

4965

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 13, 2013

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Introduced by M. of A. ENGLEBRIGHT, COLTON, GUNTHER, MILLMAN, LAVINE, JAFFEE, GABRYSZAK, SCHIMEL, KELLNER, ROSENTHAL, BOYLAND, CASTRO, RIVERA, ROBINSON, PRETLOW, WEPRIN, LUPARDO, STEVENSON, MOYA, ABBATE, GIBSON, ROBERTS, BENEDETTO, TITONE, MILLER, MAISEL, ORTIZ, DINOWITZ, HEVESI, RUSSELL, GOLDFEDER, JACOBS, WRIGHT, BARRON -- Multi-Sponsored by -- M. of A. ARROYO, BRENNAN, BRINDISI, CERETTO, CLARK, COOK, CRESPO, CURRAN, CUSICK, CYMBROWITZ, DUPREY, GALEF, GOODELL, GOTTFRIED, HOOPER, JOHNS, KATZ, LENTOL, LIFTON, LOSQUADRO, MAGEE, MALLIOTAKIS, MARKEY, McDONOUGH, McKEVITT, MONTESANO, O'DONNELL, PAULIN, PERRY, RA, RAIA, RAMOS, RODRIGUEZ, SALADINO, SCARBOROUGH, SWEENEY, TEDISCO, THIELE, TITUS, WEISENBERG -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing healthy workplaces

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

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

3     ARTICLE 20-D

4     HEALTHY WORKPLACES

5     SECTION 760. LEGISLATIVE FINDINGS AND INTENT.

6                     761. DEFINITIONS.

7                     762. ABUSIVE WORK ENVIRONMENT.

8                     763. EMPLOYER LIABILITY.

9                     764. EMPLOYEE LIABILITY.

10                    765. AFFIRMATIVE DEFENSES.

11                    766. REMEDIES.

12                    767. ENFORCEMENT.

13                    768. EFFECT ON COLLECTIVE BARGAINING AGREEMENTS.

14                    769. EFFECT OF OTHER LAWS.

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

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1 S 760. LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS  
2 THAT THE SOCIAL AND ECONOMIC WELL-BEING OF THE STATE IS DEPENDENT UPON  
3 HEALTHY AND PRODUCTIVE EMPLOYEES. AT LEAST ONE-THIRD OF ALL EMPLOYEES  
4 DIRECTLY EXPERIENCE HEALTH ENDANGERING WORKPLACE BULLYING, ABUSE AND  
5 HARASSMENT DURING THEIR WORKING LIVES. SUCH FORM OF MISTREATMENT IS  
6 FOUR TIMES MORE PREVALENT THAN SEXUAL HARASSMENT ALONE. WORKPLACE  
7 BULLYING, MOBBING AND HARASSMENT CAN INFLICT SERIOUS HARM UPON TARGETED  
8 EMPLOYEES, INCLUDING FEELINGS OF SHAME AND HUMILIATION, SEVERE ANXIETY,  
9 DEPRESSION, SUICIDAL TENDENCIES, IMPAIRED IMMUNE SYSTEMS, HYPERTENSION,  
10 INCREASED RISK OF CARDIOVASCULAR DISEASE, AND SYMPTOMS CONSISTENT WITH  
11 POST-TRAUMATIC STRESS DISORDER.

12 FURTHERMORE, THE LEGISLATURE FINDS THAT ABUSIVE WORK ENVIRONMENTS CAN  
13 HAVE SERIOUS CONSEQUENCES FOR EMPLOYERS, INCLUDING REDUCED EMPLOYEE  
14 PRODUCTIVITY AND MORALE, HIGHER TURNOVER AND ABSENTEEISM RATES, AND  
15 SIGNIFICANT INCREASES IN MEDICAL AND WORKERS' COMPENSATION CLAIMS.

16 THE LEGISLATURE HEREBY FINDS THAT IF MISTREATED EMPLOYEES WHO HAVE  
17 BEEN SUBJECTED TO ABUSIVE TREATMENT IN THE WORKPLACE CANNOT ESTABLISH  
18 THAT THE BEHAVIOR WAS MOTIVATED BY RACE, COLOR, SEX, SEXUAL ORIENTATION,  
19 NATIONAL ORIGIN OR AGE, SUCH EMPLOYEES ARE UNLIKELY TO BE PROTECTED BY  
20 THE LAW AGAINST SUCH MISTREATMENT.

