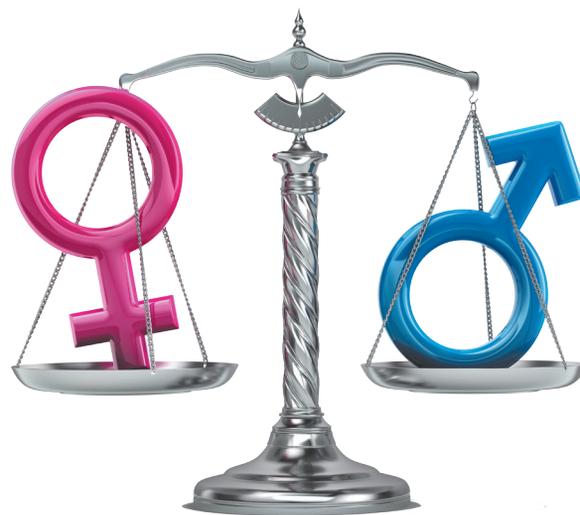


NEW LAWS FRIENDLY TO WOMEN IN THE WORKPLACE

*Pay Equity Act seeks to close
gender pay gap, provide protections*



By BERNADETTE STARZEE

Women on average earn 79 cents for every dollar their male counterparts bring in, according to the Institute for Women's Policy Research. The Pay Equity Act, a series of laws that go into effect in New York State this month, is designed to help close that gap while expanding several workplace protections for women and other employees.

Under the old law, men and women must receive equal pay for equal work unless the employer can show that the difference is based on seniority, merit or "any other factor other than sex." The language in the new law, which goes into effect Jan. 19, is more specific, with the last part replaced by "a bona fide factor such as education, training or experience."

The new statute more explicitly states what can now be considered a reason to pay men and women different rates to do the same job, said Jessica Moller, a labor and employment lawyer who is an associate at Bond, Schoenck & King in Garden City.

Under the old law, market forces – such as the supply and demand of employees for a given position – would be a defense, Moller said.

"Now, it may fail," she said.

"Take a situation where a male candidate has a job offer from a competitor, and the employer must match the other offer in order to attract the candidate, and this results in a higher rate of pay for this male than a female in a comparable position," said Doug Rowe, a partner in the labor and employment law practice group at East Meadow-based Certilman Balin Adler & Hyman. "I would argue as an employment lawyer that market conditions could be a bona fide factor other than sex that could result in higher pay for this male worker. It's not necessarily clear whether that will be considered a bona fide reason by the court. It's similar to how all the laws work: The statute goes into effect and it's tested out in court. If that ultimately is not what the legislation intended, we'll see amendments and get more guidance."

The statute also significantly increased the amount of

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liquidated damages – from 100 percent of the amount of unpaid back wages to 300 percent, driving home the importance for employers to "redouble their efforts to make sure they are in compliance," said A. Jonathan Trafimow, a partner and chair of the employment law practice group at Moritt Hock & Hamroff in Garden City.

It will also be easier for more employees to learn what their coworkers make, as the new law prevents any employer from prohibiting their employees from inquiring about, discussing or disclosing their wages.

"In the past, it was common to see policies in place that payroll information is confidential and employees could not discuss pay rates among themselves," Moller said. "The new law closes a loophole in New York. Most private-sector employees were already afforded this type of protection under the federal National Labor Relations Act, but that law didn't apply to public-sector employers in New York."

Workplaces will become more transparent as a result of the statute, and "women will become aware of what male employees in similar positions performing similar duties make rather than leaving it up to their imagination," Rowe said. "This will allow them to better evaluate potential claims – they won't be operating in the dark."

As Moller noted, "One way to keep pay differentiation unknown is to prohibit discussion of it."

The statute also expands protections for victims of sexual harassment in the workplace. Two laws generally govern sexual harassment: Title VII of the Civil Rights Act (affecting workplaces with 15 or more employees) and

New York Human Rights Law (for workplaces with four or more employees). However, prior to the new law, there was no statutory prohibition against sexually harassing employees at workplaces with fewer than four employees.

"What this law does is say sexual harassment is now prohibited in any workplace, even those with less than four employees," Moller said. "It can be hard on the owners of small mom-and-pop-type shops who never had to deal with sexual harassment claims, whether meritorious or not."

The new law also removes a barrier to remedying gender discrimination by allowing successful plaintiffs to recover attorneys' fees in employment discrimination cases based on sex. However, the prevailing employer can now also have its attorney fees paid by the losing plaintiff employee if the defendant can prove the case was frivolous.

In addition to characteristics like age and race, familial status – such as whether someone is a parent of a young child – was added as a protected category by which employers cannot discriminate.

"Some gender discrimination cases out there touch on 'You're a mom, you're not going to be as committed to doing the job as you might otherwise have been,'" Moller said. Now that it's a category on its own, familial status claims do not have to be tied into gender discrimination.

Further, the new law explicitly states that employers are obligated to make reasonable accommodations for employees with a disabling medical condition related to pregnancy.

"Overall, there are more workplace protections for New York women," Trafimow said.

In light of the new law and increased penalties for non-compliance, companies should "absolutely do an audit to make sure there is not a problem they're not even aware of," Rowe said. "They should make sure there's a bona fide factor other than sex to justify differences in pay and be able to defend the differential under the new law, not the old law."