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

6207

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

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

AN ACT to amend the labor law, in relation to the prevention of abusive conduct in the workplace

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

Section 1. The labor law is amended by adding a new article 20-D to read as follows:

ARTICLE 20-D

PREVENTION OF ABUSIVE CONDUCT IN THE WORKPLACE

SECTION 760. STATEMENT OF PUBLIC POLICY AND FINDINGS.
761. DEFINITIONS.
762. ABUSIVE CONDUCT AN UNLAWFUL ACT.

S 760. STATEMENT OF PUBLIC POLICY AND FINDINGS. THE LEGISLATURE HEREBY FINDS AND DECLARES IT NECESSARY TO ATTEMPT TO PREVENT ABUSIVE CONDUCT IN THE WORKPLACE. STUDIES HAVE DOCUMENTED THAT ABUSIVE WORK ENVIRONMENTS CAN HAVE SERIOUS ADVERSE EFFECTS ON TARGETED EMPLOYEES, INCLUDING FEELINGS OF SHAME AND HUMILIATION, STRESS, LOSS OF SLEEP, ANXIETY, DEPRESSION, STRESS RELATED GASTROINTESTINAL DISORDERS AND HYPERTENSION. THEY ALSO SUGGEST THAT ABUSIVE WORK ENVIRONMENTS CAN ALSO HARM EMPLOYERS, BY RESULTING IN LOWER EMPLOYEE PRODUCTIVITY AND MORALE, HIGHER TURNOVER AND ABSENTEEISM, AND GREATER MEDICAL AND WORKERS' COMPENSATION CLAIMS.

S 761. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CONDUCT" MEANS ALL FORMS OF BEHAVIOR, INCLUDING ACTS AND OMISSIONS OF ACTS.

2. "MALICE" MEANS THE DESIRE TO SEE ANOTHER PERSON SUFFER PSYCHOLOGICAL, PHYSICAL, OR ECONOMIC HARM, WITHOUT LEGITIMATE CAUSE OR JUSTIFICATION. MALICE CAN BE INFERRED FROM THE PRESENCE OF FACTORS SUCH AS: OUTWARD EXPRESSIONS OF HOSTILITY; HARMFUL CONDUCT INCONSISTENT WITH AN

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

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EMPLOYER'S LEGITIMATE BUSINESS INTERESTS; A CONTINUATION OF HARMFUL, ILLEGITIMATE CONDUCT AFTER THE COMPLAINANT REQUESTS THAT IT CEASE OR DEMONSTRATES OUTWARD SIGNS OF EMOTIONAL OR PHYSICAL DISTRESS IN THE FACE OF THE CONDUCT; OR ATTEMPTS TO EXPLOIT THE COMPLAINANT'S KNOWN PSYCHOLOGICAL OR PHYSICAL VULNERABILITY.

3. "ABUSIVE CONDUCT" MEANS CONDUCT THAT A REASONABLE PERSON WOULD FIND HOSTILE, OFFENSIVE, AND UNRELATED TO AN EMPLOYER'S LEGITIMATE BUSINESS INTERESTS. IN CONSIDERING WHETHER ABUSIVE CONDUCT IS PRESENT, A TRIER OF FACT SHOULD WEIGH THE SEVERITY, NATURE, AND FREQUENCY OF THE DEFENDANT'S CONDUCT. ABUSIVE CONDUCT MAY INCLUDE, BUT IS NOT LIMITED TO: REPEATED INFLICTION OF VERBAL ABUSE SUCH AS THE USE OF DEROGATORY REMARKS, INSULTS, AND EPITHETS; VERBAL OR PHYSICAL CONDUCT THAT A REASONABLE PERSON WOULD FIND THREATENING, INTIMIDATING, OR HUMILIATING; OR THE GRATUITOUS SABOTAGE OR UNDERMINING OF A PERSON'S WORK PERFORMANCE. A SINGLE ACT NORMALLY WILL NOT CONSTITUTE ABUSIVE CONDUCT, BUT AN ESPECIALLY SEVERE AND EGREGIOUS ACT MAY MEET THIS STANDARD.

4. "TANGIBLE HARM" MEANS PSYCHOLOGICAL HARM OR PHYSICAL HARM.

(A) PSYCHOLOGICAL HARM IS THE MATERIAL IMPAIRMENT OF A PERSON'S MENTAL HEALTH, AS DOCUMENTED BY A COMPETENT PSYCHOLOGIST, PSYCHIATRIST, OR PSYCHOTHERAPIST, OR SUPPORTED BY COMPETENT EXPERT EVIDENCE AT TRIAL.