21 THE LEGISLATURE HEREBY DECLARES THAT LEGAL PROTECTION FROM ABUSIVE  
22 WORK ENVIRONMENTS SHOULD NOT BE LIMITED TO BEHAVIOR GROUNDED IN A  
23 PROTECTED CLASS STATUS AS REQUIRED BY EMPLOYMENT DISCRIMINATION STAT-  
24 UTES. EXISTING WORKERS' COMPENSATION PROVISIONS AND COMMON LAW TORT LAW  
25 ARE INADEQUATE TO DISCOURAGE SUCH MISTREATMENT OR TO PROVIDE ADEQUATE  
26 REDRESS TO EMPLOYEES WHO HAVE BEEN HARMED BY ABUSIVE WORK ENVIRONMENTS.

27 THE PURPOSE OF THIS ARTICLE SHALL BE TO PROVIDE LEGAL REDRESS FOR  
28 EMPLOYEES WHO HAVE BEEN HARMED PSYCHOLOGICALLY, PHYSICALLY OR ECONOM-  
29 ICALLY BY DELIBERATE EXPOSURE TO ABUSIVE WORK ENVIRONMENTS; AND TO  
30 PROVIDE LEGAL INCENTIVES FOR EMPLOYERS TO PREVENT AND RESPOND TO ABUSIVE  
31 MISTREATMENT OF EMPLOYEES AT WORK.

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

34 1. "ABUSIVE CONDUCT" MEANS ACTS, OMISSIONS, OR BOTH, THAT A REASONABLE  
35 PERSON WOULD FIND ABUSIVE, BASED ON THE SEVERITY, NATURE, AND FREQUENCY  
36 OF THE CONDUCT, INCLUDING, BUT NOT LIMITED TO: REPEATED VERBAL ABUSE  
37 SUCH AS THE USE OF DEROGATORY REMARKS, INSULTS, AND EPITHETS; VERBAL,  
38 NON-VERBAL, OR PHYSICAL CONDUCT OF A THREATENING, INTIMIDATING, OR  
39 HUMILIATING NATURE; OR THE SABOTAGE OR UNDERMINING OF AN EMPLOYEE'S WORK  
40 PERFORMANCE. IT SHALL BE CONSIDERED AN AGGRAVATING FACTOR IF THE CONDUCT  
41 EXPLOITED AN EMPLOYEE'S KNOWN PSYCHOLOGICAL OR PHYSICAL ILLNESS OR DISA-  
42 BILITY. A SINGLE ACT NORMALLY SHALL NOT CONSTITUTE ABUSIVE CONDUCT, BUT  
43 AN ESPECIALLY SEVERE AND EGREGIOUS ACT MAY MEET THIS STANDARD.

44 2. "ABUSIVE WORK ENVIRONMENT" MEANS AN EMPLOYMENT CONDITION WHEN AN  
45 EMPLOYER OR ONE OR MORE OF ITS EMPLOYEES, ACTING WITH INTENT TO CAUSE  
46 PAIN OR DISTRESS TO AN EMPLOYEE, SUBJECTS THAT EMPLOYEE TO ABUSIVE  
47 CONDUCT THAT CAUSES PHYSICAL HARM, PSYCHOLOGICAL HARM OR BOTH.

48 3. "ADVERSE EMPLOYMENT ACTION" MEANS AN OUTCOME WHICH NEGATIVELY  
49 IMPACTS AN EMPLOYEE, INCLUDING, BUT NOT LIMITED TO, A TERMINATION,  
50 DEMOTION, UNFAVORABLE REASSIGNMENT, FAILURE TO PROMOTE, DISCIPLINARY  
51 ACTION OR REDUCTION IN COMPENSATION.

52 4. "CONSTRUCTIVE DISCHARGE" MEANS AN ADVERSE EMPLOYMENT ACTION WHERE:

53 (A) THE EMPLOYEE REASONABLY BELIEVED HE OR SHE WAS SUBJECTED TO AN  
54 ABUSIVE WORK ENVIRONMENT;

55 (B) THE EMPLOYEE RESIGNED BECAUSE OF THAT CONDUCT; AND

1 (C) THE EMPLOYER WAS AWARE OF THE ABUSIVE CONDUCT PRIOR TO THE RESIG-  
2 NATION AND FAILED TO STOP IT.

