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New York Enacts Revival Statutes, Renewing Expired Claims for Sexual Assault

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In 2019, the state of New York passed legislation extending the statute of limitations for civil causes of action for certain sex offenses from three years to 20 years. However, that law was prospective only. Now, New York is providing recourse for sexual assault survivors whose civil claims have expired. On May 24, 2022, New York Governor Kathy Hochul signed the Adult Survivors Act (ASA) into law. A so-called “revival statute,” the ASA provides a one-year window for adult sexual assault survivors to bring otherwise time-barred civil claims against their alleged abusers and other responsible parties, including public and private institutions, such as the individual perpetrator’s employer.

In this article, we discuss the backdrop for the passage of the ASA and present an overview of the law, as well as another statute with a revival window on the horizon—New York City’s Victims of Gender-Motivated Violence Protection Law. We also offer practical suggestions for employers to consider in anticipation of lawsuits which may be filed once the ASA’s revival window opens this fall.

Revival Statutes

Since the #MeToo movement gained nationwide momentum in 2017, many commentators have observed that often victims of sexual misconduct do not come forward at the time of the offense. See, e.g., Kaelyn Forde, [Why more Women don’t Report Sexual Assaults](#), ABC News (Sept. 27, 2018). This happens for a variety of reasons, including confusion, shame, or fear of victim-blaming, retaliation, not being believed, or potential career and community repercussions. A common thread among the reasons victims do not bring claims is the existence of power dynamics where the perpetrator holds economic or other influence over their victim that coerces the victim not to seek redress.

Over the last half-decade, many state and local governments have enacted #MeToo-inspired legislation intended to address sexual harassment, violence, and misconduct. Numerous states, such as California and New Jersey, have passed “revival statutes,” which suspend the statute of limitations for civil actions related to sexual offenses to give survivors another opportunity to seek legal redress.

To date, most of these revival statutes have been aimed at childhood sexual abuse. For example, New York's Child Victims Act (CVA), enacted in February 2019, permitted childhood sexual assault survivors to bring previously-expired civil claims related to their sexual abuse for a two-year period (originally one year) from Aug. 14, 2019 to Aug. 14, 2021. See N.Y. C.P.L.R. 214-j. During that two-year period, plaintiffs brought 10,857 lawsuits under the law. Jay Tokasz, [Nearly 11,000 Child Victims Act lawsuits filed in New York State](#), The Buffalo News (Aug. 17, 2021). Approximately 85% of those suits were brought against institutions, including thousands of suits against public and private employers for allegedly enabling, or not preventing, sexual abuse by their employees. Child USA, [Statute of Limitations Reform Serves the Public Interest: A Preliminary Report on the New York Child Victims Act](#) 6 (2021); Michael Hill, [NY let Childhood Sex Abuse Victims Sue](#), ABC News (Aug. 13, 2021). However, the suits were limited mostly to institutions that have regular contact with children, such as religious institutions, hospitals, and schools.

The Adult Survivors Act

On the heels of the CVA's revival window closing, New York enacted the ASA, which may have a much larger impact on employers other than just those that interact with children. The ASA is modeled after the CVA but covers sexual assault survivors who were adults at the time of the offense. Specifically, the ASA amends New York's Civil Practice Law and Rules to revive temporarily any and all expired claims related to certain sexual offenses committed against individuals 18 years of age or older—regardless of how long ago the alleged offense took place. N.Y. C.P.L.R. 214-j. The law provides recourse for sexual assault survivors who have suffered physical, psychological, or other injuries as a result of behavior which constitutes a sexual offense under New York Penal Code 130. *Id.* New York Penal Code §130 offenses include sexual misconduct, rape, criminal sexual acts, forcible touching, and predatory sexual assault, among others. See N.Y. Penal Law §130 et seq. The law does not create a new cause of action; rather, it revives claims that could have been asserted

under existing law, such as tort claims for battery or assault.

