

Philadelphia Enacts Amendments to Its Fair Practices Ordinance Expanding Legal Protection Against Discrimination

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On March 10, the Philadelphia City Council unanimously passed legislation amending the Philadelphia Fair Practices Ordinance, Phila. Code § 9-1100 et seq., to expand legal protections against discrimination. Today, Mayor Michael A. Nutter signed the bill into law; the new ordinance will take effect in 90 days, on June 22, 2011.

The Philadelphia Fair Practices Ordinance, as amended (the Ordinance), applies to employers, which term is defined broadly to mean “any person who does business in the City of Philadelphia through employees or who employs one or more employees exclusive of parents, spouse, or children.” The amendments expand the antidiscrimination provisions of the existing ordinance by, among other things, (1) adding three new protected classes—genetic information, domestic or sexual violence victim status, and familial status; (2) strengthening the provisions concerning prohibited practices and adding to the types of employment practices considered unlawful; (3) empowering enforcement by the Philadelphia Commission on Human Relations (PCHR); (4) providing streamlined procedures for accepting, investigating, and adjudicating complaints; and (5) adding remedies and increasing penalties for discrimination.

Protected Classes

As amended, the Ordinance prohibits employment discrimination for both actual and perceived membership in a protected class, including the expanded classes above and those classes already protected, which include race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, and marital status.

The Ordinance provides broad definitions for the inclusion of individuals under the newly protected classes. Specifically, discrimination on the basis of “familial status” includes individuals who either are now or are becoming a provider of care or support to a family member, defined broadly to include the individual’s spouse, life partner, parents, grandparents, siblings, or in-laws and children, grandchildren, nieces or nephews, including through adoption or other dependent or custodial relationships. The familial status protection also applies to any person who is pregnant or is in the process of securing legal custody of an individual under age 18. The term life partner is defined to include a member of a life partnership, i.e., a long-term committed relationship between two unmarried individuals of the same gender who satisfy certain requirements under the Philadelphia Code to be considered a member of such a relationship.

Discrimination on the basis of genetic information is now defined to include discrimination on the basis of information about an individual's genetic tests, the genetic tests of the individual's family members, and the manifestation of a disease or disorder in the individual's family members. A genetic test is defined as an analysis of DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

The Ordinance expands the protection of domestic or sexual violence victim status to the discrimination context. Individuals subjected to acts of domestic violence, sexual assault, or stalking now have protection beyond the requirement that employers provide them with the leave rights to which they are already entitled under the Entitlement to Leave Due to Domestic Violence, Sexual Assault, or Stalking, Phila. Code § 9-3200 et seq.

The former protected class of "handicap" has been replaced with the term "disability," bringing the language of the Ordinance in line with the definition for disability provided under federal law.

Unlawful Practices

As amended, the Ordinance prohibits an employer from engaging in the unlawful employment practices already prohibited by the current ordinance (i.e., denying or interfering with the employment opportunities of an individual based on their protected status) and incorporates any other acts or practices made unlawful under federal or Pennsylvania antidiscrimination laws. However, the amended Ordinance includes stronger antidiscrimination provisions prohibiting any *person* from harassing, threatening, harming, damaging, or otherwise penalizing, retaliating, or discriminating against any other person because that person complied with the Ordinance; exercised rights under the Ordinance; enjoyed the benefits of the Ordinance; or made a charge, testified, or assisted with any investigation, proceeding, or hearing concerning a violation of the Ordinance. It also adds the requirement to post and exhibit in any place of business where employment is carried on any fair practices notice prepared for posting and made available by the PCHR. A failure to comply with this requirement is also considered an unlawful employment practice under the amended Ordinance.

Enforcement

The PCHR and complainants have greater enforcement rights based on the amended Ordinance. The PCHR may issue an order directing a respondent found to have engaged in an unlawful employment practice to take affirmative action to redress the harms suffered by the complainant, and may take any or all of the following actions: (1) issuing a cease-and-desist order; (2) ordering injunctive relief or equitable relief such as hiring or reinstating the complainant or upgrading the complainant's employment, with or without back pay; (3) ordering payment of compensatory damages; (4) ordering payment of punitive damages, which are now increased from the maximum allowance of \$300 to \$2,000 per violation; (5) and ordering payment of reasonable attorneys fees and hearing costs. Respondents may seek judicial review of such orders by appealing to any court with competent jurisdiction within 30 days.

The Ordinance as amended streamlines the procedures for the filing and investigation of complaints before the PCHR, and includes a new provision requiring respondents to file answers to complaints brought against them. Complaints must still be filed within 300 days after the occurrence of the alleged unlawful practice. However, filing such a complaint does not foreclose that person's right of action in state court. Instead, if within one year after the filing of a complaint with the PCHR, the agency either dismisses the complaint or has not entered into an agreement to which the complainant is a party, the

PCHR must notify the complainant. The complainant may then file an action in the Court of Common Pleas of Philadelphia County and may seek relief in the form of compensatory damages, punitive damages, reasonable attorneys' fees, and costs or other equitable relief. There is no cap designated for the amount of punitive damages that may be awarded to a complainant in a civil action.

Conclusion

The amended Ordinance provides greater rights and remedies to individuals who claim to be victims of discrimination, supplementing the existing requirements of applicable federal and state law. Juries deciding cases in the City of Philadelphia can be expected to be sympathetic to individuals who claim to have been the victim of discrimination. Thus, it is important for all employers doing business in Philadelphia to familiarize themselves with the requirements of this law and take steps to ensure compliance with its provisions.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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