

THE CHILD VICTIMS ACT – WHAT IT MEANS FOR YOU

Hodgson Russ Labor & Employment Alert
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The Child Victims Act, which was passed by the New York State Legislature and signed by Governor Cuomo on February 14, 2019, amends a number of laws including the Criminal Procedure Law, the Civil Practice Law and Rules, the General Municipal Law, the Education Law, the Court of Claims Act, and the Judiciary Law.

Specifically, this act will:

- Extend the statute of limitations in the criminal prosecution of sexual offenses committed against children to begin at age 23;
- Extend the statute of limitations in civil actions relating to sexual offenses committed against children until the victim reaches age 55;
- Revive civil actions otherwise barred by the existing statute of limitations for a one year period and grant trial preference to civil actions relating to sexual offenses committed against children;
- Eliminate the requirement to file a notice of claim or notice of intention to file a claim for civil actions relating to sexual offenses committed against children; and
- Require judicial training on sexual offenses committed against children.

Under the criminal procedure law, the statute of limitations for sexual offenses committed against a child now begins to run when the child reaches the age of twenty-three (23) or the offense is reported to a law enforcement agency or statewide central register for child abuse and maltreatment, whichever occurs earlier. Previously, the statute of limitations began when the child reached the age of eighteen (18), not twenty-three (23).

For civil actions, all civil claims or causes of action brought by an individual for physical, psychological, or other injury or condition resulting from a sexual offense committed against that individual when the individual was a child must be commenced on or before the individual reaches the age of fifty-five (55). Thus, as of February 14, 2019, individuals under the age of fifty-five (55) may commence a lawsuit for abuse that they endured as a child. Similarly, all such claims that previously had been barred by the applicable statute of limitations or the individual's failure to file a notice of claim or a notice of intention to file a claim, now may be

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commenced six months after the effective date of this new legislation (August 14, 2019) and for a one year period thereafter. The chief administrator of the courts has been ordered to promulgate rules to ensure the timely adjudication of such revived actions.

Additionally, plaintiffs are no longer required to file a notice of claim or a notice of intention to file a claim when suing a municipality, school district, or the State of New York before commencing an action for claims for physical, psychological, and other injury or condition suffered as a result of a sexual offense committed against a child. Notices of claims are intended to provide municipalities and other government entities with advanced notice, prior to the actual commencement of the lawsuit, that it may be subject to a claim for damages. With this advanced notice, it is the intent that such government entities will have an adequate opportunity to investigate the circumstances and the merits of the claim while witnesses, documents, and other information are readily available. Municipalities and school districts will no longer have this benefit for claims relating to sexual offenses committed against children.

Lastly, in addition to training on crimes involving sexual assault, all judges in New York State now are required to undergo training regarding crimes involving the sexual abuse of minors.

Practical Implications

Based on the extended statute of limitations and the elimination of the notice of claim requirement, all entities, and especially municipalities and educational institutions, should reconsider their records retention practices. A minor's file may now potentially be relevant until they reach the age of fifty-five (55). Likewise, policies, procedures, and staff lists may now need to be retained for much longer. The timeframes set forth in ED-1 Records Retention and Disposition are now likely inadequate. Additionally, entities will need to give particular consideration to identifying their historical insurance carriers and to provide notice as claims arise. A previous insurance carrier from twenty years ago may be responsible for providing coverage for a claim filed tomorrow depending on when the conduct occurred and the language of the policy.

This legislation also may increase litigation overall, and especially for the one year period starting August 14, 2019 for those claims that have been revived. Anticipating a wave of litigation, institutions should seek to locate copies of insurance policies dating back to 1964 for the general fifty-five (55) years of age statute of limitations and even earlier for the one year look back window.

Please contact one of our attorneys if you have any questions about this latest development.

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