



Episode 37: “All Your New York State Division of Human Rights Questions Answered, Part 1,” With Debbie Kent

Speakers: Ari Kwiatowski, Barclay Damon
and Debbie Kent, New York State Division
of Human Rights Buffalo Office

[Ari Kwiatowski]: Hi, everyone, this is a Barclay Damon live broadcast where we discuss all things L&E, labor and employment. I’m Ari. Let’s dig in.

[Ari]: Hey, guys. Welcome to “All Your New York State Division of Human Rights Questions Answered,” a one-on-one conversation with the regional director. I am so happy to welcome, as I just said, the regional director of the New York State Division of Human Rights Buffalo Office, Debbie Kent. Debbie, welcome. Thanks so much for joining.

[Debbie]: Thank you. Thank you for inviting me. Happy to be here.

[Ari]: Of course, we’re really excited to have you. You know, a big part of what we do, Debbie and I know, you know, this is respond to complaints of discrimination filed with the Division of Human Rights. So I know that the information that you give us today is going to be invaluable to our listeners. So thanks again for joining.

[Debbie]: No problem. Glad to be here.

[Ari]: There. Absolutely. So before we get into it, Debbie, I always have our guest share a fun or interesting fact about themselves, personal or professional life and I will let you choose. And I don’t mean to put you on the spot, but again, I kind of do. So I’ll turn it over to you.

[Debbie]: I don’t know that my life is that exciting, but I did go skydiving once, so that was pretty exciting. And that was that was quite a few years ago. But I’m an avid quilter, so that’s something I do now.

[Ari]: Wow. So I think skydiving is very interesting and terrifying. Where did you do that?

[Debbie]: Down in Florida.

[Ari]: Okay, that sounds.

[Debbie]: Spur of the moment thing I said, oh, I’m going to go do this. And it was great.

[Ari]: Oh, my gosh. I was going to ask, was it like a something you always wanted to do or you were just like, you know what it was?

[Debbie]: Yeah, it was. It was like one of those bucket list things like, I definitely have to do this at least once. So I guess.

[Ari]: Oh, my gosh. Well, kudos to you. I...this just came up in conversation with my friends last weekend. On Saturday, we were out to dinner and somebody brought up how they wanted to go skydiving. So it’s timely for me and I...my first reaction is, I don’t think I could ever do it. Oh, was it as cool as you thought it would be?

[Debbie]: Oh, yeah. It was pretty amazing. You are you know, you're just floating in the air and there's quite a while before you pull the chute. So you're just, like, freefalling. Not in a plane. You have to leave a plane. That's the hard part, right?

[Ari]: So is it a tandem jump if it's, like your first time?

[Debbie]: It was. Oh, yeah.

[Ari]: I would do it again.

[Debbie]: I wouldn't trust myself. I would stick to a base and pay attention. The guy had to remind me they did let me pull the ripcord. But yeah, they definitely had to remind me. Like to pay attention.

[Ari]: Oh, my gosh. That's so exciting. Okay, well, we'll talk about this off flight so we can get into the meat of it. But I definitely want to I want to hear more. So, Debbie, again, thanks so much for joining. As I mentioned to our listeners, you are the regional director for the New York State Division of Human Rights Buffalo Office. Can you just tell us a little bit about what your role is at the division and what you do as the regional director?

[Debbie]: As the regional director I'm the head of the office, so I'm supervising the staff here. And I'm also making determinations on all of the cases that come before our office.

[Ari]: Right. And we will definitely get into that for sure. Can you tell our listeners, Debbie, or just educate our listeners a little bit about the Division of Human Rights? What it is and what its mission is?

[Debbie]: The Division of Human Rights is...was created to enforce the New York state human rights law. This is a certain body of law to enforce the state's anti-discrimination law. And we do have a mission statement and it's short. I'll read it to you. So it's only a couple sentences. "The New York State Division of Human Rights is dedicated to eliminating discrimination, remedying the injustice, and promoting equal opportunity, access and dignity to enforcement of the human rights law. Our vision is a New York free of discrimination, where everyone can fulfill their potential and participate fully in the life of the state." So basically, we're trying to eradicate discrimination across the state, and we do that in a couple of different ways. We have education to try to prevent the discrimination from happening in the first place, so we have, Know Your Rights Campaign. So we go across the state. We do as much outreach as we can and have pamphlets and other materials that we provide people. We do all various trainings. You know, we do all types of outreach to try to get information to individuals about what you know, what is discrimination and what's covered. And, you know, the process of trying to make a complaint and where they can go, but also to educate entities and businesses on how they can help prevent discrimination from happening in the workplace in the first place. So that, you know, the prevention is obviously, you know, the best thing if we can prevent it. Then everybody is happy and there's no problems, unfortunately, that we're not at that point yet, so there is the enforcement angle and we have to you know, complaints are filed and we go through that process and then there's the enforcement tools.

