

STATE OF NEW YORK

10461

IN ASSEMBLY

April 23, 2018

Introduced by M. of A. WRIGHT, PEOPLES-STOKES, BARRON, BICHOTTE, COOK, CRESPO, DE LA ROSA, GALEF, O'DONNELL, ROZIC, SEAWRIGHT, SEPULVEDA, SIMON, TAYLOR, L. ROSENTHAL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, the civil practice law and rules, the public officers law, the general obligations law and the labor law, in relation to discrimination; and to amend subpart E of part KK of chapter 57 of the laws of 2018, amending the labor law, relating to the establishment of a model policy regarding the prevention of sexual harassment and a model training program to prevent sexual harassment in the workplace, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The section heading and paragraph (a) of subdivision 1 of
2 section 139-1 of the state finance law, as added by section 1 of subpart
3 A of part KK of chapter 57 of the laws of 2018, are amended to read as
4 follows:
5 Statement on [~~sexual harassment~~ *discrimination*], in bids.
6 (a) Every bid hereafter made to the state or any public department or
7 agency thereof, where competitive bidding is required by statute, rule
8 or regulation, for work or services performed or to be performed or
9 goods sold or to be sold, shall contain the following statement
10 subscribed by the bidder and affirmed by such bidder as true under the
11 penalty of perjury:
12 "By submission of this bid, each bidder and each person signing on
13 behalf of any bidder certifies, and in the case of a joint bid each
14 party thereto certifies as to its own organization, under penalty of
15 perjury, that the bidder has and has implemented a written policy
16 addressing [~~sexual harassment~~ *discrimination*] prevention in the work-
17 place and provides annual [~~sexual harassment~~ *discrimination*] prevention
18 training to all of its employees. Such policy shall, at a minimum, meet
19 the requirements of section two hundred one-g of the labor law."

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD15412-02-8

1 § 2. Subdivisions 2 and 3 of section 7515 of the civil practice law
2 and rules, as added by section 1 of subpart B of part KK of chapter 57
3 of the laws of 2018, are amended to read as follows:

4 2. The term "prohibited clause" shall mean any clause or provision in
5 any contract which requires as a condition of the enforcement of the
6 contract or obtaining remedies under the contract that the parties
7 submit to mandatory arbitration to resolve any allegation or claim of
8 [~~an unlawful discriminatory practice of sexual harassment~~] discrimi-
9 nation, in violation of laws prohibiting discrimination, including but
10 not limited to, article fifteen of the executive law.

11 3. The term "mandatory arbitration clause" shall mean a term or
12 provision contained in a written contract which requires the parties to
13 such contract to submit any matter thereafter arising under such
14 contract to arbitration prior to the commencement of any legal action to
15 enforce the provisions of such contract and which also further provides
16 language to the effect that the facts found or determination made by the
17 arbitrator or panel of arbitrators in its application to a party alleg-
18 ing [~~an unlawful discriminatory practice based on sexual harassment~~]
19 discrimination, in violation of laws prohibiting discrimination, includ-
20 ing but not limited to, article fifteen of the executive law shall be
21 final and not subject to independent court review.

22 § 3. The section heading and subdivision 2 of section 17-a of the
23 public officers law, as added by section 1 of subpart C of part KK of
24 chapter 57 of the laws of 2018, are amended to read as follows:

25 Reimbursement of funds paid by state agencies and state entities for
26 the payment of awards adjudicated in [~~sexual harassment~~] discrimination
27 claims.

28 2. Notwithstanding any law to the contrary, any employee who has been
29 subject to a final judgment of personal liability for intentional wrong-
30 doing related to a claim of [~~sexual harassment~~] discrimination, in
31 violation of laws prohibiting discrimination, including but not limited
32 to, article fifteen of the executive law, shall reimburse any state
33 agency or entity that makes a payment to a plaintiff for an adjudicated
34 award based on a claim of [~~sexual harassment~~] discrimination, in
35 violation of laws prohibiting discrimination, including but not limited
36 to, article fifteen of the executive law resulting in a judgment, for
37 his or her proportionate share of such judgment. Such employee shall
38 personally reimburse such state agency or entity within ninety days of
39 the state agency or entity's payment of such award.

40 § 4. The section heading and subdivision 2 of section 18-a of the
41 public officers law, as added by section 2 of subpart C of part KK of
42 chapter 57 of the laws of 2018, are amended to read as follows:

43 Reimbursement of funds paid by a public entity for the payment of
44 awards adjudicated in [~~sexual harassment~~] discrimination claims.