3 5. "PHYSICAL HARM" MEANS THE IMPAIRMENT OF A PERSON'S PHYSICAL HEALTH  
4 OR BODILY INTEGRITY, AS ESTABLISHED BY COMPETENT EVIDENCE.

5 6. "PSYCHOLOGICAL HARM" MEANS THE IMPAIRMENT OF A PERSON'S MENTAL  
6 HEALTH, AS ESTABLISHED BY COMPETENT EVIDENCE.

7 S 762. ABUSIVE WORK ENVIRONMENT. 1. NO EMPLOYEE SHALL BE SUBJECTED TO  
8 AN ABUSIVE WORK ENVIRONMENT.

9 2. NO EMPLOYER OR EMPLOYEE SHALL RETALIATE IN ANY MANNER AGAINST AN  
10 EMPLOYEE WHO HAS OPPOSED ANY UNLAWFUL EMPLOYMENT PRACTICE UNDER THIS  
11 ARTICLE, OR WHO HAS MADE A CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED  
12 IN ANY MANNER IN AN INVESTIGATION OR PROCEEDING UNDER THIS ARTICLE,  
13 INCLUDING, BUT NOT LIMITED TO, INTERNAL COMPLAINTS AND PROCEEDINGS,  
14 ARBITRATION AND MEDIATION PROCEEDINGS AND LEGAL ACTIONS.

15 S 763. EMPLOYER LIABILITY. 1. AN EMPLOYER SHALL BE VICARIOUSLY LIABLE  
16 FOR A VIOLATION OF SECTION SEVEN HUNDRED SIXTY-TWO OF THIS ARTICLE  
17 COMMITTED BY ITS EMPLOYEE.

18 2. WHERE THE ALLEGED VIOLATION OF SUCH SECTION DOES NOT INCLUDE AN  
19 ADVERSE EMPLOYMENT ACTION, IT SHALL BE AN AFFIRMATIVE DEFENSE FOR AN  
20 EMPLOYER ONLY THAT:

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

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

26 S 764. EMPLOYEE LIABILITY. 1. AN EMPLOYEE MAY BE INDIVIDUALLY LIABLE  
27 FOR A VIOLATION OF SECTION SEVEN HUNDRED SIXTY-TWO OF THIS ARTICLE.

28 2. IT SHALL BE AN AFFIRMATIVE DEFENSE FOR AN EMPLOYEE ONLY THAT THE  
29 EMPLOYEE COMMITTED A VIOLATION OF SUCH SECTION AT THE DIRECTION OF THE  
30 EMPLOYER, UNDER ACTUAL OR IMPLIED THREAT OF AN ADVERSE EMPLOYMENT  
31 ACTION.

32 S 765. AFFIRMATIVE DEFENSES. IT SHALL BE AN AFFIRMATIVE DEFENSE THAT:

33 1. THE COMPLAINT IS BASED ON AN ADVERSE EMPLOYMENT ACTION REASONABLY  
34 MADE FOR POOR PERFORMANCE, MISCONDUCT OR ECONOMIC NECESSITY;

35 2. THE COMPLAINT IS BASED ON A REASONABLE PERFORMANCE EVALUATION; OR

36 3. THE COMPLAINT IS BASED ON AN EMPLOYER'S REASONABLE INVESTIGATION  
37 ABOUT POTENTIALLY ILLEGAL OR UNETHICAL ACTIVITY.

38 S 766. REMEDIES. 1. WHERE A DEFENDANT HAS BEEN FOUND LIABLE FOR A  
39 VIOLATION OF SECTION SEVEN HUNDRED SIXTY-TWO OF THIS ARTICLE, THE COURT  
40 MAY ENJOIN SUCH DEFENDANT FROM ENGAGING IN THE UNLAWFUL EMPLOYMENT PRAC-  
41 TICE AND MAY ORDER ANY OTHER RELIEF THAT IS DEEMED APPROPRIATE INCLUD-  
42 ING, BUT NOT LIMITED TO, REINSTATEMENT, REMOVAL OF THE OFFENDING PARTY  
43 FROM THE PLAINTIFF'S WORK ENVIRONMENT, REIMBURSEMENT FOR LOST WAGES,  
44 FRONT PAY, MEDICAL EXPENSES, COMPENSATION FOR PAIN AND SUFFERING,  
45 COMPENSATION FOR EMOTIONAL DISTRESS, PUNITIVE DAMAGES AND ATTORNEY FEES.

