



# Alert

## Labor and Employment Client Service Group

To: Our Clients and Friends

August 10, 2009

### New York State Human Rights Law Amended: Civil Penalties More Broadly Available, Protected Category Added

The New York State Human Rights Law (“HRL”) has been amended to make available civil penalties in all matters covered by the HRL. Also, one’s status as the victim of domestic violence is now added to the list of HRL protected categories that also includes race, color, creed, national origin, sex, age, disability, sexual orientation, marital status, familial status, military status, arrest or conviction record, and predisposing genetic characteristics.

#### Civil Penalties

Civil penalties have long been available under the HRL in housing discrimination matters. Now they also are available for conduct occurring on or after July 6, 2009 that violates the HRL’s prohibition of discrimination with respect to employment, places of public accommodation, and educational institutions. Violations can result in penalties payable to New York State up to \$50,000, and up to \$100,000 for “wanton, willful or malicious” violations. Notably, these penalties will be available in court actions as well as in administrative proceedings before the New York State Division of Human Rights (“SDHR”). These penalties are in addition to the existing HRL remedies of equitable relief and compensatory damages. While punitive damages and attorneys fees remain unavailable under the HRL, legislation is pending to add those remedies.

With respect to administrative actions, we understand that the SDHR is developing guidance for its Administrative Law Judges for use in assessing civil penalties. If SDHR practice in housing discrimination matters is any guide, employers should expect at least some civil penalty to be assessed if a violation is determined. Employers should be aware that it will be incumbent upon them to raise mitigating factors, such as hardship associated with a significant penalty, because the SDHR will not independently make such a consideration.

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## **Impact on Places of Public Accommodation**

Places of public accommodation, such as restaurants, hotels, and retail locations, are reminded that the HRL was amended in January of 2008 to prohibit barriers to access that would also violate Title III of the Americans with Disabilities Act (“ADA”). The ADA contains detailed requirements to provide disabled people with, for example, access to restrooms and goods and services. Unlike the ADA, which makes available only equitable relief, the HRL provides for compensatory damages, and now, civil penalties.

## **Suggestions**

Given the range of damages available, it is now more important than ever to have appropriate policies and training in place to prohibit discriminatory conduct and to provide employees with effective reporting procedures. Places of public accommodation should conduct an internal review to ensure compliance with laws promoting access for disabled people.

We are ready to assist you with all of your legal needs concerning the workplace and places of public accommodation. If you have any questions, please contact Dermot J. Sullivan at (212) 541-2135 or your regular Bryan Cave contact.