45 2. Notwithstanding any law to the contrary, any employee who has been
46 subject to a final judgment of personal liability for intentional wrong-
47 doing related to a claim of [~~sexual harassment~~] discrimination, in
48 violation of laws prohibiting discrimination, including but not limited
49 to, article fifteen of the executive law, shall reimburse any public
50 entity that makes a payment to a plaintiff for an adjudicated award
51 based on a claim of [~~sexual harassment~~] discrimination, in violation of
52 laws prohibiting discrimination, including but not limited to, article
53 fifteen of the executive law resulting in a judgment, for his or her
54 proportionate share of such judgment. Such employee shall personally
55 reimburse such public entity within ninety days of the public entity's
56 payment of such award.

1 § 5. Section 5-336 of the general obligations law, as added by section
2 1 of subpart D of part KK of chapter 57 of the laws of 2018, is amended
3 to read as follows:

4 § 5-336. Nondisclosure agreements. Notwithstanding any other law to
5 the contrary, no employer, its officers or employees shall have the
6 authority to include or agree to include in any settlement, agreement or
7 other resolution of any claim, the factual foundation for which involves
8 [~~sexual harassment~~] discrimination, in violation of laws prohibiting
9 discrimination, including but not limited to, article fifteen of the
10 executive law, any term or condition that would prevent the disclosure
11 of the underlying facts and circumstances to the claim or action unless
12 the condition of confidentiality is the complainant's preference. Any
13 such term or condition must be provided to all parties, and the
14 complainant shall have twenty-one days to consider such term or condi-
15 tion. If after twenty-one days such term or condition is the
16 complainant's preference, such preference shall be memorialized in an
17 agreement signed by all parties. For a period of at least seven days
18 following the execution of such agreement, the complainant may revoke
19 the agreement, and the agreement shall not become effective or be
20 enforceable until such revocation period has expired.

21 § 6. Section 5003-b of the civil practice law and rules, as added by
22 section 2 of subpart D of part KK of chapter 57 of the laws of 2018, is
23 amended to read as follows:

24 § 5003-b. Nondisclosure agreements. Notwithstanding any other law to
25 the contrary, for any claim or cause of action, whether arising under
26 common law, equity, or any provision of law, the factual foundation for
27 which involves [~~sexual harassment~~] discrimination, in violation of laws
28 prohibiting discrimination, including but not limited to, article
29 fifteen of the executive law, in resolving, by agreed judgment, stipu-
30 lation, decree, agreement to settle, assurance of discontinuance or
31 otherwise, no employer, its officer or employee shall have the authority
32 to include or agree to include in such resolution any term or condition
33 that would prevent the disclosure of the underlying facts and circum-
34 stances to the claim or action unless the condition of confidentiality
35 is the plaintiff's preference. Any such term or condition must be
36 provided to all parties, and the plaintiff shall have twenty-one days to
37 consider such term or condition. If after twenty-one days such term or
38 condition is the plaintiff's preference, such preference shall be memo-
39 rialized in an agreement signed by all parties. For a period of at least
40 seven days following the execution of such agreement, the plaintiff may
41 revoke the agreement, and the agreement shall not become effective or be
42 enforceable until such revocation period has expired.

43 § 7. Section 201-g of the labor law, as added by section 1 of subpart
44 E of part KK of chapter 57 of the laws of 2018, is amended to read as
45 follows:

46 § 201-g. Prevention of [~~sexual harassment~~] discrimination. 1. The
47 department shall consult with the division of human rights to create and
48 publish a model [~~sexual harassment~~] discrimination prevention guidance
49 document and [~~sexual harassment prevention~~] discrimination prevention
50 policy that employers may utilize in their adoption of [~~a sexual harass-~~
51 ~~ment prevention~~] the policy required by this section. For purposes of
52 this section, "discrimination" shall mean unlawful discriminatory prac-
53 tice, as defined in section two hundred ninety-six of the executive law
54 and/or discrimination or harassment based on race, color, sex, national
55 origin, creed, sexual orientation, age, disability, military status,

1 familial status, marital status, predisposing genetic characteristics,
2 or domestic violence victim status.

