohibited

Back in April 2018, the New York legislature expanded the NYSHRL’s scope of protection against sexual harassment to include non-employees such as independent contractors, vendors, and consultants. Under the new law, these non-employees are now protected by the NYSHRL against **all** forms of unlawful discrimination. N.Y. Exec. Law § 296-d.

### **Effective February 8, 2020**

#### 7. All Employers Subject to NYSHRL (No Minimum Employee Requirement)

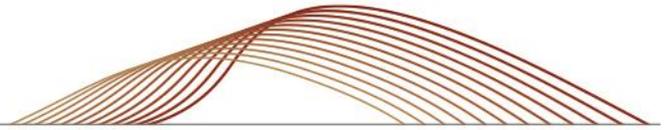
The NYSHRL currently only applies to New York employers with four or more employees. However, on February 8, 2020, the law’s coverage will extend to all New York employers, no matter the number of employees. N.Y. Exec. Law § 292(5).

### **Effective August 12, 2020**

#### 8. Statute of Limitations to Bring Sexual Harassment Claims Before New York State Division of Human Rights Extended to Three Years

Presently, complainants have one year to bring sexual harassment claims before the New York State Division of Human Rights. Effective August 12, 2020, the statute of limitations for **sexual harassment** claims will be expanded to **three years**, matching the statute of limitations for bringing sexual harassment claims under New York City law. N.Y. Exec. Law § 297(5).

Other discrimination and harassment claims remain subject to the one-year statute of limitations.



Employers should understand and be prepared for the significant changes to the NYSHRL and ensure their compliance by all applicable deadlines.



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