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DATE: May 11, 2015

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

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: New York City legislation changing the scope and enforcement of the New York City Human Rights Law

A. New York City Council passes legislation which prohibits employers from discriminating based on an applicant's credit history

On April 16, 2015, the New York City Council passed bill Intro. No. 261-A, 2014 into law, which prohibits employers from discriminating against employees and job applicants based on their credit history. The bill, which passed by a wide majority and was signed by Mayor Bill de Blasio on May 7, 2015, now includes applicants and employees with poor credit among the list of protected classes under the New York City Human Rights Law. The bill becomes effective on September 4, 2015.

Specifically, New York City Administrative Code §8-107 has been amended as follows:

23. . . . it is an unlawful discriminatory practice for an employer, labor organization, employment agency or licensing agency to request or to use for employment purposes information contained in the consumer credit history of an applicant for employment or to retaliate or otherwise discriminate against an applicant or an employee with regard to hiring, termination, promotion, demotion, discipline, compensation or the terms, conditions or privileges of employment based on information in the consumer credit history of the applicant or employee.

The stated purpose of this law is to ensure that individuals with poor credit history due to unpaid medical bills, student loans, etc. are not denied employment opportunities for which the person may otherwise be qualified. Despite the breadth of this ban, employers still retain their rights to run credit checks on candidates for top-level executive positions with fiduciary responsibilities, law enforcement personnel, and other security sensitive positions. For instance, employers may request credit history for non-clerical positions having regular access to “trade

secrets”, positions that have signing authority over third party funds or assets of \$10,000 or more (or that involve fiduciary responsibility to the employer with authority to enter financial agreements on behalf of the employer of \$10,000 or more), positions for which a credit check is required by law or by a self-regulatory organization such as the Securities and Exchange Commission, police officers, peace officers, and computer security positions where the regular duties allow the employee to modify digital security systems in place to prevent the unauthorized use of an employer’s or client’s networks or databases.

This bill means that Employers must change their employment applications, employee handbooks, interview procedures, and background procedures generally in order to comply with the bill, which will become law on September 4, 2015.

B. Mayor de Blasio signs bills into law regarding the operations of the New York City Human Rights Commission

On April 20, 2015, the Mayor signed two bills into law which directly affect the operations of the City Human Rights Commission.

The first requires an annual report from the Commission to the New York City Council and the Mayor regarding the numbers and types of investigations initiated, as well as how many of those investigations resulted in civil actions. The second requires the Commission to test for discriminatory employment practices at least five (5) times each year. The tests will utilize a pair of “testers” to submit employment applications with similar credentials differing only in the protected category to which the purported applicant belongs. Incidents of discrimination gleaned from these tests will be forwarded to the Commission’s law enforcement bureau for assessment.

The Mayor believes that this legislation will allow New York City to “fulfill its promise as a City where everyone can thrive, regardless of who they are or where they come from”.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Lois M. Traub, Alexander Soric, Robert L. Sacks, or Michael C. Lydakakis.

cc: Joseph E. Spinnato, Esq.
Vijay Dandapani, Chairman