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

8195--A

2011-2012 Regular Sessions

I N A S S E M B L Y

June 6, 2011

Introduced by M. of A. ROSENTHAL, WRIGHT, MILLMAN, MAISEL, DINOWITZ, SCHIMEL, JEFFRIES, BARRON, N. RIVERA -- Multi-Sponsored by -- M. of A. ARROYO, GABRYSZAK, GLICK, GOTTFRIED, McENENY, P. RIVERA, ROBINSON, RUSSELL -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to requiring sexual harassment training for hotel and motel employees

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 section 202-l to read as follows:

S 202-L. SEXUAL HARASSMENT TRAINING FOR HOTEL AND MOTEL EMPLOYEES. 1. ON OR AFTER THE NINETIETH DAY AFTER THE EFFECTIVE DATE OF THIS SECTION, HOTELS AND MOTELS SHALL PROVIDE SEXUAL HARASSMENT TRAINING TO ITS EMPLOYEES VIA A CLASSROOM OR OTHER EFFECTIVE INTERACTIVE TRAINING AND SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING TOPICS:

(A) INFORMATION AND PRACTICAL GUIDANCE REGARDING FEDERAL, STATE AND LOCAL STATUTORY LAWS ABOUT SEXUAL HARASSMENT;

(B) INFORMATION ABOUT THE CORRECTION OF SEXUAL HARASSMENT AND THE REMEDIES AVAILABLE TO VICTIMS OF SEXUAL HARASSMENT;

(C) PRACTICAL EXAMPLES AIMED AT INSTRUCTING SUPERVISORS IN THE PREVENTION OF SEXUAL HARASSMENT, DISCRIMINATION, AND RETALIATION.

2. HOTELS AND MOTELS SHALL HAVE TWO MONTHS FROM THE HIRING DATE OF ANY NEW EMPLOYEE TO PROVIDE SEXUAL HARASSMENT TRAINING FOR SUCH EMPLOYEE.

3. EMPLOYEES SHALL RECEIVE TRAINING EVERY TWO YEARS FOLLOWING THEIR INITIAL TRAINING.

4. ON OR BEFORE APRIL FIRST FOLLOWING THE TRAINING REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AND EVERY YEAR THEREAFTER, OPERATORS OF SUCH HOTEL OR MOTEL SHALL CERTIFY TO THE DEPARTMENT THAT THEY HAVE

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

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CONDUCTED SEXUAL HARASSMENT TRAINING AND SHALL INCLUDE AN ELECTRONIC LIST OF THE EMPLOYEES WHO PARTICIPATED IN THE TRAINING. THE DEPARTMENT WILL ISSUE A HOTEL OR MOTEL A CERTIFICATE OF COMPLIANCE UPON RECEIVING SUCH LIST.

5. IMMEDIATELY UPON COMMENCEMENT OF EMPLOYMENT AND PRIOR TO THEIR SEXUAL HARASSMENT TRAINING, EMPLOYEES SHALL BE PROVIDED WITH A "KNOW YOUR RIGHTS" BROCHURE DETAILING THE RIGHTS AND REMEDIES AVAILABLE UNDER FEDERAL, STATE AND LOCAL LAW. THE BROCHURE SHALL BE PRODUCED BY THE DEPARTMENT, IN PLAIN ENGLISH, AND SHALL BE MADE AVAILABLE IN OTHER LANGUAGES, INCLUDING BUT NOT LIMITED TO SPANISH, HAITIAN FRENCH, CHINESE AND RUSSIAN. EMPLOYEES SHALL SIGN A STATEMENT ON A DOCUMENT TO BE PRODUCED BY THE DEPARTMENT, CERTIFYING THAT THEY HAVE RECEIVED THE "KNOW YOUR RIGHTS" BROCHURE REQUIRED PURSUANT TO THIS SECTION.

6. EMPLOYERS SHALL CONSPICUOUSLY POST AN EMPLOYEE'S BILL OF RIGHTS TO BE PROMULGATED BY THE DEPARTMENT. THE BILL OF RIGHTS SHALL BE WRITTEN IN PLAIN ENGLISH, AND SHALL BE MADE AVAILABLE IN OTHER LANGUAGES, INCLUDING BUT NOT LIMITED TO SPANISH, HAITIAN FRENCH, CHINESE AND RUSSIAN.

