

Alert | Labor & Employment



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To Settle or Not to Settle? The Question Just Got Harder in New York

Starting Oct. 12, there will be no more confidential settlements in New York. Citing a “vested interest” in the ultimate resolution of all cases before it, the New York Division of Human Rights (DHR) **announced** on Oct. 1 that it will no longer issue Commissioner’s Orders discontinuing complaints after private settlements are reached in cases filed with the DHR, even when the complainant has been represented by private counsel.

Contrary to prior practice, all settlements now will be subject to review by the DHR before a case is closed. Previously, review was only conducted in cases where the complainant did not have private counsel, but rather was represented by a DHR attorney. Under the new standard, with regard to complaints filed on or after Oct. 12, 2021, if a complainant’s attorney seeks a discontinuance indicating a private settlement has been reached, the discontinuance will be denied. To ensure that the terms of any settlement reached comply with the DHR’s basic standards and do not violate public policy, parties may either settle the matter through a DHR Order after entering a stipulation setting forth the terms of the settlement or proceed through the DHR’s public hearing process.

The DHR has indicated these changes are being made to ensure New Yorkers have greater insight into the results of complaints and to allow the DHR to monitor all settlements to confirm they comply with the intent of the Human Rights Law. However, submitting the settlement can not only jeopardize the confidentiality of its terms but potentially create the need for a second round of negotiations, this time with the DHR. Going forward, as companies consider settlement in DHR complaints, resolution between

parties could become more difficult, as settlement terms and amounts will be subject to agency review and publicly disclosed.

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