The ASA's revival window opens six months after May 24, 2022 and lasts for 12 months. N.Y. C.P.L.R. 214-j. Accordingly, aggrieved individuals will have from Nov. 24, 2022 to Nov. 23, 2023 to file their otherwise time-barred claims or to refile actions that were previously dismissed as time-barred. *Id.*

Unlike the CVA, which prospectively amended the statute of limitations for both criminal and civil actions for sexual offenses against children on a go-forward basis, the ASA does not alter any statutes of limitations after the close of the revival period in November 2023. But like the CVA, in addition to reviving civil claims against individual perpetrators, the ASA allows sexual assault survivors to initiate lawsuits against institutions that were allegedly negligent or otherwise enabled sexual offenses committed by individual perpetrators. The statute encompasses "every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person." N.Y. C.P.L.R. 214-j. While the scope of the statute has yet to be tested, employers should anticipate that potential plaintiffs may argue for the inclusion of certain sexual harassment claims against employers under the New York State Human Rights Law if the alleged behavior would rise to the level of a crime under the New York Penal Law. For example, a plaintiff may argue that an expired sexual harassment claim based on "forcible touching" (as defined under the New York Penal Law §130.52) is revived under the statute, but a sexual harassment or hostile work environment claim based only on verbal harassment likely would not be revived because such conduct does not fall within the scope of New York Penal Law §130 et seq.

In an effort to expedite these revived claims, some of which could be decades old, all actions brought under the ASA will receive trial preference. See N.Y. C.P.L.R. 3403(a)(7). Further, the ASA directs the chief administrator of the courts to "promulgate rules for the timely adjudication" of such actions. N.Y. Jud. Law §219-e.

Approaching Revival Window

New York City's Victims of Gender-Motivated Violence Protection Law (VGMVPL), originally enacted in 2010, creates a private right of action for victims of gender-based violence. In addition to criminal charges and civil tort claims, parties who "commit[], direct[], enable[], participate[] in, or conspire[] in the commission of violence motivated by gender" are subject to civil liability under the VGMVPL. N.Y.C. Admin. Code §10-1104. The law's statute of limitations is generally seven years, but an amendment passed late last year will temporarily revive all expired claims for two years—from March 1, 2023 to March 1, 2025. See N.Y.C. Admin. Code §10-1106.

Though the VGMVPL amendment is a revival statute like the ASA, the VGMVPL creates an independent cause of action under which a plaintiff has a right to sue, whereas the ASA only revives expired claims available under other laws. Because the VGMVPL creates its own cause of action, it provides for specific types of relief, including compensatory and punitive damages, injunctive and declaratory relief, attorney's fees and costs, and other remedies as a court may deem appropriate. See N.Y.C. Admin. Code §10-1104. In contrast, the relief available under an action authorized by the ASA is limited to the remedies provided for under the primary law. For example, in a negligence action in New York, a plaintiff may generally recover compensatory and punitive damages but not attorney fees.

Like the ASA, the VGMVPL allows for institutional liability where an employer "enables" an offense, but both laws encompass only offenses that would rise to the level of certain crimes. See N.Y.C. Admin. Code §10-1103; N.Y. C.P.L.R. 214-j. In practice, the two laws may cover the same or similar types of conduct, as some courts have held that sexual offenses are presumptively gender-motivated. See, e.g., *Breest v. Haggis*, 115 N.Y.S.3d 322, 326 (N.Y. App. Div. 2019). Note that neither law requires that the underlying behavior by the individual result in actual criminal charges, prosecution, or conviction.

Practical Considerations

Litigation brought under the ASA, the VGMVPL, and other revival statutes could be related to incidents that occurred years, or even decades, earlier. When defending a lawsuit under one of these revival statutes, employers may face unique litigation challenges—ranging from reputational risk to evidentiary issues. In preparation for responding to claims brought under revival statutes, employers may wish to consider the following actions:

- Gather and preserve all historical employment policies, including copies of employee handbooks.
- Reassess document retention policies and procedures, with an eye toward supporting investigations of alleged misconduct from years past. Consider temporarily pausing the organization's regularly scheduled destruction of business records such as personnel files, emails, policies, handbooks, etc. until the expiration of the relevant revival periods or extending the organization's standard document retention periods. These types of records, which may fall under the hearsay exception for records maintained in the ordinary course of business, may be critical in demonstrating that an employer was not negligent and took appropriate action related to any alleged misconduct by employees.
- Identify and preserve all existing or historical insurance policies which may provide coverage for claims, and promptly notify the relevant carrier contact persons after a demand is made.
- Discuss with management, as well as the human resources and legal departments, the organization's planned procedure for handling future claims should they arise—particularly if the organization is aware of any historical allegations of sexual misconduct that appear likely to give rise to claims under a revival statute.
- Identify key advisors to contact in the event a claim is raised, including outside counsel, insurance carriers, and public relations or consulting firms.

- Verify compliance with all current sexual harassment laws. Update policies and implement trainings where appropriate, and establish a channel through which sexual harassment or assault by an employee can be anonymously reported.

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