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**TO: Memo Distribution List**

LeadingAge New York

**FROM: Hinman Straub P.C.**

**RE: Expansion of New York's Labor Law Prohibiting Employer Retaliation Against Immigrant Employees**

**DATE: August 20, 2019**

**NATURE OF THIS INFORMATION:** This is general information you might find helpful or informative.

**DATE FOR RESPONSE OR IMPLEMENTATION:** N/A

**HINMAN STRAUB CONTACT PEOPLE:** Sean Doolan, Esq.; Kristin Foust, Esq. and David Morgen, Esq.

**THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:**

**Category:** #4 Regulatory Process                      **Suggested Key Word(s):**

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On July 27, 2019, Governor Andrew Cuomo signed into law an amendment to New York's Labor Law providing added protection to immigrants in the workplace who report employer violations of the Labor Law, participate in related investigations with government agencies, or institute legal proceedings seeking damages as a result of the employer's unlawful conduct. The amendment prohibits employers from using an employee's suspected immigration or citizenship status, or the suspected immigration or citizenship status of an employee's family or household member, to retaliate against the employee for engaging in the protected conduct. The text of the amendment is [attached](#) to this memorandum.

Under current state law, employers are prohibited from discharging, threatening, penalizing, discriminating, or otherwise retaliating against an employee:<sup>1</sup>

(i) because such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general or any other person, that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or any order issued by the commissioner, (ii) because such employer or person believes that such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general, or to any other person that the employer has violated any provision of this chapter, or any order issued by the commissioner, (iii) because such employee has caused to be instituted or is about to institute a proceeding under or related to this chapter, or (iv) because such employee has provided information to the commissioner or his or her authorized representative or the attorney general, or (v) because such employee has testified or is about to testify in an investigation or proceeding under this chapter, or (vi) because such employee has otherwise exercised rights protected under this chapter, or (vii) because the employer has received an adverse determination from the commissioner involving the employee.

The amendment to Labor Law § 215 prohibits employers from:

“threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state or local agency.”

Labor Law § 215 (1)(a). This amendment will take effect October 25, 2019.

The amendment was originally proposed by the New York State Office of the Attorney General (“OAG”) following OAG investigations of allegations that certain employers invoked

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<sup>1</sup> Labor Law § 215 (1)(a).

federal immigration authorities as a threat to retaliate against workers who accused the employers of violating the Labor Law.

Threatening to report an employee to immigration authorities in retaliation for reporting a violation of federal wage and hour laws may already be prohibited by federal law. *See Centeno-Beruny v. Perry*, 302 F. Supp.2d 128, 136 (W.D.N.Y. 2003) [holding that the former owner of the employer's "actions after learning of the lawsuit" against the employer, "i.e., reporting plaintiffs to the INS and making baseless allegations to the government that plaintiffs are terrorists, constitute an adverse employment action" that could be retaliation under the federal Fair Labor Standards Act]; *see also Lin v Great Rose Fashion, Inc.*, No. 08-cv-4778 (NGG)(RLM), 2009 WL 1544749, \*21 (E.D.N.Y June 3, 2009) (characterizing business owner's announcement to staff "that anyone without legal immigration status would be eliminated" after the owner was sued by an employee for FLSA violations as "witness intimidation"). The amendment to Labor Law § 215 may go further than federal law, however, by addressing threats related to an employee's family and household members, as opposed to just the employee.

Under current state law, employers who retaliate against employees may be guilty of a class B misdemeanor. Labor Law § 215 (3). Employers also face potential damages claims by current and former employees and may be required to pay attorney's fees and liquidated damages for each aggrieved employee. Labor Law § 215 (2)(a). Additionally, the law permits plaintiffs to obtain injunctive relief. *Id.* Liable employers may also be required to rehire or reinstate the employee to a "former position with restoration of seniority or an award of front pay in lieu of reinstatement." *Id.*

Separately from litigation by employees, employers found to be in violation of New York's prohibition on retaliation in actions brought by the Department of Labor may be subject to a civil penalty of up to \$10,000, and up to \$20,000 if the employer has a prior violation within the preceding six years. Labor Law § 215 (1)(b).

Hinman Straub is available to provide a more in-depth analysis and discussion of the above-referenced law regarding the expansion of New York's Labor Law prohibiting employer retaliation against immigrant employees. If you have any additional questions, please contact Sean Doolan, Esq. ([sdoolan@hinmanstraub.com](mailto:sdoolan@hinmanstraub.com)), Kristin Foust, Esq. ([kfoust@hinmanstraub.com](mailto:kfoust@hinmanstraub.com)), or David Morgen, Esq. ([dmorgen@hinmanstraub.com](mailto:dmorgen@hinmanstraub.com)), or at (518) 436-0751.

# STATE OF NEW YORK

5791

2019-2020 Regular Sessions

## IN SENATE

May 15, 2019

Introduced by Sen. RAMOS -- (at request of the Attorney General) -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to penalties for discrimination or retaliation against immigrant employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 1 of section 215 of the labor  
2 law is amended by adding a new undesignated paragraph to read as  
3 follows:

4 As used in this section, to threaten, penalize, or in any other manner  
5 discriminate or retaliate against any employee includes threatening to  
6 contact or contacting United States immigration authorities or otherwise  
7 reporting or threatening to report an employee's suspected citizenship  
8 or immigration status or the suspected citizenship or immigration status  
9 of an employee's family or household member, as defined in subdivision  
10 two of section four hundred fifty-nine-a of the social services law, to  
11 a federal, state or local agency.

12 § 2. This act shall take effect on the ninetieth day after it shall  
13 have become a law. Effective immediately, the addition, amendment and/or  
14 repeal of any rule or regulation necessary for the implementation of  
15 this act on its effective date are authorized to be made and completed  
16 on or before such date.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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