

CLIENT ALERT – CORONAVIRUS (COVID-19)

New York Expanded Whistleblower Law Takes Effect (Plus What About Mask Mandates?)

Dear Clients and Friends:

In October 2021, Governor Hochul signed a bill making changes to New York's Whistleblower Statutes (New York Labor Law Sections 740 and 741). As those changes go into effect today, employers may need to act quickly to make changes to comply with the new requirements.

Basic Information

The statute applies to all employers with one or more employees. It extends protections not only to employees, but also to former employees and independent contractors. Previously, the law only applied where the employee could show an actual violation of law. Now, it also applies to employees who report actions or conditions they **reasonably believe** are (i) violations of law, rules or regulations or (ii) conditions that pose a danger to public health and safety.

The law expands the type of behavior considered retaliatory by an employer to include, among other items, making calls to immigration authorities.

While the law continues to provide that employees should make reports internally first, it now provides protection to employees who do not first make an internal report in a number of circumstances, such as when the employee reasonably believes that evidence may be destroyed or when the employer is already aware of the unlawful policy, practice, or safety issue.

The statute of limitations for such a claim has been expanded to two years. Employees who believe they have been retaliated against may bring a civil legal action to be reinstated and/or seek damages and attorneys' fees. Employers may also be subject to monetary penalties for retaliation.

Requirements for Employers

Employers are required to post a notice regarding the Act's provisions and remedies.

Non-Profit employers will want to be especially careful as many policies that comply with the New York Non-Profit law's whistleblower requirement will be inadequate to comply with the new law (which new law still applies to them if they have employees).

Next Steps

Employers should draft a Whistleblower policy consistent with the revised requirements if they do not already have one. It is particularly important to identify how internal complaints can be made.

Employers will also need to post a notice of the statute's requirements and remedies.

While the New York Department of Labor may eventually provide a model notice for employers, Employers should act now to comply with the statute while waiting for such guidance.

Your HH&K attorneys are available to assist you with understanding the new law's provisions, updating or drafting policies, and preparing notices.

New York Mask Mandate Update

On Monday night, a Nassau County Trial Court held that the Statewide mask mandate under 10 NYCRR 2.6 was unconstitutional. An earlier decision by an Albany County Trial Court upheld the mandate. The Governor's office has indicated they will appeal the Nassau County decision and seek a stay while the appeal is pending.

Employers are reminded that while these decisions may apply to the general public, such as customers, they do not address the mask mandates for employees required under New York's Hero Act. That designation remains unaffected by these decisions and is in place until February 15, unless further extended by the Commission of the Department of Health.

Contact Your HH&K Attorney for Legal Guidance

This information is not legal advice and may not be suitable for all client situations. This Client Alert provides general information and does not outline all of the important considerations related thereto.

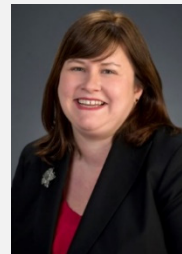
This Client Alert is not a substitute for legal guidance regarding program details and how those may be applicable to your business. As always, if we can be of assistance with these programs or any other matters, please do not hesitate to contact your HH&K attorney.



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