

838

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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

AN ACT to amend the workers' compensation law, in relation to enacting the "protection in the workplace act"

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "protection in the workplace act".  
3     S 2. Legislative intent. It is the finding of this legislature that  
4     violence in the workplace has become an increasingly serious occupa-  
5     tional hazard, which all too many employees and employers must confront.  
6     While it is the intent of the workers' compensation system to provide  
7     medical aid and monetary compensation to injured workers or their survi-  
8     vors in return for the surrender of their right to petition the courts,  
9     it is the finding of this body that rape, sexual assault or other sex  
10    crimes should not be classified as a condition of employment at the  
11    expense of the workers' compensation system's ameliorative goals and  
12    that such system is not and should not be used as a shield to permit  
13    employers whose negligent acts or omissions cause injury or harm to  
14    fellow employees without such injured employees having every opportunity  
15    for full and adequate redress. For purposes of determining benefits  
16    pursuant to the workers' compensation law, sexual assault is not, and  
17    shall not be considered a condition of employment.  
18    It is therefore the intent of this legislation to ensure that workers  
19    suffering sexual assault in the workplace due to the derelict or negli-  
20    gent practices of their employer, receive appropriate medical care and  
21    benefits but also have every opportunity to recover all damages commensurate with their injury.  
22    S 3. The workers' compensation law is amended by adding a new section  
23    10-a to read as follows:  
24

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

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1 S 10-A. LIABILITY RESULTING FROM SEXUAL OFFENSES. NOTWITHSTANDING ANY  
2 OTHER PROVISION OF LAW, ANY EMPLOYEE SUFFERING INJURY OR PERSONAL INJURY  
3 PURSUANT TO SUBDIVISION SEVEN OF SECTION TWO OF THIS CHAPTER AS A CONSE-  
4 QUENCE OF A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF  
5 THE PENAL LAW DUE TO NEGLIGENT ACTS OR OMISSIONS OF THE EMPLOYER SHALL  
6 BE ENTITLED TO ALL RIGHTS AND BENEFITS AVAILABLE PURSUANT TO THIS CHAP-  
7 TER AND, IN ADDITION MAY PURSUE ANY REMEDY AVAILABLE IN EQUITY OR AT  
8 LAW, FOR COMPENSATION FOR ANY AND ALL DAMAGES RESULTING FROM SUCH INJU-  
9 RY.

10 S 4. Section 11 of the workers' compensation law, as amended by chap-  
11 ter 635 of the laws of 1996, the opening paragraph as amended by chapter  
12 169 of the laws of 2007, the fifth undesignated paragraph as added by  
13 chapter 49 of the laws of 1999 and the closing paragraph as added by  
14 chapter 392 of the laws of 2008, is amended to read as follows:

15 S 11. Alternative remedy. 1. The liability of an employer prescribed  
16 by [the last preceding] section TEN OF THIS ARTICLE shall be exclusive  
17 and in place of any other liability whatsoever, to such employee, his or  
18 her personal representatives, spouse, parents, dependents, distributees,  
19 or any person otherwise entitled to recover damages, contribution or  
20 indemnity, at common law or otherwise, on account of such injury or  
21 death or liability arising therefrom, except that if an employer fails  
22 to secure the payment of compensation for his or her injured employees  
23 and their dependents as provided in section fifty of this chapter, an  
24 injured employee, or his or her legal representative in case [of] death  
25 results from the injury, may, at his or her option, elect to claim  
26 compensation under this chapter, or to maintain an action in the courts  
27 for damages on account of such injury; and in such an action it shall  
28 not be necessary to plead or prove freedom from contributory negligence  
29 nor may the defendant plead as a defense that the injury was caused by  
30 the negligence of a fellow servant nor that the employee assumed the  
31 risk of his or her employment, nor that the injury was due to the  
32 contributory negligence of the employee. The liability under this chap-  
33 ter of The New York Jockey Injury Compensation Fund, Inc. created under  
34 section two hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel  
35 wagering and breeding law shall be limited to the provision of workers'  
36 compensation coverage to jockeys, apprentice jockeys and exercise  
37 persons licensed under article two or four of the racing, pari-mutuel  
38 wagering and breeding law and any statutory penalties resulting from the  
39 failure to provide such coverage.

40 2. For purposes of this section the terms "indemnity" and "contrib-  
41 ution" shall not include a claim or cause of action for contribution or  
42 indemnification based upon a provision in a written contract entered  
43 into prior to the accident or occurrence by which the employer had  
44 expressly agreed to contribution to or indemnification of the claimant  
45 or person asserting the cause of action for the type of loss suffered.

46 3. An employer shall not be liable for contribution or indemnity to  
47 any third person based upon liability for injuries sustained by an  
48 employee acting within the scope of his or her employment for such  
49 employer unless such third person proves through competent medical  
50 evidence that such employee has sustained a "grave injury" which shall  
51 mean only one or more of the following: death, permanent and total loss  
52 of use or amputation of an arm, leg, hand or foot, loss of multiple  
53 fingers, loss of multiple toes, paraplegia or quadriplegia, total and  
54 permanent blindness, total and permanent deafness, loss of nose, loss of  
55 ear, permanent and severe facial disfigurement, loss of an index finger

1 or an acquired injury to the brain caused by an external physical force  
2 resulting in permanent total disability.

