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Labor and Employment Alert: New York City Makes ‘Caregivers’ a Protected Class

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On January 5, 2016, New York City Mayor Bill de Blasio signed into law legislation prohibiting employment discrimination based on an individual's actual or perceived status as a caregiver. The New York City Human Rights Law already bans employment discrimination based on age, race, creed, color, national origin, gender (including gender identity and sexual harassment), disability, marital status, partnership status, sexual orientation, alienage, citizenship status, any lawful source of income, status as a victim of domestic violence or as a victim of sex offenses or stalking, and arrest and conviction status. The new law adds "caregiver status" to this long list.

The caregiver discrimination law is expansive in its coverage. It defines a "caregiver" as "a person who provides direct and ongoing care for a minor child or care recipient." A "care recipient" is a person with a disability who is a covered relative, or a person who resides in the caregiver's household, and who relies on the caregiver for medical care or to meet the needs of daily living. A "covered relative" is further defined as a caregiver's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver's spouse or domestic partner, or any other individual in a familial relationship with the caregiver, as designated by the City Commission on Human Rights.

For employers, including caregiver status in the Human Rights Law means that an applicant or employee's caregiving responsibilities must be excluded from any decision-making about whether to hire, promote, terminate, or otherwise affect the terms and conditions of employment. It's also worth noting that an earlier version of the legislation would have required employers to reasonably accommodate caregivers "to enable [them] to satisfy the essential requisites of a job or to enjoy the right or rights in question provided that the caregiver status is known or should have been known by the employer." While this provision is not in the new law, the city council may consider the accommodation issue in the future.

The law takes effect in 120 days, and expressly permits the City Commission on Human Rights to adopt rules to implement its provisions. A member of the Commission has already stated that the Commission “will vigorously enforce this much-needed protection and looks forward to working with the mayor’s office and the New York City Council to further advance the rights of caregivers under the law.” Contact your Vorys lawyer if you have questions about how the new caregiver protections may impact your business.