

# Now & Next

## Labor & Employment Alert

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### **New York Legislature passes “No Severance Ultimatums Act”; awaits governor**

By Tara E. Daub and Peter Wilms

Governor Kathy Hochul may soon sign New York Senate Bill S372A, the “No Severance Ultimatums Act”. If signed into law, this bill would impose new requirements on employers offering severance agreements to New York employees.



#### **What’s the impact?**

- Employers offering severance agreements in New York would be required to provide written notice to the employee of specific rights, including the right to consult an attorney.
- Covered employees would be entitled to at least twenty-one calendar days to consider a severance agreement and seven calendar days to revoke the agreement after signing.
- Severance agreements that do not comply with the statute would be void and unenforceable.
- If signed by the governor, the legislation would take effect immediately, so employers will need to be prepared to update their forms and practices promptly.

## **No Severance Ultimatums Act**

Senate Bill S372A, titled the “No Severance Ultimatums Act,” states that it would prohibit “coercive severance ultimatums.”

The legislation gives separating employees additional time and information before signing severance agreements that require them to release waivable claims against their employer.

Many employers already provide 21-day consideration and seven-day revocation periods for severance agreements offered to employees age 40 and older under the federal Older Workers Benefit Protection Act, in order to obtain an enforceable release of federal age discrimination claims. However, S372A is not limited to specific claims by employees age 40 or older. If enacted, the New York requirements would apply to all employees covered by New York Labor Law and all severance agreements requiring release of waivable claims.

A limited exception is included for certain severance agreements negotiated pursuant to a collective bargaining process.

## **Required notices and review period**

Under the No Severance Ultimatums Act, any employer offering an employee or former employee a severance agreement would be required to notify the individual that:

- / The employee has the right to consult an attorney regarding the agreement;
- / The employee has at least 21 calendar days to consider the agreement;
- / The employee may revoke the agreement within seven calendar days after execution; and
- / The agreement does not become effective or enforceable until the seven-day revocation period has expired.

The bill also provides that an employee may sign the severance agreement before the end of the 21-day consideration period, but only if the employee’s decision to shorten the period is knowing, voluntary, and not induced by the employer through fraud, misrepresentation, or a threat to withdraw or alter the consideration period before it expires.

Employers also may not induce early signing by offering different terms if the employee signs before the expiration of the 21-day consideration period.

Because the agreement would not become effective or enforceable until after the seven-day revocation period expires, employers should ensure that payroll, benefits, and severance payment timelines account for the additional waiting period.

## Covered entities and agreements

The bill uses the broad definitions of “employee” and “employer” set forth in New York Labor Law Section 190 and expressly includes governmental agencies.

The bill defines a “severance agreement” as an agreement offered by an employer to an employee upon separation of employment and related to such separation that requires such employee to release waivable claims against their employer.

## Collective bargaining agreement waiver

The requirements of the new statute may be waived by a severance agreement that specifically acknowledges the provisions of Labor Law Section 215-d and is negotiated pursuant to a collective bargaining agreement.

## Effective date

The bill provides that it would take effect immediately. Accordingly, if signed into law, employers may have little or no lead time to update severance agreement forms and separation practices.

For assistance reviewing severance agreements or preparing for compliance with this legislation, please contact your Nixon Peabody attorney or the authors of this alert:

**Tara E. Daub**

516.832.7613 or 212.940.3046

[tdaub@nixonpeabody.com](mailto:tdaub@nixonpeabody.com)

**Peter Wilms**

516.832.7570

[pwilms@nixonpeabody.com](mailto:pwilms@nixonpeabody.com)