

NEW YORK REGULATIONS GOVERNING GENDER IDENTITY DISCRIMINATION TAKE EFFECT

Labor & Employment Alert
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As we recently reported, in October 2015, Governor Cuomo introduced regulations under the New York Human Rights Law banning discrimination and harassment against transgender individuals. Following a 45-day comment period, the State Division of Human Rights has adopted the proposed regulations. The new “gender identity discrimination” regulations became effective on January 20, 2016.

Under the new regulations, workplace discrimination and harassment on the basis of gender identity or the status of being transgender is considered a form of sex discrimination and, thus, prohibited by the Human Rights Law. Gender identity is defined broadly to include having or being perceived as having a gender identity, self-image, appearance, behavior or expression, whether or not they are different from those traditionally associated with the sex assigned at birth. A transgender person is defined as an individual who has a gender identity different from the sex assigned at birth.

Further, the new regulations define gender dysphoria as a disability under the Human Rights Law and require employers to reasonably accommodate individuals with gender dysphoria. The Division declined invitations to specify what types of accommodations would constitute reasonable accommodations for gender dysphoria, stating instead that whether an accommodation is reasonable would depend on the circumstances.

In light of the new regulations, employers in New York State should review their recruiting, hiring, and employment practices and equal employment opportunity policies. Direct supervisors should receive training about hiring and working with transgender individuals. Further, in view of gender dysphoria being defined as a disability, employers should consider whether modifications to their disability accommodations practices and procedures are necessary.

Should you have any questions about the newly adopted regulations, please contact any one of our labor and employment attorneys.

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