S T A T E O F N E W Y O R K

391

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring public employers to develop and implement programs to prevent workplace violence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature finds and declares that workplace assaults and homicides are a serious public health problem that demands the attention of the state of New York. During the last decade, homicide was the third leading cause of death for all workers and the leading cause of occupational death for women workers. Workplace violence presents a serious occupational safety hazard for workers, but many employers and workers may be unaware of the risk. Moreover, the hazard of workplace violence is not currently addressed by any specific federal or state statute and regulation. It is critical to the maintenance of a productive workforce that employers and workers evaluate their workplaces to determine the risk of violence and to develop, and implement programs to minimize the hazard. Experience has shown that when employers evaluate the safety and health hazards in their workplaces and implement employee protection programs, the incidence of workplace injuries is reduced. The legislature, therefore, further finds and declares that the public health, safety and welfare would be advanced by enactment of a law to require that employers develop and implement workplace violence protection programs designed to minimize the danger to employees of workplace violence.

S 2. The labor law is amended by adding a new section 27-c to read as follows:

S 27-C. DUTY OF PUBLIC EMPLOYERS TO DEVELOP AND IMPLEMENT PROGRAMS TO PREVENT WORKPLACE VIOLENCE. 1. PURPOSE. THE PURPOSE OF THIS SECTION IS TO ENSURE THAT THE RISK OF WORKPLACE ASSAULTS AND HOMICIDES IS EVALUATED

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

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BY AFFECTED PUBLIC EMPLOYERS AND THEIR EMPLOYEES AND THAT SUCH EMPLOYERS DESIGN AND IMPLEMENT WORKPLACE VIOLENCE PROTECTION PROGRAMS TO PREVENT AND MINIMIZE THE HAZARD OF WORKPLACE VIOLENCE TO PUBLIC EMPLOYEES.

2. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

A. "EMPLOYER" MEANS: (1) THE STATE; (2) A POLITICAL SUBDIVISION OF THE STATE, PROVIDED, HOWEVER THAT THIS SUBDIVISION SHALL NOT MEAN ANY EMPLOYER AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE-A OF THE EDUCATION LAW; AND (3) A PUBLIC AUTHORITY, A PUBLIC BENEFIT CORPORATION, OR ANY OTHER GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF.

B. "EMPLOYEE" MEANS A PUBLIC EMPLOYEE WORKING FOR AN EMPLOYER.

C. "WORKPLACE" MEANS ANY LOCATION AWAY FROM AN EMPLOYEE'S DOMICILE, PERMANENT OR TEMPORARY, WHERE AN EMPLOYEE PERFORMS ANY WORK-RELATED DUTY IN THE COURSE OF HIS OR HER EMPLOYMENT BY AN EMPLOYER.

D. "SUPERVISOR" MEANS ANY PERSON WITHIN AN EMPLOYER'S ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK PERFORMANCE OF AN EMPLOYEE, OR WHO HAS THE AUTHORITY TO TAKE CORRECTIVE ACTION REGARDING THE VIOLATION OF A LAW, RULE OR REGULATION TO WHICH AN EMPLOYEE SUBMITS WRITTEN NOTICE.

E. "RETALIATORY ACTION" MEANS THE DISCHARGE, SUSPENSION, DEMOTION, PENALIZATION, OR DISCRIMINATION AGAINST ANY EMPLOYEE, OR OTHER ADVERSE EMPLOYMENT ACTION TAKEN AGAINST AN EMPLOYEE IN THE TERMS AND CONDITIONS OF EMPLOYMENT.

3. RISK EVALUATION AND DETERMINATION. EVERY EMPLOYER SHALL EVALUATE ITS WORKPLACE OR WORKPLACES TO DETERMINE THE PRESENCE OF FACTORS OR SITUATIONS IN SUCH WORKPLACE OR WORKPLACES THAT MIGHT PLACE EMPLOYEES AT RISK OF OCCUPATIONAL ASSAULTS AND HOMICIDES. EXAMPLES OF SUCH FACTORS SHALL INCLUDE, BUT NOT LIMITED TO:

A. WORKING IN PUBLIC SETTINGS (E.G., SOCIAL SERVICES OR OTHER GOVERNMENTAL WORKERS, POLICE OFFICERS, FIREFIGHTERS, TEACHERS, PUBLIC TRANSPORTATION DRIVERS, HEALTH CARE WORKERS, AND SERVICE WORKERS);

B. WORKING LATE NIGHT OR EARLY MORNING HOURS;

C. EXCHANGING MONEY WITH THE PUBLIC;

D. WORKING ALONE OR IN SMALL NUMBERS;

E. UNCONTROLLED ACCESS TO THE WORKPLACE; AND

F. AREAS OF PREVIOUS SECURITY PROBLEMS.

4. WRITTEN WORKPLACE VIOLENCE PREVENTION PROGRAM. EVERY EMPLOYER WITH AT LEAST TWENTY FULL TIME PERMANENT EMPLOYEES SHALL DEVELOP AND IMPLEMENT A WRITTEN WORKPLACE VIOLENCE PREVENTION PROGRAM FOR ITS WORKPLACE OR WORKPLACES THAT INCLUDES THE FOLLOWING:

A. A LIST OF THE RISK FACTORS IDENTIFIED IN SUBDIVISION THREE OF THIS SECTION THAT ARE PRESENT IN SUCH WORKPLACE OR WORKPLACES;

B. THE METHODS THE EMPLOYER WILL USE TO PREVENT INCIDENTS OF OCCUPATIONAL ASSAULTS AND HOMICIDES AT SUCH WORKPLACE OR WORKPLACES, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(1) MAKING HIGH-RISK AREAS MORE VISIBLE TO MORE PEOPLE;

(2) INSTALLING GOOD EXTERNAL LIGHTING;

(3) USING DROP SAFES OR OTHER METHODS TO MINIMIZE CASH ON HAND;

(4) POSTING SIGNS STATING THAT LIMITED CASH IS ON HAND;

(5) INCREASING THE NUMBER OF STAFF ON DUTY;

(6) PROVIDING TRAINING IN CONFLICT RESOLUTION AND NONVIOLENT SELF-DEFENSE RESPONSES; AND

(7) ESTABLISHING AND IMPLEMENTING REPORTING SYSTEMS FOR INCIDENTS OF AGGRESSIVE BEHAVIOR.

5. EMPLOYEE INFORMATION AND TRAINING. A. EVERY EMPLOYER WITH AT LEAST TWENTY PERMANENT FULL TIME EMPLOYEES SHALL MAKE THE WRITTEN WORKPLACE

VIOLENCE PREVENTION PROGRAM AVAILABLE, UPON REQUEST, TO ITS EMPLOYEES, THEIR DESIGNATED REPRESENTATIVES AND THE DEPARTMENT.

B. EVERY EMPLOYER SHALL PROVIDE ITS EMPLOYEES WITH THE FOLLOWING INFORMATION AND TRAINING ON THE RISKS OF OCCUPATIONAL ASSAULTS AND HOMICIDES IN THEIR WORKPLACE OR WORKPLACES AT THE TIME OF THEIR INITIAL ASSIGNMENT AND ANNUALLY THEREAFTER:

(1) EMPLOYEES SHALL BE INFORMED OF THE REQUIREMENTS OF THIS SECTION, THE RISK FACTORS IN THEIR WORKPLACE OR WORKPLACES, AND THE LOCATION AND AVAILABILITY OF THE WRITTEN WORKPLACE VIOLENCE PREVENTION PROGRAM REQUIRED BY THIS SECTION; AND

(2) EMPLOYEE TRAINING SHALL INCLUDE AT LEAST: (A) THE MEASURES EMPLOYEES CAN TAKE TO PROTECT THEMSELVES FROM SUCH RISKS, INCLUDING SPECIFIC PROCEDURES THE EMPLOYER HAS IMPLEMENTED TO PROTECT EMPLOYEES, SUCH AS APPROPRIATE WORK PRACTICES, EMERGENCY PROCEDURES, USE OF SECURITY ALARMS AND OTHER DEVICES, AND (B) THE DETAILS OF THE WRITTEN WORKPLACE VIOLENCE PREVENTION PROGRAM DEVELOPED BY THE EMPLOYER.

6. APPLICATION. A. ANY EMPLOYEE OR REPRESENTATIVE OF EMPLOYEES WHO BELIEVES THAT A SERIOUS VIOLATION OF A WORKPLACE VIOLENCE PROTECTION PROGRAM EXISTS OR THAT AN IMMINENT DANGER EXISTS SHALL BRING SUCH MATTER TO THE ATTENTION OF A SUPERVISOR IN THE FORM OF A WRITTEN NOTICE AND SHALL AFFORD THE EMPLOYER A REASONABLE OPPORTUNITY TO CORRECT SUCH ACTIVITY, POLICY OR PRACTICE. THIS REFERRAL SHALL NOT APPLY WHERE IMMINENT DANGER OR THREAT EXIST TO THE SAFETY OF A SPECIFIC EMPLOYEE OR TO THE GENERAL HEALTH OF A SPECIFIC PATIENT AND THE EMPLOYEE REASONABLY BELIEVES IN GOOD FAITH THAT REPORTING TO A SUPERVISOR WOULD NOT RESULT IN CORRECTIVE ACTION.

