

## In This Issue:

July 2009

The New York State Human Rights Law has been amended to permit the imposition of civil fines upon a finding of discriminatory conduct by the Commissioner of the State Division of Human Rights or by a court, in an amount not to exceed \$50,000, but up to \$100,000 if a discriminatory act is found to be willful, wanton or malicious.

## New York Takes an Extra Bite of the Apple: Civil Penalties May Be Assessed for Unlawful Discriminatory Practices

By Stephen A. Fuchs and Orit Goldring

Recent amendments to the New York State Human Rights Law authorize civil penalties payable to the state in an amount up to \$100,000 against employers who commit an unlawful discriminatory practice. The amendments apply to conduct occurring on or after July 6, 2009.

The New York State Human Rights Law prohibits discrimination in employment on the basis of race, color, creed, national origin, sex, age, disability, sexual orientation, marital status, military status, predisposing genetic characteristics, or domestic violence victim status.<sup>1</sup>

Prior to July 6, 2009, the law provided a variety of remedies upon a finding of employment discrimination, including compensatory damages to the aggrieved party for out of pocket losses and/or pain and suffering; injunctive orders requiring an employer to cease and desist from unlawful discriminatory practices, to hire, reinstate or upgrade employees, with or without backpay, or to train employees; and disgorgement of profits received as a result of unlawful discrimination.<sup>2</sup>

The recent amendments provide that a penalty of up to \$50,000 may be assessed against an employer who is found to have engaged in an unlawful discriminatory practice, and that an employer whose violation is found to have been “willful, wanton or malicious” may be penalized up to \$100,000.<sup>3</sup>

The new penalties imposed by the amendments are to be paid by the employer to the state and are exclusive of any damages or other payments assessed against the employer. The amendments further provide that for employers with fewer than 50 employees, the penalty may be paid in “reasonable installments.”<sup>4</sup>

### Interpretive Regulations to Be Issued by NYSDHR

The NYSDHR is empowered by the amendments to promulgate regulations governing such “reasonable installments” for payment of the civil penalties. However, the law

requires that the installments must be paid over no more than three years and that the regulations impose interest for the delay in payment.<sup>5</sup> The regulations have not been promulgated as of the date of this article.

## Expansion of Powers for the NYSDHR

Previously, the imposition of civil fines and penalties had been limited by the New York State Human Rights Law to cases alleging housing discrimination. The amendments expand the imposition of civil penalties to all forms of prohibited discrimination, including employment discrimination. Employment discrimination cases constitute 80% of the cases filed with the NYSDHR.<sup>6</sup>

The NYSDHR has openly declared its intent to use this new enforcement weapon. NYSDHR Commissioner Galen Kirkland stated, “[t]his amendment to our law will provide the Division with a very powerful tool to fight discrimination in the state. Now that we can assess fines and penalties in the majority of the cases received by the Division we will be better equipped to further the agency’s mission to protect the rights of all New Yorkers.”<sup>7</sup>

## Application to Litigation

At first glance the penalty appears to apply only to the decisions of the Commissioner of the State Division of Human Rights. However, a preexisting provision of the statute, section 297(9), expressly provides that the civil penalties provided by section 297(4)(c) may be recovered in a civil action. Therefore the new civil penalties included in the statute may be demanded in civil lawsuits alleging a violation of the New York State Human Rights Law.

## Implication to Employers

By amending the statute to provide for the imposition of civil penalties against employers, the New York State legislature has increased employers’ potential exposure in employment discrimination and retaliation claims. Employers should remain vigilant in preventing and correcting discrimination and harassment in the workplace by immediately addressing employee complaints and by training managers and HR on prevention techniques and compliance with company antidiscrimination policy.

.....  
 Stephen A. Fuchs is a Shareholder and Orit Goldring is an Associate in Littler’s New York City Office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Fuchs at sfuchs@littler.com, or Ms. Goldring at ogoldring@littler.com.

---

<sup>1</sup> N.Y. Exec. L. § 296.1(a).

<sup>2</sup> N.Y. Exec. L. § 297.(4)(c)(i) – (iii), (v).

<sup>3</sup> N.Y. Exec. L. § 297(4)(c)(vi).

<sup>4</sup> N.Y. Exec. L. § 297(4)(e).

<sup>5</sup> *Id.*

<sup>6</sup> Press Release, *Human Rights Law Is Amended to Provide for the Assessment of Civil Fines and Penalties*, New York State Division of Human Rights, July 8, 2009.

<sup>7</sup> *Id.*