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Labor Law Bulletin

NYC Employers Beware: Appellate Division Lowers Plaintiffs' Burden of Proof Under the City Human Rights Law

Employers with employees in New York City should be aware of a troubling January 27, 2009 decision by a New York State appellate court, *Williams v. NYC Housing Authority,* interpreting a 2005 amendment to the New York City Human Rights Law (NYCHRL)—styled the "Civil Rights Restoration Act"—as substantially lowering the law's evidentiary thresholds. The decision, giving effect to the stated intention of the City Council, effectively makes employers in New York City liable for conduct that falls well short of what is required for liability under the New York State Human Rights Law and the various federal employment discrimination laws. *Williams* is a harassment case, but the court's adoption of a lower standard for establishing harassment is also applicable to other theories of discrimination.

Plaintiffs Will Find It Easier to Establish Liability for Harassment Under the NYCHRL

Prior to the *Williams* decision, almost all courts reviewed harassment claims identically under New York City, New York State, and federal EEO laws, finding that allegedly harassing conduct was actionable only if it rose to the level of being "severe or pervasive" (the standard articulated in *Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993)). Relying on the "Restoration Act," the *Williams* court rejects what it characterizes as the "overly restrictive 'severe or pervasive'" standard, stating that the NYCHRL "is now explicitly designed to be broader and more remedial" than its state and federal counterparts. The result (among other things) is that it will be far more difficult for employers to secure dismissal of harassment cases under the NYCHRL on summary judgment, although the court does say that "summary judgment will still be available where [the employer] can prove that the alleged discriminatory conduct . . . represent[s] no more than petty slights or trivial inconveniences."

Employers Can Protect Themselves—Here's How

Thanks to the *Williams* decision, employers can expect to see more claims of harassment and other kinds of discrimination filed under the NYCHRL, given that the burden of proof for establishing harassment and other forms of discrimination is seemingly now far less demanding than under analogous state or federal law. Prudent employers will act proactively to ensure that they meet their legal obligation to prevent and correct workplace violations. Harassment and nondiscrimination policies, including internal complaint procedures, should be reviewed and updated to ensure that they reflect best practices in the area, which we believe means a zero-tolerance policy. The policies should appear in the employee handbook, should be posted, and should be included in training and orientation. Supervisors should be trained on the policy and on their obligation to respond appropriately to complaints or any evidence of policy violations.

Conclusion

Even under the significantly lower liability threshold espoused by the *Williams* court, employers can avoid liability for harassment/discrimination by creating and maintaining a workplace in which employees are required to treat others in a professional and respectful manner, and in which complaints are addressed quickly and meaningfully. Please contact any Vedder Price attorney with whom you have worked for further guidance and assistance.

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