

NYC Amends Law to Protect Caregivers

Following other recent pro-employee legislation enacted in New York City, the New York City Council on December 16, 2015, passed a bill banning employment discrimination based on an individual's actual or perceived status as a caregiver. Mayor Bill de Blasio is expected to sign the bill into law.

The New York City Human Rights Law (NYCHRL) prohibits discrimination in employment based on:

- age,
- race,
- creed,
- color,
- national origin,
- gender (including gender identity and sexual harassment),
- disability,
- marital status,
- partnership status,
- sexual orientation,
- alienage, and
- citizenship status.

The NYCHRL will be amended by adding "caregiver status" to this list, thus making discrimination based on an individual's actual or perceived status as a caregiver unlawful.

This means that an employer will not be able to consider caregiver status in any decision-making, such as choosing not to hire a working mother with young children due to concerns the mother will be unable to meet the demands of the job, for example.

"Caregiver" is defined as "a person who provides direct and ongoing care for a minor child or care recipient" A "care recipient" is also defined under the law and means "a person with a disability who: (i) is a covered relative, or a person who resides in the caregiver's household; and (ii) relies on the caregiver for medical care or to meet the needs of daily living."

The definition of "covered relative" is also broad, and includes a caregiver's:

- child,
- spouse,
- domestic partner,
- parent,
- sibling,
- grandchild or grandparent, or
- the child or parent of the caregiver's spouse or domestic partner, or any other individual in a familial relationship with the caregiver, as designated by the City Commission on Human Rights.

An earlier version of the bill included language requiring employers to make reasonable accommodation to individuals with family obligations “to enable [them] to satisfy the essential requisites of a job or to enjoy the right or rights in question provided that the caregiver status is known or should have been known by the employer.” Based on hearing transcripts, it appears the City Council intends to research and “drill down” on this issue further to determine how other courts and human rights commissions have explored the parameters of reasonable accommodations in this context. Council Member Lander appeared cognizant of the difficulty employers could face if an overly broad accommodation obligation is adopted. While there is currently no express statutory requirement for employers to attempt to accommodate caregiver employees, further amendment to the NYCHRL is possible, as the issue is clearly on the City Council’s docket.

All employers with New York City operations should review policies and practices and consider training programs to familiarize managers, particularly those with authority to make employment decisions, with the anti-discrimination law.

For More Information Contact:

Timothy Domanick, Esq.
Associate
Jackson Lewis P.C.
58 South Service Road, Suite 250
Melville, NY 11747
Email: Timothy.Domanick@Jacksonlewis.com
Phone: (631) 247-4630

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