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New York Broadens Its Prohibition on Retaliation, Will Develop Sexual Harassment Hotline

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New York State employers are now prohibited from releasing personnel records to retaliate against employees who oppose discrimination, and the state has pledged, by July 14, 2022, to establish a confidential hotline for employees to seek assistance for complaints of workplace sexual harassment.

The measures, part of the state's ongoing effort to address workplace harassment and discrimination, were contained in two bills signed into law on March 17, 2022 by Gov. Kathy Hochul.

Leaking an Employee's Personnel Records Now Constitutes Retaliation

The New York State Human Rights Law (SHRL) is the state's principal law prohibiting discrimination and retaliation in the context of employment, housing, education, credit and access to public accommodations. Generally, under the SHRL, employers are forbidden from retaliating against an employee for complaining about discrimination or harassment, filing internal or external complaints, or testifying or assisting in a legal proceeding. Such retaliation may include, but is not limited to, unnecessary disciplinary action, demotion or transfer, withdrawal of previously allowed privileges, a decrease in pay or hours, or termination.

With the enactment of [Senate Bill S5870](#), employers are now prohibited from disclosing the personnel file of an employee who opposed

unlawful discrimination, filed a complaint or testified or assisted in a legal proceeding, to an unauthorized third party for any reason. This new provision does not define the term "personnel file." Generally, however, it includes documents such as performance evaluations, complaints from guests or co-workers, disciplinary forms, attendance records, forms that relate to transfers and promotions or demotions, and termination forms.

According to the Senate's justification for the bill, retaliation frequently appears in the form of leaking an employee's personnel file with the intent to disparage or discredit a victim or witness of discrimination or harassment in the workplace. This new law now makes clear that the release of personnel file because an employee filed a complaint or cooperated with an investigation counts as retaliation and is completely prohibited under the SHRL.

However, the law explicitly states that there is no violation of the law and it is not retaliatory for an employer to disclose personnel records in the course of commencing or responding to a complaint in a civil or criminal action or any other judicial or administrative proceeding as permitted by applicable law.

This law is effective immediately and employers should review their policies relating to how they manage employees' personnel files. Employers are also advised to discuss this new law with

management and human resources to ensure that they understand the legal consequences of disclosing personnel records in retaliation against an employee who opposes unlawful discrimination.

New York State to Develop Sexual Harassment Hotline

[Senate Bill A.3484](#) takes effect on July 14, 2022 and will establish a statewide toll-free confidential hotline that will enable individuals who experience workplace sexual harassment to seek counsel and assistance. The New York State Division of Human Rights (SDHR) will operate the hotline and work with organizations representing attorneys to recruit experienced lawyers to provide pro bono assistance and counsel to individuals who call the toll-free number. However, the law expressly forbids attorneys who provide assistance on the hotline from soliciting further representation of any individuals they advise through the hotline relating to the discussed sexual harassment complaint.

The law will also require employers to provide employees with information related to the hotline. Employers are advised to monitor the development of the hotline and, once it is active, ensure that their employees are aware of its resources.

The law simply sets up a resource for employees to seek advice as it relates to the purported sexual harassment they experience in the workplace. While the law states that the SDHR will “operate” the hotline, it does not address whether the state will implement procedures to examine the veracity of the claims made on the hotline.

The drafting and ultimate passage of this law seem to be rushed and ill-conceived. As explained above, it appears that the state failed to consider implementing any mechanism necessary to examine the veracity of the claims disclosed. Additionally, while the law indeed forbids those attorneys who provide assistance from soliciting clients through the hotline, the confidential nature of the hotline itself makes such a prohibition largely unenforceable and futile. Such an environment is ripe for attorneys to seek to benefit financially by taking advantage of individuals calling the hotline.

Most importantly, however, the hotline is limited solely to claims of alleged sexual harassment; it does not provide a resource for employees who experience alleged discrimination based on any other protected characteristic, such as race, age, national origin, religion or immigration status. While the hotline is certainly a step in the right direction, it inexplicably excludes a large population of employees who complain of discrimination in the workplace.

At the end of the day, employers should remain diligent about preventing claims from arising in the first place and are advised to hold regular trainings for all employees, implement responsive human resources practices and act promptly to address any employee concerns as they arise.

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