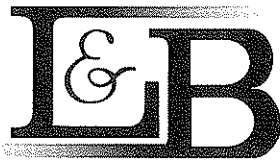


Keeping you
informed...



LAMB & BARNOSKY, LLP

ATTORNEYS AT LAW

MEMORANDUM

TO: OUR EMPLOYER CLIENTS

FROM: LAMB & BARNOSKY, LLP

RE: DISCRIMINATION BASED UPON GENDER IDENTITY

DATE: JANUARY 19, 2010

Governor David Paterson recently issued Executive Order 33 prohibiting New York State agencies from discriminating against any individual on the basis of gender identity in matters pertaining to employment including, but not limited to, hiring, termination, retention, job appointment, promotion, tenure, recruitment or compensation. "Gender identity" is defined as having, or being perceived as having, a gender identity, self-image, appearance, behavior or expression which is different from that traditionally associated with the sex assigned to that person at birth. The New York State Office of Employee Relations, in consultation with the Executive Director of the New York State Division of Human Rights, has been directed to prepare guidelines implementing this Order.

While application of this Order is limited to New York State agencies, we recommend that employers consider amending their anti-discrimination policies to prohibit discrimination based upon gender identity. The New York City Human Rights Law already contains a prohibition against discrimination based upon gender identity. While the federal and state laws do not explicitly prohibit discrimination based upon "gender identity," the courts have extended the federal and state law prohibitions against discrimination based upon sex to protect transgender individuals from discrimination. In addition, there are currently bills pending before Congress and the New York State Legislature to add "gender identity" as a protected class. The Obama administration has added gender identity among the classes protected by federal equal employment opportunity policies.

Please contact us if you have any questions regarding this memorandum.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.