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Washington, D.C. to Expand Antidiscrimination Protections to Include Independent Contractors and Homeless Individuals

Law and the Workplace on **September 27, 2022**

Effective October 1, 2022, an amendment to the District of Columbia's Human Rights Act ("the Act") will expand the universe of workers protected under the Act, as well as codify workplace harassment as an unlawful discriminatory practice.

First, the amendment expands the Act's definition of a protected "employee" to now also include individuals "working or seeking work as an independent contractor" as well as unpaid interns. However, the amendment states that an independent contractor for purposes of the Act "does not mean a service vendor who provides a discrete service to an individual customer."

Next, the amendment adds "homeless status" to the Act's list of protected classes in employment, as well as with regard to public accommodation, housing and other purposes. As such, the amended Act will provide that an employer may not "fail or refuse to hire, or to discharge, any individual; or otherwise discriminate against any individual, with respect to his or her compensation, terms, conditions, or privileges of employment" on the basis of an employee or applicant's "actual or perceived" status as homeless. For purposes of the amended Act, homelessness is defined in accordance with the city's Homeless Service Reform Act as "an individual or family that lacks a fixed, regular, and adequate nighttime residence."

Finally, the amendment expressly provides that "[i]t shall be an unlawful discriminatory practice to engage in harassment" on the basis of any protected characteristic under the Act. The amendment describes these changes as "clarify[ing] and enhanc[ing] protections against workplace harassment."

The amendment defines harassment as “conduct, whether direct or indirect, verbal or nonverbal, that unreasonably alters an individual’s terms, conditions, or privileges of employment, or has the purpose or effect of creating an intimidating, hostile, or offensive work environment.” The amendment also includes a list of non-exhaustive factors to be considered in determining whether challenged conduct constitutes unlawful harassment, including:

- the frequency of the conduct;
- the duration of the conduct;
- the location of the conduct;
- whether the conduct involved threats, slurs, epithets, stereotypes, or humiliating or degrading conduct; and
- whether any party to the conduct held a position of formal authority or informal power relative to another party.

We will continue to monitor and report on further developments regarding this amendment once it goes into effect. In the meantime, D.C. employers should review and, as necessary, update their existing anti-discrimination policies to ensure that they accurately reflect these expanded protections under the Act.

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