46 2. WHERE AN EMPLOYER IS LIABLE FOR A VIOLATION OF SECTION SEVEN  
47 HUNDRED SIXTY-TWO OF THIS ARTICLE THAT DID NOT INCLUDE AN ADVERSE  
48 EMPLOYMENT ACTION, EMOTIONAL DISTRESS DAMAGES AND PUNITIVE DAMAGES MAY  
49 BE AWARDED ONLY WHEN THE ACTIONABLE CONDUCT WAS EXTREME AND OUTRAGEOUS.  
50 THIS LIMITATION DOES NOT APPLY TO INDIVIDUALLY NAMED EMPLOYEE DEFEND-  
51 ANTS.

52 S 767. ENFORCEMENT. 1. THE PROVISIONS OF THIS ARTICLE ARE ENFORCEABLE  
53 SOLELY BY MEANS OF A CIVIL CAUSE OF ACTION COMMENCED BY AN INJURED  
54 EMPLOYEE.

1 2. AN ACTION TO ENFORCE THE PROVISIONS OF THIS ARTICLE SHALL BE  
2 COMMENCED WITHIN ONE YEAR OF THE LAST ACT THAT CONSTITUTES THE ALLEGED  
3 VIOLATION OF SECTION SEVEN HUNDRED SIXTY-TWO OF THIS ARTICLE.

4 S 768. EFFECT ON COLLECTIVE BARGAINING AGREEMENTS. THIS ARTICLE SHALL  
5 NOT PREVENT, INTERFERE, EXEMPT OR SUPERSEDE ANY CURRENT PROVISIONS OF AN  
6 EMPLOYEE'S EXISTING COLLECTIVE BARGAINING AGREEMENT WHICH PROVIDES  
7 GREATER RIGHTS AND PROTECTIONS THAN PRESCRIBED IN THIS ARTICLE NOR SHALL  
8 THIS ARTICLE PREVENT ANY NEW PROVISIONS OF THE COLLECTIVE BARGAINING  
9 AGREEMENT WHICH PROVIDE GREATER RIGHTS AND PROTECTIONS FROM BEING IMPLE-  
10 MENTED AND APPLICABLE TO SUCH EMPLOYEE WITHIN SUCH COLLECTIVE BARGAINING  
11 AGREEMENT. WHERE THE COLLECTIVE BARGAINING AGREEMENT PROVIDES GREATER  
12 RIGHTS AND PROTECTIONS THAN PRESCRIBED IN THIS ARTICLE, THE RECOGNIZED  
13 COLLECTIVE BARGAINING AGENT MAY OPT TO ACCEPT OR REJECT TO BE COVERED BY  
14 THE PROVISIONS OF THIS ARTICLE.

15 S 769. EFFECT OF OTHER LAWS. 1. NO PROVISION OF THIS ARTICLE SHALL BE  
16 DEEMED TO EXEMPT ANY PERSON OR ENTITY FROM ANY LIABILITY, DUTY OR PENAL-  
17 TY PROVIDED BY ANY OTHER STATE LAW, RULE OR REGULATION.

18 2. THE REMEDIES PROVIDED IN THIS ARTICLE SHALL BE IN ADDITION TO ANY  
19 REMEDIES PROVIDED UNDER ANY OTHER PROVISION OF LAW, AND NOTHING IN THIS  
20 ARTICLE SHALL RELIEVE ANY PERSON FROM ANY LIABILITY, DUTY, PENALTY OR  
21 PUNISHMENT PROVIDED BY ANY OTHER PROVISION OF LAW, EXCEPT THAT IF AN  
22 EMPLOYEE RECEIVES WORKERS' COMPENSATION FOR MEDICAL COSTS FOR THE SAME  
23 INJURY OR ILLNESS PURSUANT TO BOTH THIS ARTICLE AND THE WORKERS' COMPEN-  
24 SATION LAW, OR COMPENSATION UNDER BOTH THIS ARTICLE AND SUCH LAW IN CASH  
25 PAYMENTS FOR THE SAME PERIOD OF TIME NOT WORKING AS A RESULT OF THE  
26 COMPENSABLE INJURY OR ILLNESS OR THE UNLAWFUL EMPLOYMENT PRACTICE, THE  
27 PAYMENTS OF WORKERS' COMPENSATION SHALL BE REIMBURSED FROM DAMAGES PAID  
28 UNDER THIS ARTICLE.

29 S 2. This act shall take effect immediately, and shall apply to  
30 abusive conduct occurring on or after such date.