

# Alert

## New York State Passes a Host of New Employment Laws

August 12, 2019

### New York State Outlaws Hairstyle Discrimination

On July 12, 2019, Governor Cuomo signed a bill amending New York State's Human Rights and Education Laws to clarify that discrimination based on an individual's hairstyle is considered race discrimination. The new law, which went into effect immediately, added two new subsections to the Human Rights Law and the Education Law that define the terms "race" and "protective hairstyles" as follows:<sup>1</sup>

- "race shall . . . include traits historically associated with race, including but not limited to, hair texture and protective hairstyles"; and
- "protective hairstyles shall include, but not be limited to, such hairstyles as braids, locks and twists."

The changes to the Education Law do not apply to private, religious or denominational educational institutions.

New York City had previously clarified that discrimination on the basis of hairstyle is race discrimination in guidance issued by the New York City Human Rights Commission in February 2019. See *SRZ Alert*, [New York City Issues New Guidance on Racial Discrimination on the Basis of Hair](#).

Employers should confirm that any grooming or hairstyle policies that they have in place with regard to employees are set forth in facially neutral terms and do not unduly burden or single out individuals of any race.

### New York State Enacts New Pay Equity Laws

Governor Cuomo recently signed into law two bills that will affect how employers pay their employees. One prohibits employers from asking and relying on salary histories in hiring and the other extends the state's equal pay law to all protected categories.

#### *Salary History Inquiries*

The state's new law prohibiting salary history inquiries is similar to New York City's existing law. See *SRZ Alert*, [New York City to Ban Employer Inquiries and Reliance on Salary History](#). The state's law will go into effect on Jan. 6, 2020.

Under the new state law, employers may not consider salary history when deciding whether to hire an applicant and determining the applicant's salary. The new law also forbids employers from asking current employees or their past employers for the employee's salary history. Employers are prohibited

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<sup>1</sup> S.B. 6209, 142nd LEGIS. SESS., REG. SESS. (N.Y. 2019).

from taking adverse action against an applicant or an employee for either refusing to disclose salary history or reporting a violation of the law.

The state's law includes some exceptions. As with the city's law, the state's law does not prevent an applicant or current employee from voluntarily, and without prompting, disclosing or verifying previous salary history. Further, an employer may confirm an applicant's or current employee's salary if at the time the employer makes an offer of employment with compensation, the applicant or current employee responds to the offer by providing salary history to support a proposed salary that is higher than what the employer offered.

The new law permits applicants, current employees and former employees to sue for violations of the new law. Potential remedies include injunctive relief and attorney's fees.

#### *Equal Pay for Similar Work or Substantially Similar Work*

The state's other new law goes into effect on Oct. 8, 2019 and broadens protections under New York State's existing equal pay law. Previously, the equal pay law prohibited unequal pay based on sex; the new law expands the prohibition of unequal pay to any member of a protected class under New York law.

The new law also modifies the standard from "equal pay for similar work" to "equal pay for similar work or *substantially similar work*." Accordingly, under the new law, employers cannot pay employees that belong to a protected class less than employees who do the same or substantially similar work and who are not members of that protected class.

#### **New York State Broadens Protections for Immigrant Employees**

On July 27, 2019, Governor Cuomo signed a bill into law penalizing employers who threaten, penalize, discriminate or retaliate against immigrant employees. The new law clarifies that threatening, penalizing, discriminating or retaliating includes "threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member." The new law goes into effect on Aug. 15, 2019.

#### **New York State Strengthens Employee Protections Against Discrimination and Harassment**

On Aug. 12, 2019, Governor Cuomo signed a new law strengthening employee protections against harassment and other discriminatory practices in the workplace. See *SRZ Alert*, [New York Strengthens Employee Protections Against Discrimination and Harassment](#).

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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