Sexual Assault Ruling Increases Exposure For NYC Employers

By **Sara Begley, Jeremy Sternberg and Dana Feinstein**

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Just ahead of the start of Harvey Weinstein's criminal trial, a precedential ruling by the First Appellate Division of the New York Supreme Court in Breest v. Haggis now provides a new avenue for individuals in New York City to seek financial recovery from claims of sexual assault.

The court, addressing claims of sexual assault brought by publicist Haleigh Breest against film director and writer Paul Haggis, held that New York City's Victims of Gender-Motivated Violence Protection Act, or VGMVPA, applied to Breest's claims.[1]

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The VGMVPA, which provides a private cause of action for individuals injured by crimes of violence motivated by gender, has never before been interpreted to apply to claims of workplace sexual harassment. By doing so, the court significantly expands the weight of the VGMVPA, with significant consequences for employers.

The VGMVPA's definition of "gender-motivated crimes of violence" are expansive and broadly worded. A "crime of violence" is defined as:

> an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law … if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges.

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"Motivated by gender" is defined as "committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." These broad definitions allowed the court to expand the application of the VGMVPA to any claims of forced sexual activity in its ruling in Breest v. Haggis.

The court explained:

> Rape and sexual assault are, by definition, actions taken against the victim without the victim's consent. Without consent, sexual acts such as those alleged in the complaint are a violation of the victim's bodily autonomy and an expression of the perpetrator's contempt for that autonomy. Coerced sexual activity is dehumanizing and fear-inducing. Malice or ill will based on gender is apparent from the alleged commission of the act itself.

The court's holding will allow individuals who bring claims of sexual harassment and assault under the VGMVPA access to the large financial recoveries available under the statute, including emotional distress and punitive damages. Such individuals will also benefit from the VGMVPA's lengthy seven-year statute of limitations, giving claimants an expanded period of time in which to file previously time-barred claims of sexual assault. Moreover, relief under the VGMVPA does not preclude a plaintiff from seeking recovery for claims of sexual harassment under other statutes, as well as civil claims of assault and battery — not to mention related criminal claims.

Employers should evaluate any potential claims within their organization to which the VGMVPA might now apply following the court's expansion of the law in Breest. The VGMVPA applies to anyone who either works or lives in New York City.

New York state recently enacted legislation extending the statute of limitations for claims of workplace sexual harassment from one to three years — but the VGMVPA's seven-year statute of limitations expands individuals' ability to bring such claims even further. Any employer with employees who either live or work in New York City must investigate, address and remediate any relevant claims, even those that date back years.

In addition to claims of sexual harassment involving parties of the opposite sex, employers should pay careful attention to same-sex claims of sexual harassment, as they would likely fall within the VGMVPA's prohibition on crimes of violence motivated by gender. Courts are increasingly interpreting discrimination on the basis of sex to include sexual orientation and gender identity — a distinction that will be addressed by the U.S. Supreme Court in a trio of cases currently before it: Altitude Express Inc. v. Zarda; Bostock v. Clayton County, Georgia; and R.G. & G.R. Harris Funeral Homes Inc. v. U.S. Equal Employment Opportunity Commission.

In light of the court's precedential decision in Breest, employers in or near New York City cannot afford to stand back and take a wait-and-see approach to potential claims of sexual harassment or assault. Rather, employers and organizations should take this opportunity to examine their culture, both present and past.

Doing so may help avoid litigation and prevent significant financial exposure. But most important, addressing such claims will create a vibrant workplace environment free from harassment, which will increase employee morale, help to retain and foster top talent, and bolster the employer's reputation as a place where all employees can thrive.

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[1] Breest v. Haggis, 2019 NY Slip. Op. 09398 (2019).