3 4. For purposes of this section "person" means any individual, firm,  
4 company, partnership, corporation, joint venture, joint-stock associ-  
5 ation, association, trust or legal entity.

6 5. The liability under this chapter of the New York black car opera-  
7 tors' injury compensation fund, inc. shall be limited to: (i) securing  
8 the payment of workers' compensation in accordance with article six-F of  
9 the executive law to black car operators, as defined in such article,  
10 whose injury arose out of and in the course of providing services for a  
11 central dispatch facility, as defined in such article, that is a regis-  
12 tered member of such fund, and (ii) any statutory penalty resulting from  
13 the failure to secure such payment. The liability under this chapter of  
14 a central dispatch facility, as defined in article six-F of the execu-  
15 tive law, that is a registered member of the New York black car opera-  
16 tors' injury compensation fund, inc. that shall be limited to remaining  
17 a registered member in good standing of such fund and any statutory  
18 penalty, including loss of immunity provided by this section, resulting  
19 from the failure to become or remain a registered member in good stand-  
20 ing of such fund, except, however, that such central dispatch facility  
21 shall be subject to the provisions of section one hundred thirty-one of  
22 this chapter and shall be liable for any payments for which it may  
23 become responsible pursuant to such section or pursuant to section four-  
24 teen-a of this [chapter] ARTICLE.

25 6. The liability under this chapter of the New York independent livery  
26 driver benefit fund, inc. shall be limited to: (i) securing the payment  
27 of workers' compensation coverage to cover those matters required by  
28 article six-G of the executive law for independent livery drivers, as  
29 defined in such article, whose injury arose out of and in the course of  
30 providing covered services for a livery base, as defined in such arti-  
31 cle, that is a registered member of such fund, and (ii) any statutory  
32 penalty resulting from the failure to secure such payment.

33 7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN EMPLOYEE SUFFERING  
34 AN INJURY OR PERSONAL INJURY AS A RESULT OF A SEXUAL OFFENSE AS DEFINED  
35 IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, DUE TO NEGLIGENT ACTS OR  
36 OMISSIONS OF THE EMPLOYER SHALL BE ENTITLED TO ALL RIGHTS AND BENEFITS  
37 AVAILABLE PURSUANT TO THIS CHAPTER AND, IN ADDITION MAY PURSUE ANY REME-  
38 DY AVAILABLE IN EQUITY OR AT LAW FOR COMPENSATION FOR DAMAGES RESULTING  
39 FROM SUCH INJURY. ANY INSURANCE CARRIER PROVIDING WORKERS' COMPENSATION  
40 BENEFITS PURSUANT TO THIS SECTION SHALL BE ENTITLED TO A LIEN ON ANY  
41 DAMAGES AWARDED PURSUANT TO THIS SECTION, PROVIDED THAT NO SUCH LIEN  
42 SHALL BE IN AN AMOUNT GREATER THAN THE AMOUNT OF BENEFITS PAID BY SUCH  
43 INSURANCE CARRIER.

44 S 5. Subdivision 6 of section 29 of the workers' compensation law, as  
45 amended by chapter 635 of the laws of 1996, is amended to read as  
46 follows:

47 6. The right to compensation or benefits under this chapter, shall be  
48 the exclusive remedy to an employee, or in case of death his or her  
49 dependents, when such employee is injured or killed by the negligence or  
50 wrong of another in the same employ, UNLESS SUCH EMPLOYEE WAS INJURED OR  
51 KILLED AS A CONSEQUENCE OF A SEXUAL OFFENSE, AS DEFINED IN ARTICLE ONE  
52 HUNDRED THIRTY OF THE PENAL LAW, the employer's insurer or any collec-  
53 tive bargaining agent of the employer's employees or any employee, of  
54 such insurer or such collective bargaining agent (while acting within  
55 the scope of his or her employment). The limitation of liability of an  
56 employer set forth in section eleven of this article for the injury or

1 death of an employee shall be applicable to another in the same employ,  
2 the employer's insurer, any collective bargaining agent of the employ-  
3 er's employees or any employee of the employer's insurer or such collec-  
4 tive bargaining agent (while acting within the scope of his or her  
5 employment). The option to maintain an action in the courts for damages  
6 based on the employer's failure to secure compensation for injured  
7 employees and their dependents as set forth in section eleven of this  
8 article shall not be construed to include the right to maintain an  
9 action against another in the same employ, the employer's insurer, any  
10 collective bargaining agent of the employer's employees or any employee  
11 of the employer's insurer or such collective bargaining agent (while  
12 acting within the scope of his or her employment).

13 S 6. This act shall take effect immediately.