B. IF FOLLOWING A REFERRAL OF SUCH MATTER TO THE EMPLOYEE'S SUPERVISOR'S ATTENTION AND AFTER A REASONABLE OPPORTUNITY TO CORRECT SUCH ACTIVITY, POLICY OR PRACTICE THE MATTER HAS NOT BEEN RESOLVED AND THE EMPLOYEE OR REPRESENTATIVE OF EMPLOYEES STILL BELIEVES THAT A VIOLATION OF A WORKPLACE VIOLENCE PREVENTION PROGRAM REMAINS, OR THAT AN IMMINENT DANGER EXISTS, SUCH EMPLOYEE OR REPRESENTATIVE OF EMPLOYEES MAY REQUEST FOR AN INSPECTION BY GIVING NOTICE TO THE COMMISSIONER OF SUCH VIOLATION OR DANGER. SUCH NOTICE AND REQUEST SHALL BE IN WRITING, SHALL SET FORTH WITH REASONABLE PARTICULARITY THE GROUNDS FOR THE NOTICE, SHALL BE SIGNED BY SUCH EMPLOYEE OR REPRESENTATIVE OF EMPLOYEES, AND A COPY SHALL BE PROVIDED BY THE COMMISSIONER TO THE EMPLOYER OR THE PERSON IN CHARGE NO LATER THAN THE TIME OF INSPECTION, EXCEPT THAT ON THE REQUEST OF THE PERSON GIVING SUCH NOTICE, SUCH PERSON'S NAME AND THE NAMES OF INDIVIDUAL EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES SHALL BE WITHHELD. SUCH INSPECTION SHALL BE MADE FORTHWITH.

C. A REPRESENTATIVE OF THE EMPLOYER AND AN AUTHORIZED EMPLOYEE REPRESENTATIVE SHALL BE GIVEN THE OPPORTUNITY TO ACCOMPANY THE COMMISSIONER DURING AN INSPECTION FOR THE PURPOSE OF AIDING SUCH INSPECTION. WHERE THERE IS NO AUTHORIZED EMPLOYEE REPRESENTATIVE, THE COMMISSIONER SHALL CONSULT WITH A REASONABLE NUMBER OF EMPLOYEES CONCERNING MATTERS OF SAFETY IN THE WORKPLACE.

D. THE AUTHORITY OF THE COMMISSIONER TO INSPECT A PREMISES PURSUANT TO SUCH AN EMPLOYEE COMPLAINT SHALL NOT BE LIMITED TO THE ALLEGED VIOLATION CONTAINED IN SUCH COMPLAINT. THE COMMISSIONER MAY INSPECT ANY OTHER AREA OF THE PREMISES IN WHICH HE OR SHE HAS REASON TO BELIEVE THAT A SERIOUS VIOLATION OF THIS SECTION EXISTS.

E. NO EMPLOYER SHALL TAKE RETALIATORY ACTION AGAINST ANY EMPLOYEE BECAUSE THE EMPLOYEE DOES ANY OF THE FOLLOWING:

(1) MAKES AN APPLICATION PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION;

(2) REQUESTS AN INSPECTION AS AUTHORIZED IN PARAGRAPH B OF THIS SUBDIVISION;

(3) ACCOMPANIES THE COMMISSIONER AS AUTHORIZED IN PARAGRAPH C OF THIS SUBDIVISION;

F. THE COMMISSIONER MAY, UPON HIS OR HER OWN INITIATIVE, CONDUCT AN INSPECTION OF ANY PREMISES OCCUPIED BY AN EMPLOYER IF HE OR SHE HAS REASON TO BELIEVE THAT A VIOLATION OF THIS SECTION HAS OCCURRED OR IF HE OR SHE HAS A GENERAL ADMINISTRATIVE PLAN FOR THE ENFORCEMENT OF THIS SECTION, INCLUDING A GENERAL SCHEDULE OF INSPECTIONS, WHICH PROVIDE A RATIONAL ADMINISTRATIVE BASIS FOR SUCH INSPECTING. WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS PARAGRAPH THE COMMISSIONER SHALL ADOPT RULES AND REGULATIONS IMPLEMENTING THE PROVISIONS OF THIS SECTION.

G. ANY INFORMATION OBTAINED BY THE COMMISSIONER PURSUANT TO THIS SUBDIVISION SHALL BE OBTAINED WITH A MINIMUM BURDEN UPON THE EMPLOYERS.

H. WHEN A REQUEST FOR AN INSPECTION HAS BEEN MADE IN A SITUATION WHERE THERE IS AN ALLEGATION OF AN IMMINENT DANGER SUCH THAT AN EMPLOYEE WOULD BE SUBJECTING HIMSELF OR HERSELF TO SERIOUS INJURY OR DEATH BECAUSE OF THE HAZARDOUS CONDITION IN THE WORKPLACE, THE INSPECTION SHALL BE GIVEN THE HIGHEST PRIORITY BY THE DEPARTMENT AND SHALL BE CARRIED OUT IMMEDIATELY.

S 3. The provisions of this act shall not diminish the rights of employees pursuant to any law, rule, regulation or collective bargaining agreement.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.