

New York Senate Passes First-in-the-Nation Bill Requiring Mandatory Review and Revocation Period for All Severance Agreements

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Under current law, New York employers are statutorily required to provide a 21-day review and seven-day revocation periods in employment separation agreements in two scenarios: (1) if the employee is 40 or older and the waiver and release includes federal age discrimination claims; and/or (2) if the separation agreement with an employee or independent contractor resolves claims of discrimination, harassment, or retaliation and the employer wishes to include a nondisclosure provision regarding the factual foundation of the claim. The New York Senate recently passed the No Severance Ultimatums Act (the Act), S.372, which expands the 21-day review and seven-day revocation period requirements to all employment separation agreements. The bill, which is likely to be passed by the New York Assembly and signed by the governor, requires employers to provide employees with at least 21 business days to review a separation agreement, and seven calendar days to revoke the separation agreement (meaning an agreement cannot become effective or enforceable until the revocation period has expired). While employees can voluntarily sign a separation agreement before the required consideration period expires, the revocation period is not waivable. The Act also requires employers to notify employees that they have the right to consult an attorney regarding the separation agreement.

If enacted into law, the Act will go into effect immediately. A severance agreement that does not comply with the Act shall be deemed void and unenforceable, so it is essential that New York employers keep current on the status of the bill, and immediately comply if it goes into effect.

Employers should be cognizant of the fact that the Act's review period requirement is 21 business days, which is longer than both the federal age discrimination review period and the state review period for agreements resolving claims of discrimination, harassment, or retaliation, both of which are 21 calendar days. This inconsistency may have been a drafting error and may be corrected before enactment. Otherwise, if the Act goes into effect, New York employers will need to provide for a separate, longer review period for their New York employees than those only covered by the federal age discrimination law.

We will continue to monitor developments.

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