Suing New York City – For Employees and Former Employees of New York City

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There are a number of important distinctions between bringing an action against a private employer and suing the City of New York that must be taken into consideration before a lawsuit is filed. Some of those distinctions are addressed below. Of course, for further information, please feel free to contact our Firm and speak with one of our lawyers.

1. What To Do Before You Sue

When bringing a claim against the City of New York, a plaintiff is often required to file a "Notice of Claim" prior to bringing a lawsuit in court. If a Notice of Claim is not filed, the plaintiff risks losing the right to bring his or her claims. Critically, for certain claims, the deadline to file a Notice of Claim is one year and 90 days. Therefore, for those categories of claims, even if the "statute of limitations" on a claim is ordinarily longer than one year and 90 days, a plaintiff will still have to file a Notice of Claim within the one year and 90 day time period in order to sue the City of New York. Not every cause of action against the City of New York requires a Notice of Claim to be filed. However, many do and if one does not comply with the requirement, he or she could be barred from bringing claims against the City of New York. Therefore, it is important to consult with legal counsel as soon as one experiences an unlawful act to determine whether a Notice of Claim must be filed.

2. Who Do You Sue?

If an individual is a current or former employee of New York City or one of its agencies, New York City Charter § 396 provides that any lawsuit filed against the employer should be brought against the City of New York, and not against the agency for which the individual works, except where otherwise provided by law. This means that, generally, New York City agencies cannot be named as a defendant in a lawsuit. For example, an employee looking to sue New York City agencies, such as the New York City Police Department, the New York City Department of Corrections, the Office of the Chief Medical Examiner, the Civilian Complaint Review Board, etc., would have to name New York City as the defendant, and not the agency. However, as noted above, there are exceptions to this general rule. One such exception is the New York City Department of Education, which can be named as a defendant in a lawsuit. Accordingly, it is very important to consult with legal counsel to ensure that the correct entity has been named if one desires to bring a lawsuit against the City of New York or one of its agencies.

3. Suing Individual Defendants Is Critical

Unlike a private employer, the City of New York can at times be exempted from having to pay any punitive damages. However, individuals can be sued for punitive damages. Therefore, it may be important to sue not only the appropriate entity, but also to name the individuals who committed the

unlawful conduct as defendants. If one receives an award of punitive damages against an individual employed by New York City, it is likely that New York City will "indemnify" that individual, which means that New York City will pay the punitive damages award. If one does not name an appropriate individual defendant, it may result in an inability to collect punitive damages and therefore an inability to maximize the potential recovery.

4. Laws That Protect Only Public Employees

Another difference between suing a private entity and the City of New York is that there are certain laws that only protect public employees. One such law is New York Civil Service Law § 75-b. Section 75-b is a whistleblower protection law that prohibits retaliation against public employees who report or complain about certain unlawful or improper conduct. If a current or former employee of New York City has been retaliated against for disclosing improper or unlawful conduct, he or she may be able to recover damages under § 75-b.

For more information, or questions, employees can contact Wigdor LLP at (212) 257-6800.

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