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TO: Hotel Association of New York City, Inc.
Labor Relations Members
General Managers, Human Resources Directors and Controllers

FROM: Kane Kessler, P.C.
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RE: Governor Cuomo Signs Women’s Equality Legislation and Proposes Transgender Discrimination Regulations

On October 21, 2015, Governor Cuomo signed into law the Women’s Equality Act, legislation aimed at strengthening anti-gender discrimination laws already in effect in the workplace and in the housing and housing credit contexts (the “Legislation”). The Legislation, summarized below, amends the New York State Human Rights Law (“NYSHRL”) as well as the State’s Labor Laws.¹ Specifically, the Legislation:

- **Strengthens Equal Pay Laws and Codifies the Ability to Discuss the Terms and Conditions of One’s Employment:** The Legislation amends the Labor Law by identifying the factors that constitute a bona fide reason for disparate pay between men and women, including education, training, or experience. This is in conjunction with the already-prescribed bona fide factors of seniority systems, merit systems, and systems that measure earnings by quantity or quality of production.

This provision also codifies the rule that an employee is permitted to inquire about, discuss, or disclose his or her wages or those of another employee. The foregoing is consistent with Federal labor laws. The Legislation, however, enables employers to set limits on such discussions, *i.e.*, the time, place and manner of the discussions. These limitations must be reasonable and consistent with state and federal law and must be expressly stated in a written policy. It is expected that regulations promulgated pursuant to the Legislation will provide additional guidance on this issue. Additionally, the Legislation provides for treble damages if an employer is found to have willfully violated the law.

¹ Certain provisions of the Legislation also amend the penal code with respect to human trafficking laws as well as the judiciary law with respect to access to New York’s Family Court.

- **Prohibits Discrimination Against Familial Status in the Employment Context:** Currently, New York prohibits certain landlords and certain credit lenders from discriminating on the basis that an individual has a child. The Legislation amends the NYHRL by also prohibiting employers from making certain employment decisions, such as refusing to hire, discharging, or otherwise affecting the terms and conditions of employment, on the basis that a prospective employee or employee has a child.
- **Requires Reasonable Accommodations for Pregnancy-Related Medical Conditions:** While New York City already codifies an employer's obligation to provide reasonable accommodations for individuals with pregnancy-related medical conditions, prior to the enactment of the Legislation, New York State merely prohibited employers from forcing pregnant women to take medical leave. The Legislation makes clear that a pregnancy-related medical condition shall be treated as a temporary disability and that an employer must, therefore, engage in the interactive process to accommodate the condition.
- **Permits the Award of Attorneys' Fees to Successful Plaintiffs in Sex Discrimination Cases:** Prior to the enactment of the Legislation, plaintiffs could only obtain attorneys' fees in certain housing discrimination disputes. The Legislation provides that a plaintiff in a successful employment or housing credit sexual discrimination action is entitled to attorneys' fees. Employers may also be entitled to attorneys' fees but the Legislation prescribes an additional burden of requiring employers to first prove that the sex discrimination claim was frivolous.
- **Expands the Definition of Employer in Sexual Harassment Cases:** Prior to the enactment of the Legislation, an employer under the NYHRL was defined as one that employed four or more employees (New York City's Human Rights Law has an equivalent definition). That definition remains intact except with respect to sexual harassment claims. The Legislation defines an employer for purposes of a sexual harassment claim as all employers within the state, regardless of the number of individuals in its employ.
- **Prohibits Discrimination in the Housing Context Against Victims of Domestic Violence:** Prior to the enactment of the Legislation, discrimination against victims of domestic violence was only prohibited in the employment context (New York City has a similar law). The Legislation prohibits owners and managers of residential rental buildings from discriminating against such victims with respect to approving or rejecting rental applications, discriminating in the terms, conditions or privileges of any such rental, and/or from evicting individuals based on their status as a domestic violence victim. This provision of the Legislation provides for attorneys' fees and punitive damages up to \$2,000 for each offense.

Following on the heels of the enactment of the Women’s Equality Act, on October 22, 2015, Governor Cuomo announced a set of proposed regulations to be promulgated by the New York State Division of Human Rights that would include transgender individuals in the definition of “sex” as a protected class against discrimination. The proposed regulations also define a “disability” as including individuals with dysphoria, a medical condition relating to one having a gender identity different from the sex assigned to him or her at birth. The proposed regulations are expected to be published in the State register this week and will be subject to a 45-day comment period prior to enactment.

Clients are advised to update their employment practices and policy manuals accordingly and be cognizant that more is at stake in terms of damages (punitive and treble in certain instances) and attorneys’ fees if found to have violated the law. With respect to the newly-prescribed protected class of familial status, employers should refrain from inquiring during the hiring process whether an individual has children.

If you have any questions, please do not hesitate to contact [David R. Rothfeld](#), [Judith A. Stoll](#), [Robert L. Sacks](#), [Lois M. Traub](#), [Alexander Soric](#), [Michael C. Lydakis](#) or [Jaelyn Ruocco](#).

cc: Joseph E. Spinnato
Vijay Dandapani, Chairman