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Recent Developments in New York Employment Law

The past few months have seen a number of developments in New York State employment law, including laws enacted by the state legislature that will be of interest to New York employers. Some of the more noteworthy laws enacted, which are briefly summarized in this *Client Alert*, provide for the following changes:

- Issuers of group medical insurance policies in New York State are now required to provide up to 36 months of continued COBRA coverage and must provide employers with the option of covering certain dependent children under their policies until age 30.
- Employers must provide new employees, at the time of hire, with written notice of their rate of pay and, where applicable, rate of overtime pay, and obtain from employees a written acknowledgement that they have been provided with this notice.
- Domestic violence victims have been added as a protected group under the New York State Human Rights Law and are protected from discriminatory employment practices.
- Civil penalties can now be imposed on employers for discriminatory employment practices in violation of the New York State Human Rights Law.

New York Extends COBRA Continuation Coverage to 36 Months and Extends "Dependent" Status Through Age 29 for Purposes of Medical Insurance Coverage

In response to the rising unemployment rate in New York and the recent economic downturn,

New York's "mini-COBRA" law was amended to require group medical insurers to offer continuing medical insurance coverage for up to 36 months following a loss of coverage due to a qualifying event (such as a loss of employment). In contrast to the new state law, COBRA, the federal law, provides continuing coverage only for up to 18 months (and up to 29 and 36 months in certain limited circumstances). The individual would be responsible for paying the cost of any continued coverage elected. The new law applies to New York employers irrespective of the number of employees they employ (unlike prior aspects of New York's "mini-COBRA" law which apply only to employers with less than 20 employees). However, the new law only applies to group insurance contracts issued under the New York insurance laws. It does not apply to self-insured plans or to insurance contracts issued in another state. The new law applies to group policies or contracts that are issued, renewed, modified, or amended on or after July 1, 2009.

Employers who have fully-insured group medical policies should review their plan documents, summary plan descriptions, COBRA notices, and other documents to determine what, if any, changes should be made as a result of the new law. Employers who sponsor self-insured group plans should consider whether they want to voluntarily comply with the new law and extend COBRA rights for up to 36 months.

Additionally, a new law was enacted that will require New York group insurers to give employers the option of covering certain dependant children through the age of 29.

Currently, dependent children typically "age out" of group health insurance coverage at age 19 (or 23 if a full-time student). The new law applies to a dependent child who is not married, who is not insured under another group insurance contract, and who is not eligible for Medicare coverage. Employers are *not* required to include this option in their group plans (and, indeed, including this option may raise federal tax issues because of the different definitions of "dependent" under the federal tax code and this new law). However, if an employer elects not to include this option in its group plan, the insurance company must offer the dependent a (COBRA-like) election to continue coverage until the dependent turns 30 (again, at the individual's expense). The new law applies to group policies or contracts that are issued, renewed, modified, or amended on or after September 1, 2009.

Employers Must Provide Written Notice to Employees of Regular and Overtime Rates of Pay and Obtain Written Acknowledgment in Return

The New York Labor Law was amended to require that written notice be given to new employees advising them of (a) their rate of pay, (b) if applicable, their overtime rate of pay, and (c) the employer's regular payday. The new law also requires that employers obtain from each new employee a written acknowledgement of receipt of the written notice. The content and form of the written acknowledgement must conform to any requirements established by the Commissioner of Labor. The purpose of the new law is to allow workers to more easily determine whether their paychecks correctly reflect the rates of pay their employers agreed to at the time of hiring, including the correct overtime rates.

These new requirements become effective on October 26, 2009, and apply to all employees in New York State hired on or after that date.

Between now and October 26, 2009, New York employers should draft a standard written form to be given to new hires that advises each individual of his or her regular rate of pay (and, for non-exempt employees, the rate of overtime pay) and the employer's regular day of pay, including a written acknowledgement for the individual's signature to be returned to the employer for its records.

Alternatively, New York employers can add these provisions to their existing offer letter and employment agreement forms.

Domestic Violence Victims Added as a Protected Class Under the New York State Human Rights Law

The New York State Human Rights Law prohibits discriminatory employment practices on the basis of certain characteristics (such as race, sex, and disability, to name just a few). Effective July 7, 2009, the Human Rights Law was amended to add "domestic violence victim" as a protected characteristic. The definition of "domestic violence victim" cross-references New York's Family Court Act and includes an individual who is a victim of a covered offense committed by a spouse, former spouse, parent, child, or member of the same family or household. Examples of covered offenses include disorderly conduct, harassment, stalking, menacing, reckless endangerment, and assault.

As a result of this amendment, domestic violence victims are now protected in New York State from discriminatory employment practices in hiring, discharge, compensation, and other terms, conditions, and privileges of employment. The goal of this amendment is to provide victims

of domestic violence with greater ability to gain financial independence, and ultimately complete independence, from their abusers. Some of the legislative commentary on this amendment suggests that a New York employer will now have an obligation to accommodate a domestic violence victim (for example, to allow him or her to seek time off for a court appearance, to recover from injuries, or to find alternate housing). Employers in New York City will likely be least affected by this amendment, as the New York City Human Rights Law already provides protection against discrimination based on one's status as a domestic violence victim.

Employers are advised to consult with employment counsel for guidance on how to address workplace issues for employees who are known or suspected to be victims of domestic violence.

Civil Penalties May Now Be Imposed Under the New York State Human Rights Law; Additional Legislation to Allow Punitive Damages and Attorneys' Fees Under the Human Rights Law is Pending

Effective July 6, 2009, the New York State Human Rights Law was amended to allow civil penalties to be imposed on employers who are found to have engaged in discrimination in violation of the New York State Human Rights Law. The maximum penalty that may be imposed under this provision is \$50,000, unless the employer is found to have acted willfully, wantonly, or maliciously, in which case the maximum penalty is increased to \$100,000. The

New York State Division of Human Rights is expected to issue guidance addressing these civil penalties, including under what circumstances an employer may be considered to have acted willfully, wantonly, or maliciously. Any civil penalty imposed would be paid to New York State and would be in addition to any civil damages that the employer may be obligated to pay to the complainant (typically a current or former employee).

In addition, there are bills currently pending in the New York State Assembly and Senate to amend the New York State Human Rights Law to permit punitive damages awards of up to \$10,000 in employment discrimination cases, and to allow awards of attorneys' fees and expert witness fees in employment discrimination cases involving employers with 50 or more employees.

These developments in the law provide a good opportunity to remind employers about the importance of complying with federal, New York State, and, where applicable, New York City anti-discrimination laws. Employers should continue to be vigilant about deterring practices that could create liability under these laws. Employers also should ensure that they have effective anti-discrimination policies in place, that the policies are reviewed by counsel and updated periodically, and that all personnel (management and subordinates) are trained and educated about such policies and their duty under such policies to report conduct that they believe is unlawful or inappropriate for the workplace.

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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