[Ari]: Right. I'm glad you read the mission statement, Debbie. All very important goals, aims. And I know that the division does a lot of work educating employees and employers on everything that those individuals, businesses need to know with respect to the division. And I know you mentioned, Debbie, that the division enforces New York State anti-discrimination law. The New York human rights law. Is that law—just for the benefit of our listeners—is that law related only to preventing discrimination in employment? Or are there other areas that the law covers?

[Debbie]: Right. We have multiple jurisdictions: employment, housing, education, credit, and places of public accommodations. So it's pretty broad and it covers most entities across the state.

[Ari]: Right. And importantly in New York, really, at employers that have one or more employee in most instances, as opposed to under federal law, where there's a 15, 20 employee threshold.

[Debbie]: Exactly. Yeah, there's different thresholds. There used to be four or more employees in the state. Right. Then a couple of years ago, they changed that. And so now pretty much every employer who has one or more employee, as you said, would be covered under the law and they would have to follow the law.

[Ari]: Yes. So, Debbie, you mentioned that the division enforces the New York State human rights law, which is an anti-discrimination law covering, as you said, several facets: employment, public accommodations, etc. What type of discrimination is the human rights law aimed to prevent...based on what characteristics said in another way? Right.

[Debbie]: There's multiple bases that are covered. And I can tell you that back when I started 23 years ago, there was a very short list. And now has gotten longer, keeps getting added to. These different bases that are covered under different jurisdictions. And so I probably could remember all the bases that are covered, under employment, but I brought a list. So this...so I don't miss anything and I'll read that for you. I'm not going to read everything...

[Ari]: ...is totally understandable.

[Debbie]: I'm like I, this one and I'm the regional director that's not going to look good, right? Age, race, creed, color. Sex, national origin. Prior arrests, conviction. Record disability, marital status. Familial status. Domestic violence victim status. Sexual orientation. Gender identity or expression. Military status. Pregnancy-related condition, predisposing genetic characteristics, retaliation, and opposing discrimination. So those are the ones that are covered under employment. The list can be slightly different for housing or public accommodation, but that...under housing there's going to be lawful, unlawful source of income. That is one that's definitely not under employment. So there are differences depending on what area it is.

[Ari]: Got it. So, Debbie, before we kind of get into the meat of complaints in responding, can you just educate our listeners a little bit about how the Division of Human Rights is organized throughout the states?

[Debbie]: Sure. Well, the head of our agency is the commissioner, and that's Maria Imperial is the current commissioner, was the first deputy commissioner under her Cicely Harris. And then there's three main areas that we have. We have the regional affairs which covers the regional offices and investigations, and that is the deputy commissioner, Gina Martinez. We have a deputy commissioner of enforcement, Melissa Franco and we have a deputy commissioner of external affairs, Jill Faison. So we have about 12 offices across the state and our main office, our central offices in the Bronx. And then we have multiple regional offices, and then each office covers certain geographical area, certain counties. The Buffalo office covers Erie, Niagara, Chautauqua, and Cattaraugus counties. And then each office is going to have an investigative team. Some of the offices also have legal staff there, although there isn't legal staff at every office and then there's hearing offices across the state as well, where our administrative law judge reside. But they don't live there, but they work there. We are also forming a new hate and bias prevention unit. So that is something... a new unit that the division is putting together right now. I don't have all the information about the structure of the unit and all the details about what they will be doing. But I think the main goal, the vision, is going to be designed to be immediately deployed. If there's specific incidents that happened across the state and they can go right there and obviously the incident will be involving discrimination or hate, and then try to provide resources to them, maybe referrals and use different tools to try to resolve the issue in any way we can or guide them toward how to make complaints, and such as that. So the exact structure, like I said, I'm not entirely sure yet, but once that's up and running. There should be more information about that on our website.