(B) PHYSICAL HARM IS THE MATERIAL IMPAIRMENT OF A PERSON'S PHYSICAL HEALTH OR BODILY INTEGRITY, AS DOCUMENTED BY A COMPETENT PHYSICIAN OR SUPPORTED BY COMPETENT EXPERT EVIDENCE AT TRIAL.

(C) A NEGATIVE EMPLOYMENT DECISION IS A TERMINATION, DEMOTION, UNFAVORABLE REASSIGNMENT, REFUSAL TO PROMOTE, OR DISCIPLINARY ACTION.

S 762. ABUSIVE CONDUCT AN UNLAWFUL ACT. 1. IT SHALL BE UNLAWFUL FOR ANY PERSON TO ENGAGE IN ABUSIVE CONDUCT TOWARD ANOTHER PERSON AT THAT PERSON'S WORKPLACE.

2. A PERSON WHO HAS BEEN OR IS BEING ABUSED MAY BRING AN ACTION IN SUPREME COURT FOR MONETARY DAMAGES AND INJUNCTIVE RELIEF. SUCH ACTION SHALL BE BROUGHT AGAINST THE PARTY PERFORMING THE ACT OR ACTS WHICH CONSTITUTE THE ABUSIVE CONDUCT AND/OR THE EMPLOYER.

3. AN EMPLOYER SHALL BE VICARIOUSLY LIABLE FOR AN UNLAWFUL EMPLOYMENT PRACTICE, AS DEFINED BY THIS SECTION, COMMITTED BY ITS EMPLOYEE.

4. IT SHALL BE AN AFFIRMATIVE DEFENSE FOR AN EMPLOYER ONLY THAT:

(A) THE EMPLOYER EXERCISED REASONABLE CARE TO PREVENT AND CORRECT PROMPTLY ANY ACTIONABLE BEHAVIOR; AND

(B) THE COMPLAINANT EMPLOYEE UNREASONABLY FAILED TO TAKE ADVANTAGE OF APPROPRIATE PREVENTIVE OR CORRECTIVE OPPORTUNITIES PROVIDED BY THE EMPLOYER.

THIS DEFENSE IS NOT AVAILABLE WHEN THE ACTIONABLE BEHAVIOR CULMINATES IN A NEGATIVE EMPLOYMENT DECISION.

5. WHERE AN EMPLOYER HAS BEEN FOUND TO HAVE COMMITTED AN UNLAWFUL EMPLOYMENT PRACTICE UNDER THIS SECTION THAT DID NOT CULMINATE IN A NEGATIVE EMPLOYMENT DECISION, ITS LIABILITY FOR DAMAGES FOR EMOTIONAL DISTRESS SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS, AND IT SHALL NOT BE SUBJECT TO PUNITIVE DAMAGES. THIS PROVISION DOES NOT APPLY TO INDIVIDUALLY NAMED CO-EMPLOYEE DEFENDANTS.

6. IT SHALL BE AN AFFIRMATIVE DEFENSE THAT:

(A) THE COMPLAINT IS GROUNDED PRIMARILY UPON A NEGATIVE EMPLOYMENT DECISION MADE CONSISTENT WITH AN EMPLOYER'S LEGITIMATE BUSINESS INTERESTS, SUCH AS A TERMINATION OR DEMOTION BASED ON AN EMPLOYEE'S POOR PERFORMANCE; OR

(B) THE COMPLAINT IS GROUNDED PRIMARILY UPON AN EMPLOYER'S REASONABLE INVESTIGATION ABOUT POTENTIALLY ILLEGAL OR UNETHICAL ACTIVITY.

IT SHALL BE AN UNLAWFUL EMPLOYMENT PRACTICE UNDER THIS SECTION TO RETALIATE IN ANY MANNER AGAINST AN EMPLOYEE BECAUSE HE OR SHE HAS OPPOSED ANY ABUSIVE CONDUCT, PRACTICE, OR BECAUSE HE OR SHE HAS MADE A CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED IN ANY MANNER IN AN INVESTIGATION OR PROCESSING UNDER THIS SECTION, INCLUDING, BUT NOT LIMITED TO, INTERNAL COMPLAINTS AND PROCEEDINGS, ARBITRATION AND MEDIATION PROCEEDINGS, AND LEGAL ACTIONS.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the commissioner of labor shall immediately promulgate any rules or regulations necessary for the implementation of this act on or before such effective date.