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STRENGTH IN PARTNERSHIP

ALERT

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2009 NEW YORK EMPLOYMENT LAW ROUNDUP

Moritt Hock Hamroff & Horowitz LLP is pleased to offer our clients and friends an overview of New York State Employment Law developments in 2009. We have previously written about the important legislative change in New York that requires employers to provide certain information to employees about their wages. (*See our November 2009 Client Alert, available on our website at www.moritthock.com).* Since that Client Alert, the New York State Department of Law ("NYSDOL") has posted certain forms on its website that employers may use to comply with this new law, but has also stated that employers may design their own forms so long as the employer's forms are legally compliant. A brief discussion of other 2009 legal developments follows.

Victims of Domestic Violence Protected Against Employment Discrimination. Effective July 7, 2009, the New York State Human Rights Law ("NYSHRL") was amended to protect victims of domestic violence against employment discrimination when they need to take time off from work for certain reasons, such as going to court or speaking with the district attorney, seeing a doctor, or recovering from injuries. The NYSHRL does not expressly require that employers reasonably accommodate domestic violence victims, although it is not entirely clear how courts will interpret the statute. Moreover, employers subject to the New York City Human Rights Law ("NYCHRL") and/or the Westchester County Code should be aware that those statutes do expressly require that employers reasonably accommodate victims of domestic violence.

Labor Law Retaliation and Liquidated Damages. New York law has long prohibited employers from retaliating against employees for complaining about labor law violations. Effective November 24, 2009, however, the state Labor Law was amended to increase the penalties that the NYSDOL can assess against employers who are found to have retaliated against employees for exercising their rights under the Labor Law. These rights include, for example, complaining to the NYSDOL that the employers have not paid them in accordance with the Labor Law and/or participating in an investigation by the NYSDOL.

Liquidated damages (up to 25% of the employee's unpaid wages) are akin to punitive damages in that they penalize an employer beyond that which is necessary to compensate an employee (such compensatory damages are limited to back pay under this statute), should the employee prevail at trial.

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Prior to this change in the law, the employee had to prove that the employer willfully violated the statute to recover the liquidated damages. Now, the employer must prove that it believed in good faith that it was complying with the law (even if the employer was mistaken) in order to avoid liquidated damages. The employer who underpays but proves good faith will still be responsible for the back pay but will not be responsible for the liquidated damages.

New Interpretations of the New York City Human Rights Law. In 2005, Mayor Bloomberg signed the Civil Rights Restoration Act, which amended the NYCHRL. In 2009, court decisions signaled at least two major areas in which interpretations of the NYCHRL have broadened considerably: the territorial scope of the NYCHRL and a reduced burden on employees seeking to prove harassment and/or retaliation.

- **Territorial Scope of NYCHRL.** It is not always necessary that an employee work in New York City to claim the protection of the NYCHRL. The "old" rule required that the employer's decision had an impact within the City for the NYCHRL to apply. Following a recent court decision, however, it now appears that the employee need only allege that the discriminatory decision was made in the City for the NYCHRL to apply.[1] This decision is significant for employers with operations present both within and without the City.

- **Disability Discrimination.** In another decision, a court explained that the Civil Rights Restoration Act placed the burden on the employer to prove that it had not discriminated against an employee because of his/her disability (as opposed to the burden being on the employee to prove that s/he had been the victim of discrimination).[2] The court faulted the employer for failing to engage in the "interactive process" with the employee (to see if the employee could be reasonably accommodated) in good faith. Further, the court placed on the employer the burden of proving that an employee's accommodation imposed an "undue hardship" (and therefore was not a reasonable accommodation).

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We can assist you in understanding and complying with these new laws, including reviewing your existing policies to determine if they comply with these new requirements.

[1] *Hoffman v. Parade Publications*, 878 N.Y.S.2d 320 (1st Dep't 2009). Similarly, it now appears that the NYSHRL applies if the employee alleges that the discriminatory decision was made in the State, even if its impact was not felt in the State, for example, if the employee lived and worked in a different state or country.

[2] *Williams v. New York City Housing Authority*, 872 N.Y.S.2d 27 (1st Dep't 2009).