[Ari]: Very interesting. Thanks, Debbie. That's helpful. So we know that or I know and at the firm, we know that the division enforces its laws, enforces the human rights law through multiple ways, through investigations, through things of that nature. And I think the starting-off point is really when an employer or former employee files a complaint with the Division of Human Rights. And one of the first questions I wanted to ask you about the complaint is: how does the division decide which complaints it will investigate? Or, in other words, is there a screening process or does the division investigate every complaint? Or how does that work in terms of when complaints come into the division?

[Debbie]: Sure, there is a screening process. There's...we have on our website, we have a self-screened screening questionnaire that people can go through when they access our website. And of course, there's information on the website about what's covered, the laws there, the various pamphlets they can access. But this questionnaire will kind of walk them through their own particular situation and then depending on what they fill in, more questions will come up and help guide them to see if that is an issue that would be covered under human rights law. Of course, people can also call our office or contact us by email and ask us questions about their individual situation to determine whether or not it would be appropriate to file here. Sometimes it is, sometimes it isn't, and we might give them referrals to another office or another place where they can go and bring their issues. Also, what's a... the complaint form itself kind of guides them through that as well. It has the different section that they need to fill out and if they come to a section, such as the basis and they there's nothing there and they can't, if none of them apply, then it's going to be a situation where possibly, you know, this isn't the case for us. Sometimes it's just that they didn't fill in the information or they're not sure. They didn't really understand it. So generally, if we have misinformation, we're going to reach out and try to talk to them and see if something applies. And we're going to ultimately, when we get the complaint, we're going to determine, does this meet the requirements for filing? And if it doesn't, then we might just dismiss the complaint right there. As not jurisdictional or timely or whatever the situation may be. And otherwise we might need to get more information. So we might need to request information from the parties to try to make a determination as to whether or not this case should go forward for investigation.

[Ari]: Got it. So it sounds like there is an initial screening process kind of built in looking at, as you mentioned, jurisdictional issues and statute of limitations, those kinds of things. And basically, the division will take a look and set it to see if the complaint meets the division's filing requirements.

[Debbie]: Yeah, that's right.

[Ari]: Great. So just another preliminary-type question, Debbie, because this I think this is confusing to employers. So as an employer, you know, you may receive a chart or excuse me, a complaint filed with the Division of Human Rights. And then it's noted on there that there was a dual filing with the Equal Employment Opportunity Commission. That creates a little bit of confusion for our clients and employers sometimes because they're not really sure what that means. So my first question is: what does that mean, and what is the relationship between the two agencies?

[Debbie]: Right. The EEOC contracts with certain agencies across the country, and they're called there is fair employment practices agencies. And so the division is one of those. And there's a contract between our agencies whereby one, a person can file at one agency, but file both state and federally at the same time. And then generally the agency that takes the complaint is going to be the investigating agency. And then once we conducted the investigation, we would share our findings for the EEOC; there's different variations that can happen and take place depending on, you know, there's all kinds of scenarios. But generally, as far as if there's...if someone has another complaint filed with one agency, it might make sense to send the second complaint to that agency. So that they're both investigated together or if there's a lot of state allegations that involve state law, which is different than the federal law, EEOC might send the case here for investigation, or it might be a case where they're already investigating several cases of a similar nature. And so we would send it there. So there's various things that can happen.

[Ari]: That make sense, Debbie. So when an employee or an individual, former employee files a complaint, do they pick whether or not they would like the complaint to be dually filed with both agencies? Or is it an automatic process or how does that work?

[Debbie]: Certainly people can ask, but it's ultimately going to be the determination of the division. So we're going to be looking at all...the various factors to see if it meets the requirements to be filed, if they, say, have a couple of employees. And then the threshold to file with the federally is 15 employees, then then it's not going to be filed there.

[Ari]: Right.

[Debbie]: There's a timeliness difference where we have 365 days to file. Generally. Now with sexual harassment, we have up to three years. But federally it's going to be 300 days. So it might not meet that...the time limits [garbled] or to be...it's a basis that they don't cover or those things. So we're going to be making that determination. So we're not going to file it federally, even if the person wants it filed federally, if it doesn't meet those requirements that it's not going to happen.

[Ari]: That makes total sense. Thanks for clarifying that, Debbie, because I think a lot of times that's confusing for employers who have received a copy of one of those documents and have no familiarity with either agency to see that there's been something filed with both. So thanks for clarifying.

[Debbie]: Sometimes we get complaints and they don't let us know that they've already filed the EEOC. So if the employer knows that...that they have and they've already gotten the complaint, certainly we would appreciate it if they let us know and send us that information so that we can try to coordinate with the EEOC there, so they are not going through to investigations on the same issues.