7. THE DEPARTMENT SHALL ESTABLISH PROTOCOL FOR SEXUAL HARASSMENT TRAINING WHICH SHALL BE AVAILABLE ONLINE TO HOTELS AND MOTELS SUBJECT TO THE PROVISIONS OF THIS SECTION.

8. UNDER THE SUPERVISION OF THE DEPARTMENT, ALL EMPLOYERS SHALL CREATE AND IMPLEMENT A COMPREHENSIVE AND CONFIDENTIAL INCIDENT REPORTING SYSTEM, AND SHALL PUT CLEAR PROCEDURES IN PLACE TO GUIDE EMPLOYEES AND MANAGERS IN THE REPORTING OF SEXUAL HARASSMENT INCIDENTS.

9. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL RESULT IN A PENALTY OF FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION, AND FOR THE SECOND AND EACH SUBSEQUENT VIOLATION, THE PENALTY SHALL BE ONE THOUSAND DOLLARS.

10. (A) FAILURE TO PROVIDE THE TRAINING AND EDUCATION REQUIRED BY THIS SECTION MAY BE CONSIDERED AS A FACTOR IN DETERMINING WHETHER AN EMPLOYER MAY BE HELD LIABLE FOR A CLAIM OF SEXUAL HARASSMENT OR HOSTILE WORK ENVIRONMENT UNDER APPLICABLE LAW, BUT LIABILITY MAY NOT BE PREDICATED SOLELY UPON SUCH FAILURE. AN EMPLOYER'S COMPLIANCE WITH THIS SECTION SHALL NOT CONSTITUTE A DEFENSE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING WHERE A CLAIM OF SEXUAL HARASSMENT OR HOSTILE WORK ENVIRONMENT HAS BEEN BROUGHT.

(B) EMPLOYERS SHALL BE PROHIBITED FROM RETALIATING AGAINST ANY EMPLOYEE WHO EXERCISES THEIR RIGHTS UNDER THIS SECTION, OR ANY EMPLOYEE REPORTING A COMPLAINT TO MANAGEMENT OR THE AUTHORITIES THAT THEY HAVE NOT RECEIVED TRAINING PURSUANT TO THIS SECTION OR A COMPLAINT OF SEXUAL HARASSMENT.

11. THE TRAINING AND EDUCATION REQUIRED BY THIS SECTION IS INTENDED TO ESTABLISH A MINIMUM THRESHOLD AND SHOULD NOT DISCOURAGE, OR RELIEVE ANY EMPLOYER FROM PROVIDING FOR LONGER, MORE FREQUENT, OR MORE ELABORATE TRAINING AND EDUCATION REGARDING WORKPLACE HARASSMENT OR OTHER FORMS OF UNLAWFUL DISCRIMINATION IN ORDER TO MEET ITS OBLIGATIONS TO TAKE ALL REASONABLE STEPS NECESSARY TO PREVENT AND CORRECT HARASSMENT AND DISCRIMINATION.

12. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "HOTEL" AND/OR "MOTEL" SHALL MEAN ESTABLISHMENTS DISTINGUISHED AS HOTELS, MOTELS, BUNGALOW COLONIES, OR ANY OTHER ESTABLISHMENT COMPARABLE OR EQUIVALENT TO ANY OF THOSE PREVIOUSLY MENTIONED. THE TERM SHALL NOT INCLUDE THOSE PLACES OR FACILITIES NOT HAVING THE GENERAL CHARACTERISTICS OF A HOTEL OR MOTEL AS THAT TERM IS GENERALLY UNDERSTOOD AND THE COMMISSIONER OF HEALTH SHALL HAVE THE POWER TO EXCEPT FROM THIS ARTICLE

AND THE SANITARY CODE A PLACE OR FACILITY THAT IS NOT WITHIN THE INTENT OF THIS DEFINITION OF A MOTEL OR HOTEL. THE TERM SHALL NOT INCLUDE SMALL FAMILY OWNED AND OPERATED HOTELS, MOTELS OR BED AND BREAKFASTS.

(B) "EMPLOYEE" SHALL MEAN ANY PERSON EMPLOYED FOR HIRE INCLUDING SUB-CONTRACTORS WHO WORKS TWENTY HOURS OR MORE PER WEEK.

S 2. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.