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Recent Change to New York's Hearsay Law Could have Implications for Workplace Litigation

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New York's unique approach to evidentiary procedure – and specifically, its rules governing admissions by a party opponent's agent – have frustrated litigators for years. Recent changes to New York's rules on civil procedure, however, have brought the state's approach to hearsay more in line with the standard set by the Federal Rules of Evidence. These changes could significantly impact future litigation, especially disputes centered on workplace conduct.

Rule 801(d)(2)(D) of the Federal Rules of Evidence exempts statements made by a party opponent's employee or agent from the rule barring hearsay, so long as these statements were made within the scope of that employment or agency. Such statements are also admissible in many states, whose rules largely mirror the standard set by the Federal Rules of Evidence.

For years, however, New York has been an outlier, both in its approach to evidence rules generally and specifically in its approach to hearsay. The rules governing agency hearsay were far narrower than its federal counterpart, allowing only statements from agents who had explicit permission to speak – requiring, for example, such authority to be present in a job description or otherwise be inferred from job responsibilities that were typical of senior management. In contrast, no such authorization requirement is present in the federal rules. A statement made by an agent of a party opponent is admissible so long as the statement is within the scope of that person's agency, which is an easier standard to meet.

Following decades of criticism, New York's legislature recently changed the rule to better reflect the standard set by the Federal Rules of Evidence. Effective December 31, 2021, Civil Practice Law and Rule 4549 provides that "a statement offered against an opposing party shall not be excluded from evidence as hearsay if made by a person whom the opposing party authorized to make a statement on the subject or by the opposing party's agent or employee on a matter within the scope of that relationship and during the existence of that relationship." The first half of the rule reflects the old authorization standard followed by New York for years. The second half of the rule, allowing for statements that are "within the scope" of the agent's relationship with the party, significantly broadens what statements could be admissible, and largely reflects the verbiage used in the federal rule, which provides that statements "made by the party's agent or employee on a matter within the scope of that relationship" are exempt from the rule against hearsay.

The change in hearsay admissibility could have wide-ranging implications for litigation in New York, particularly workplace-related litigation. Since explicit authorization is no longer required in order to fall under the party opponent hearsay exception, statements from rank-and-file employees should be easier to admit into evidence. It remains to be seen whether this change will present additional litigation risk for employers.

The recent changes to New York's evidentiary rules – and the possibility that further changes may come in future legislative sessions – underscore the importance of businesses and their counsel remaining briefed on statutory developments. Even small changes in civil procedure rules can have significant ramifications. Understanding these changes, and the risks they present, are essential to helping protect companies from litigation pitfalls.

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