3 a. Such model [~~sexual harassment prevention~~] discrimination prevention
4 policy shall: (i) prohibit [~~sexual harassment~~] discrimination consistent
5 with guidance issued by the department in consultation with the division
6 of human rights and provide examples of prohibited conduct that would
7 constitute unlawful [~~sexual harassment~~] discrimination; (ii) include but
8 not be limited to information concerning the federal and state statutory
9 provisions concerning [~~sexual harassment~~] discrimination and remedies
10 available to victims of [~~sexual harassment~~] discrimination and a state-
11 ment that there may be applicable local laws; (iii) include a standard
12 complaint form; (iv) include a procedure for the timely and confidential
13 investigation of complaints and ensure due process for all parties; (v)
14 inform employees of their rights of redress and all available forums for
15 adjudicating [~~sexual harassment~~] discrimination complaints administra-
16 tively and judicially; (vi) clearly state that [~~sexual harassment~~]
17 discrimination is considered a form of employee misconduct and that
18 sanctions will be enforced against individuals engaging in [~~sexual~~
19 ~~harassment~~] discrimination and against supervisory and managerial
20 personnel who knowingly allow such behavior to continue; and (vii)
21 clearly state that retaliation against individuals who complain of
22 [~~sexual harassment~~] discrimination or who testify or assist in any
23 proceeding under the law is unlawful.

24 b. Every employer shall adopt the model [~~sexual harassment~~] discrimi-
25 nation prevention policy promulgated pursuant to this subdivision or
26 establish a [~~sexual harassment~~] discrimination prevention policy to
27 prevent [~~sexual harassment~~] discrimination that equals or exceeds the
28 minimum standards provided by such model [~~sexual harassment prevention~~]
29 policy. Such [~~sexual harassment prevention~~] policy shall be provided to
30 all employees in writing. Such model [~~sexual harassment prevention~~]
31 policy shall be publicly available and posted on the websites of both
32 the department and the division of human rights.

33 2. The department shall consult with the division of human rights and
34 produce a model [~~sexual harassment~~] discrimination prevention training
35 program to prevent [~~sexual harassment~~] discrimination in the workplace.

36 a. Such model [~~sexual harassment prevention~~] training program shall be
37 interactive and include: (i) an explanation of [~~sexual harassment~~]
38 discrimination consistent with guidance issued by the department in
39 consultation with the division of human rights; (ii) examples of conduct
40 that would constitute unlawful [~~sexual harassment~~] discrimination; (iii)
41 information concerning the federal and state statutory provisions
42 concerning [~~sexual harassment~~] discrimination and remedies available to
43 victims of [~~sexual harassment~~] discrimination; and (iv) information
44 concerning employees' rights of redress and all available forums for
45 adjudicating complaints.

46 b. The department shall include information in such model [~~sexual~~
47 ~~harassment prevention~~] training program addressing conduct by supervi-
48 sors and any additional responsibilities for such supervisors.

49 c. Every employer shall utilize [~~the~~] such model [~~sexual harassment~~
50 ~~prevention~~] training program pursuant to this subdivision or establish a
51 training program for employees to prevent [~~sexual harassment~~] discrimi-
52 nation that equals or exceeds the minimum standards provided by such
53 model training. Such [~~sexual harassment prevention~~] training program
54 shall be provided to all employees on an annual basis.

1 3. The commissioner may promulgate regulations as he or she deems
2 necessary for the purposes of carrying out the provisions of this
3 section.

4 § 8. Section 2 of subpart E of part KK of chapter 57 of the laws of
5 2018, is amended to read as follows:

6 § 2. This act shall take effect on the one hundred eightieth day after
7 it shall have become a law. Effective immediately, the department of
8 labor, in consultation with the division of human rights, is authorized
9 to create the model [~~sexual harassment prevention~~] policy and the model
10 [~~sexual harassment prevention~~] training program required to be created
11 and published pursuant to section 201-g of the labor law as added by
12 section one of this act.

13 § 9. Section 296-d of the executive law, as added by section 1 of
14 subpart F of part KK of chapter 57 of the laws of 2018, is amended to
15 read as follows:

