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New York Employers May Soon Face New Separation Agreement Procedural Requirements

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A bill passed by the New York State Legislature and awaiting delivery to Governor Kathy Hochul may impose new procedural requirements for employers around separation agreements.

If ultimately enacted, S372A, known as the "No Severance Ultimatums Act," would mandate a minimum 21-day review period and 7-day revocation period for any separation agreement requiring an employee to release claims against the employer.

Specifically, the bill would amend the New York Labor Law to establish minimum review protections for employees and former employees offered a "severance agreement," defined as an agreement offered by an employer to an employee upon separation of employment and related to such separation that requires the employee to release waivable claims against their employer.

Under the bill, an employer offering a covered severance agreement would have to notify the employee that they:

- have the right to consult an attorney regarding the agreement;
- have no less than 21 calendar days to consider the agreement;
- may revoke the agreement within 7 calendar days after signing it, and the agreement will not become effective or enforceable until the revocation period has expired; and
- may sign the agreement before the end of the 21-day consideration period, but only if the decision to do so is knowing, voluntary, and not induced by fraud, misrepresentation, threats, or an offer of different terms to sign earlier.

The bill would effectively extend procedural protections resembling those under the federal Older Workers Benefit Protection Act (OWBPA) to covered severance agreements regardless of the employee's age. The OWBPA amended the federal Age Discrimination in Employment Act to mandate consideration and revocation periods where employees age 40 and over are releasing age discrimination claims.

Notably for employers, however, the No Severance Ultimatums Act would not displace any greater protections provided under applicable law, including the OWBPA's requirement that a 45-day consideration period (and 7-day revocation period) be provided to employees age 40 or older when releasing age discrimination claims as part of group termination programs. The bill also provides for a limited exception for severance agreements negotiated pursuant to a collective bargaining agreement and specifically acknowledging the law's provisions.

If signed by the Governor, the No Severance Ultimatums Act would take effect immediately.

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