Client Alert: Proposed Legislation Would Expand the Reach of Massachusetts Anti-Discrimination Statute to Professional Investors

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Legislation currently pending in the Massachusetts Senate would expand the reach of the Commonwealth's employment discrimination statute (M.G.L. c. 151B) to professional investors in the business of sponsoring or otherwise engaging in investment transactions, including by guaranteeing or granting funds. The Bill, SD1523, was introduced by Senator Cindy F. Friedman on January 17, 2019, and has since garnered fourteen cosponsors.

SD1523 would make professional investors subject to liability under M.G.L. c. 151B for:

- discriminating against any person in deciding whether or not to sponsor or otherwise engage in an investment transaction or whether or not to guarantee or grant funds because of race, color, religion, sex, gender identity, sexual orientation, children, national origin, genetic information, ancestry, age or handicap; and
- making sexual advances, requests for sexual favors, or engaging in other verbal or physical conduct of a sexual nature, where submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly as a basis for engaging, or not engaging, in business investment transactions, including the sponsoring, guaranteeing or granting of funds.

SD1523 also contains proposed amendments to 151B that would further expand the scope of entities and professional relationships subject to the statute's anti-discrimination and sexual harassment provisions. Notably, the Bill would extend 151B's prohibition against sexual harassment by employers to cover misconduct committed by "professional investors, contractors, bankers [and] any other individual who engages in business with [an] employer," who are deemed "agents" of employers by the Bill. Further, while the current text of M.G.L. c.151B excludes employers with fewer than six employees from the statutory definition of "employer," SD1523 would limit that definitional carve-out to employers with fewer than six employees and less than 1 million dollars in assets under management, thus in effect bringing investment management entities that have fewer than six employees but manage 1 million dollars or more in assets within the reach of 151B.

The legislation is intended to address the extraordinary power imbalance that exists between company-founder entrepreneurs on the one hand, and venture capital or private equity firms on the other.

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