

Employers and Others Prepare for New York's Adult Survivors Act Revival Window Opening November 24

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On November 24, New York's [Adult Survivors Act](#) "revival window" is set to open for adult victims of sexual abuse. Revival windows, also called "lookback periods," provide a limited period, usually at least one year, for sexual abuse victims to file otherwise time-barred civil claims. New York previously opened a revival window for minor victims of sexual abuse under its 2019 Child Victim's Act, which closed in August 2021.

Lawsuits filed under revival windows are often brought not only against the alleged abuser, but also against employers, educational institutions, summer camps, social service agencies, and other entities under a vicarious liability theory. Such lawsuits typically bring claims for aiding and abetting the abuse, transporter liability, benefitting from sex trafficking under the federal Trafficking Victims Protection Act (TVPA), civil RICO violations, negligent hiring, negligent security, premises liability, and common law negligence. These claims can date back decades, implicating extremely complex insurance and liability issues.

With the commencement of the New York adult revival window looming, sexual abuse victims — and potential defendants — are gearing up for a surge of litigation. During New York's two-year revival window for minor victims, over 10,000 cases were filed under the statute, with the first reported jury verdict reaching \$25 million.^[1] After New Jersey opened a similar revival window for individuals abused as children, the Diocese of Camden, NJ settled claims made by hundreds of abuse survivors for \$87.5 million.^[2] Several high-profile targets of claims arising from revival statutes were forced to file for bankruptcy as a result of their passage and subsequent flood of legal claims.^[3]

Often, defenses are available, but must be pursued tactfully. For example, aiders and abettors of sex trafficking are liable under the TVPA only if they knowingly "benefit[], financially or by receiving anything of value, from participation in a venture which has engaged in" sex trafficking.^[4] While employees, by definition, typically provide benefit to their employers, to satisfy the TVPA, that benefit must be "*because of*" the sexual misconduct.^[5] Similarly, to plead a negligence claim against a third party, a plaintiff must sufficiently allege a legally cognizable duty owed to the plaintiff.^[6] Merely failing to act to prevent harm to an adult is not sufficient to allege that duty.^[7]

Due to the sensitivity of the issues raised, defendants in such cases should seek counsel experienced with such matters and processes and a track record demonstrating the ability to handle such sensitive issues responsibly.

[Click here to read how revival windows affect employers.](#)

[Click here for our *Law360* article about how to prepare for revival act claims.](#)

Partners Bennet Moskowitz and Molly DiRago and Associate Sophia Dauria practice in Troutman Pepper's Business Litigation Practice Group. They have served as lead defense counsel in dozens of sexual abuse and trafficking lawsuits filed in various federal and state courts — many asserting claims under the New York Child Victims Act and the Trafficking Victims Protection Act — as well as in connection with the establishment of an independent claims resolution program and, separately, a structured mediation process.

[1] See Andrew Denney, "Upstate NY Jury Awards \$25M Verdict in Child Victims Act Suit," *Law.com* (Mar. 31, 2022), <https://www.law.com/newyorklawjournal/2022/03/31/upstate-ny-jury-awards-25m-verdict-in-child-victims-act-suit/#>.

[2] Ed Shanahan, "New Jersey Diocese Agrees to Settle Sex Abuse Claims for \$87.5 Million," *The New York Times* (Apr. 19, 2022), <https://www.nytimes.com/2022/04/19/nyregion/nj-diocese-sex-abuse-settlement.html?referringSource=articleShare>.

[3] See Vince Sullivan, "Rochester Diocese Reaches \$147M Ch. 11 Deal with Insurers," *Law360* (May 23, 2022), <https://www.law360.com/articles/1495826/rochester-diocese-reaches-147m-ch-11-deal-with-insurers> ("The Rochester Diocese was the first of New York's eight dioceses to file for bankruptcy in September 2019 after the landmark Child Victims Act exposed the Catholic Church to thousands of sexual abuse claims in August 2019.").

[4] *Geiss v. Weinstein Co. Holdings LLC*, 383 F. Supp. 3d 156, 169 (S.D.N.Y. 2019) (dismissing TVPA claims against The Weinstein Company Holdings LLC and individual employees based on Harvey Weinstein's alleged conduct).

[5] *Id.* (emphasis in original); see also *Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc.*, No. 10-CV-4124, 2013 U.S. Dist. LEXIS 180463, at *52 (W.D. Ark. Dec. 24, 2013) (dismissing TVPA claims because there was no evidence of a causal relationship between the sex acts and the payment of expenses).

[6] See *David v. Weinstein Co. LLC*, 431 F. Supp. 3d 290, 310 (S.D.N.Y. 2019).

[7] *Id.* at 307.

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