[Ari]: Right.

[Debbie]: You know, nobody wants to spend the time and resources to duplicate everything.

[Ari]: Absolutely, Debbie, good point. And you know, I don't think anybody wants to waste the division or the EEOC's resources because I know there's a lot of things to handle, a lot going on.

[Debbie]: So expenses for businesses paying the attorneys to cover, you know, two different investigations. That's duplicating the work, really.

[Ari]: Yes. Also a very good point. So, Debbie, we talked a little bit about...we talked about the division a little bit about the screening process. I wanted to ask you, once the division accepts or agrees to investigate a complaint or the screening process, you know, all the screening provisos have essentially been met, then what happens? Can you tell our listeners what the next step is internally with the division?

[Debbie]: Sure. Once we've determined that it's a valid complaint, we're going to then serve a copy of it to the named entities, which we call respondents here. And they're going to have a period of time to respond to the allegations in the complaint and to either, called the response or position statement, use different terms and sometimes for different formats. So but generally we, we expect that to be a written narrative explanation or response to the actual allegations of the complaint, not just admit/deny.

[Ari]: Thanks, Debbie. So one thing I wanted to ask, you know, we represent a number of respondents, something that a respondent receives along with the complaint is what is called the "respondent contact form" or "contact information form." And on that form, in addition to providing contact information for the respondent or attorney's names, things like that, there is a query on there that asks whether the respondent will participate in mediation. So I just wanted to ask, what does mediation with the division look like or entail? Just so our listeners can get some information on that.

[Debbie]: What we generally do here is called conciliation and that...mediation, and I know there's different terms and they have different meanings. But generally when the parties are interested in conciliation and it is strictly voluntary, but if the parties are interested, we would have someone act as a facilitator and they would contact the individuals, bring them together, maybe in a meeting, or sometimes it can go by phone, sometimes it's email communications back and forth. But however the communications would be to work with the parties to see if they can reach an agreement together on some terms to resolve the complaint. If they don't reach terms, then the complaint would just go forward and be investigated as it normally would. So there's really no penalty for participating in that process. If their terms are reached, we would put that together, in a written agreement on predetermination conciliation agreement, if it's predetermination, we have post-termination agreements as well. I am not as familiar with the structure of those so I will try to stick to the PDCs, but basically it's going to contain certain standard clauses that are going to be in our agreements, you know, agrees not to retaliate. They agree to any compliance reviews, you know, so there's certain standard clauses that will be in there. And then, of course, the terms that the parties agree...were agreed to are going to be in there as well. And so we're going to make sure that the parties...make sure we get that language right on those terms and so that each person knows what their responsibilities are. And then ultimately I, as the regional director, have to review it and sign off on it.

[Ari]: Understood. So, Debbie, in terms of conciliation or mediation, and I don't mean to use that...terms interchangeably, but I think they kind of are, at least in practice.

[Debbie]: That kind of you know, some people have different thoughts of what they are, but, you know, will say mediation, settlement, conciliation.

[Ari]: Yes. So if a respondent indicates on this respondent contact form that the respondent is willing to pursue some form of settlement prior to responding to the complaint, does the division then ask the complaining party if they're interested, how does it work in terms of making a decision whether or not the parties will pursue that at that time?

[Debbie]: Yeah, definitely, the first thing is going to be asking the complainant if they're interested. If they're not interested in even attempting it, then really there's no point in going forward with that.

[Ari]: Makes sense.

[Debbie]: They both have to be willing participants.

[Ari]: Yes. And we always encourage our clients and employers to come with an open mind to these types of discussions, in the interest of trying to reach a resolution if possible. Okay. I think this is a great place for us to break today. Thank you so much for going through these kind of preliminary type things. Next week, we're definitely going to be back and really delve into the division's investigation process. But, before we sign off, anything you want to add or anything maybe I missed while we were talking today.

[Debbie]: Oh, not. But I can think of a moment.

[Ari]: Okay. I got you on the spot again.

[Debbie]: In the next session.

[Ari]: Yes, exactly. If you think about it, we will address it next week. To our listeners as I just mentioned, Debbie will be back for our discussion next week and we will talk about the investigation process and really what the results of an investigation are. So definitely stay tuned. You don't want to miss it. See you next week.

[Ari]: The Labor & Employment Podcast is available on barclaydamon.com, YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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