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Lou DiLorenzo

New York Human Rights Law Amendment

By: Louis P. DiLorenzo¹

Somehow our legislature and Governor found time to amend the New York State Human Rights Law to expand the application of civil fines and penalties to include cases of employment discrimination occurring on or after July 6, 2009. Previously, the imposition of civil fines had been limited to cases of housing discrimination. With the enactment of the new law, fines may now be assessed against all cases of employment discrimination, which account for 80% of the Division of Human Rights cases. A fine of up to \$50,000 may be imposed or in the case where the conduct is found to be "willful, wanton or malicious," a fine of up to \$100,000. In situations where there are fewer than 50 employees, civil fines and penalties may be paid in installments by the employer.

The purpose of the amendment, according to the Division, is to:

"...greatly advance the Division's mission to exercise the police power of the State for the protection of the public welfare, health and peace of the people of this State, and in fulfillment of the provision of the constitution of this State concerning civil rights. N.Y. Exec. Law § 290.1. The fines imposed will further the goal of equal opportunity in New York State by acting to deter and reduce discrimination on the basis of race, color, creed, national origin, sex, age, disability, sexual orientation, marital status, military status, and other protected categories."

Furthermore, the imposition of such fines will be in addition to and will not reduce or offset any compensatory damages awarded to a prevailing complainant. "The fines are payable to the State, and will serve both to deter discrimination and to compensate for the harm caused to the public interest by unlawful discrimination."

In regards to personal recovery, as of now, employees who prove discriminatory employment action under state law may be granted an affirmative relief from the employer (e.g., be hired, promoted or reinstated) and receive compensatory damages (economic damages and emotional distress damages). There is pending legislation in New York which would allow individuals to recover punitive damages and reasonable attorney fees for human rights violations.

There is presently little guidance on how the penalties will be applied. The Division promises future guidelines. It may be that the standards applied in housing discrimination cases will be considered relevant. In housing discrimination cases, the factors that determine if civil fines and penalties are appropriate are: whether the respondent had previously committed unlawful housing discrimination; the respondent's financial

resources; the degree of respondent's culpability and the goal of deterrence. It may be that the Division will consider whether the employer has an established anti-discrimination policy, if it has been distributed to employees, whether there is an effective complaint procedure, and whether employees have been trained in the law and the employer's policies.

Be Careful Out There!

¹ Mr. DiLorenzo is a senior partner at Bond, Schoeneck & King, PLLC, Chair of its Labor & Employment, Employee Benefits & Executive Compensation and Immigration Practice Group. He is also Managing Partner of the Firm's New York City and Long Island Offices. He divides his time between the Syracuse and New York City offices