16 § 296-d. [~~Sexual harassment~~] Discrimination relating to non-employees.
17 It shall be an unlawful discriminatory practice for an employer to
18 permit [~~sexual harassment~~] discrimination or harassment based on race,
19 color, sex, national origin, creed, sexual orientation, age, disability,
20 military status, familial status, marital status, predisposing genetic
21 characteristics, or domestic violence victim status of non-employees in
22 its workplace. An employer may be held liable to a non-employee who is
23 a contractor, subcontractor, vendor, consultant or other person provid-
24 ing services pursuant to a contract in the workplace or who is an
25 employee of such contractor, subcontractor, vendor, consultant or other
26 person providing services pursuant to a contract in the workplace, with
27 respect to [~~sexual harassment~~] discrimination or harassment based on
28 race, color, sex, national origin, creed, sexual orientation, age, disa-
29 bility, military status, familial status, marital status, predisposing
30 genetic characteristics, or domestic violence victim status, when the
31 employer, its agents or supervisors knew or should have known that such
32 non-employee was subjected to [~~sexual harassment~~] discrimination or
33 harassment based on race, color, sex, national origin, creed, sexual
34 orientation, age, disability, military status, familial status, marital
35 status, predisposing genetic characteristics, or domestic violence
36 victim status in the employer's workplace, and the employer failed to
37 take immediate and appropriate corrective action. In reviewing such
38 cases involving non-employees, the extent of the employer's control and
39 any other legal responsibility which the employer may have with respect
40 to the conduct of the harasser shall be considered.

41 § 10. Subdivision 5 of section 292 of the executive law, as amended by
42 chapter 363 of the laws of 2015, is amended to read as follows:

43 5. The term "employer" [~~does not include any employer with fewer than~~
44 ~~four persons in his or her employ except as set forth in section two~~
45 ~~hundred ninety six b of this article, provided, however, that in the~~
46 ~~case of an action for discrimination based on sex pursuant to subdivi-~~
47 ~~sion one of section two hundred ninety six of this article, with respect~~
48 ~~to sexual harassment only, the term "employer"~~] shall include all
49 employers within the state.

50 § 11. Subdivisions 9 and 10 of section 63 of the executive law, subdivi-
51 sion 9 as amended by chapter 359 of the laws of 1969, are amended to
52 read as follows:

53 9. Bring and prosecute or defend upon request of the [~~industrial~~]
54 commissioner of labor or the state division of human rights, any civil
55 action or proceeding, the institution or defense of which in his judg-
56 ment is necessary for effective enforcement of the laws of this state

1 against discrimination by reason of age, race, ~~sex~~, creed, color [~~ex~~],
2 national origin, sexual orientation, military status, disability,
3 predisposing genetic characteristics, familial status, marital status,
4 or domestic violence victim status, or for enforcement of any order or
5 determination of such commissioner or division made pursuant to such
6 laws.

7 10. Prosecute every person charged with the commission of a criminal
8 offense in violation of any of the laws of this state against discrimi-
9 nation because of age, race, sex, creed, color, [~~ex~~] national origin,
10 sexual orientation, military status, disability, predisposing genetic
11 characteristics, familial status, marital status, or domestic violence
12 victim status, in any case where in his judgment, because of the extent
13 of the offense, such prosecution cannot be effectively carried on by the
14 district attorney of the county wherein the offense or a portion thereof
15 is alleged to have been committed, or where in his judgment the district
16 attorney has erroneously failed or refused to prosecute. In all such
17 proceedings, the attorney-general may appear in person or by his deputy
18 or assistant before any court or any grand jury and exercise all the
19 powers and perform all the duties in respect of such actions or
20 proceedings which the district attorney would otherwise be authorized or
21 required to exercise or perform.

22 § 12. Severability clause. If any clause, sentence, paragraph, subdivi-
23 sion, section or subpart of this act shall be adjudged by any court of
24 competent jurisdiction to be invalid, such judgment shall not affect,
25 impair, or invalidate the remainder thereof, but shall be confined in
26 its operation to the clause, sentence, paragraph, subdivision, section
27 or subject thereof directly involved in the controversy in which such
28 judgment shall have been rendered. It is hereby declared to be the
29 intent of the legislature that this act would have been enacted even if
30 such invalid provisions had not been included herein.

31 § 13. This act shall take effect immediately; provided, however, that:

32 a. Section one of this act shall take effect on the same date and in
33 the same manner as subpart A of part KK of chapter 57 of the laws of
34 2018, takes effect;

35 b. Section two of this act shall take effect on the same date and in
36 the same manner as subpart B of part KK of chapter 57 of the laws of
37 2018, takes effect;

38 c. Sections five and six of this act shall take effect on the same
39 date and in the same manner as subpart D of part KK of chapter 57 of the
40 laws of 2018, takes effect; and

41 d. Sections seven and eight of this act shall take effect on the same
42 date and in the same manner as subpart E of part KK of chapter 57 of the
43 laws of 2018, takes effect.