

8156

2013-2014 Regular Sessions

I N   A S S E M B L Y

August 30, 2013

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Introduced by M. of A. FINCH -- read once and referred to the Committee  
on Governmental Operations

AN ACT to amend the executive law and the labor law, in relation to  
sexual harassment in the workplace

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

1     Section 1. This act shall be known and may be cited as the "woman's  
2     workplace protection act".

3     S 2. The executive law is amended by adding a new section 296-c to  
4     read as follows:

5     S 296-C. SEXUAL HARASSMENT IN THE WORKPLACE. 1. IN ADDITION TO THE  
6     UNLAWFUL DISCRIMINATORY PRACTICES INCLUDED IN SECTIONS TWO HUNDRED  
7     NINETY-SIX AND TWO HUNDRED NINETY-SIX-A OF THIS ARTICLE, SEXUAL HARASS-  
8     MENT SHALL BE CONSIDERED AN UNLAWFUL DISCRIMINATORY PRACTICE.

9     2. (A) AS USED IN THIS SECTION "SEXUAL HARASSMENT" MEANS AN UNLAWFUL  
10    DISCRIMINATORY PRACTICE ON THE BASIS OF SEX THAT IS BASED ON UNWELCOME  
11    SEXUAL ADVANCES, REQUEST FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL  
12    CONDUCT OF A SEXUAL NATURE WHEN:

13    (1) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY  
14    A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT;

15    (2) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS  
16    USED AS THE BASIS FOR EMPLOYMENT DECISIONS AFFECTING SUCH INDIVIDUAL; OR

17    (3) SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING  
18    WITH AN INDIVIDUAL'S WORK PERFORMANCE OR CREATING AN INTIMIDATING,  
19    HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT.

20    (B) "SEXUAL HARASSMENT" SHALL ALSO MEAN THE UNLAWFUL SEX DISCRIMI-  
21    NATION AGAINST PERSONS WHO WERE QUALIFIED FOR BUT DENIED AN EMPLOYMENT  
22    OPPORTUNITY OR BENEFIT DUE TO ANOTHER PERSON'S RECEIPT OF SUCH EMPLOY-  
23    MENT OPPORTUNITY OR BENEFIT DUE TO HIS OR HER SUBMISSION TO THE EMPLOY-  
24    ER'S SEXUAL ADVANCES OR REQUESTS FOR SEXUAL FAVORS.

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

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1 3. IN DETERMINING WHETHER ALLEGED CONDUCT CONSTITUTES SEXUAL HARASS-  
2 MENT, THE COMMISSIONER WILL LOOK AT THE RECORD AS A WHOLE AND AT THE  
3 TOTALITY OF THE CIRCUMSTANCES, SUCH AS THE NATURE OF THE SEXUAL ADVANCES  
4 AND THE CONTEXT IN WHICH THE ALLEGED INCIDENTS OCCURRED. THE COMMISSION-  
5 ER SHALL ALSO CONSIDER THE IMMEDIATE AND APPROPRIATE CORRECTIVE ACTIONS  
6 TAKEN BY THE EMPLOYER AND ACTIONS TAKEN BY THE EMPLOYER TO PREVENT SEXU-  
7 AL HARASSMENT. THE DETERMINATION OF THE LEGALITY OF A PARTICULAR ACTION  
8 WILL BE MADE FROM THE FACTS, ON A CASE BY CASE BASIS.

9 S 3. Paragraph c of subdivision 4 of section 297 of the executive law,  
10 as amended by chapter 166 of the laws of 2000, is amended to read as  
11 follows:

12 c. Within one hundred eighty days after the commencement of such hear-  
13 ing, a determination shall be made and an order served as hereinafter  
14 provided. If, upon all the evidence at the hearing, the commissioner  
15 shall find that a respondent has engaged in any unlawful discriminatory  
16 practice as defined in this article, the commissioner shall state find-  
17 ings of fact and shall issue and cause to be served on such respondent  
18 an order, based on such findings and setting them forth, and including  
19 such of the following provisions as in the judgment of the division will  
20 effectuate the purposes of this article: (i) requiring such respondent  
21 to cease and desist from such unlawful discriminatory practice; (ii)  
22 requiring such respondent to take such affirmative action, including  
23 (but not limited to) hiring, reinstatement or upgrading of employees,  
24 with or without back pay, restoration to membership in any respondent  
25 labor organization, admission to or participation in a guidance program,  
26 apprenticeship training program, on-the-job training program or other  
27 occupational training or retraining program, the extension of full,  
28 equal and unsegregated accommodations, advantages, facilities and privi-  
29 leges to all persons, granting the credit which was the subject of any  
30 complaint, evaluating applicants for membership in a place of accommo-  
31 dation without discrimination based on race, creed, color, national  
32 origin, sex, disability or marital status, and without retaliation or  
33 discrimination based on opposition to practices forbidden by this arti-  
34 cle or filing a complaint, testifying or assisting in any proceeding  
35 under this article; (iii) awarding of compensatory damages to the person  
36 aggrieved by such practice; (iv) awarding of punitive damages, in cases  
37 of housing discrimination only, in an amount not to exceed ten thousand  
38 dollars, AND IN CASES OF SEXUAL HARASSMENT ONLY, IN AN AMOUNT NOT TO  
39 EXCEED ONE HUNDRED THOUSAND DOLLARS, to the person aggrieved by such  
40 practice; (v) requiring payment to the state of profits obtained by a  
41 respondent through the commission of unlawful discriminatory acts  
42 described in subdivision three-b of section two hundred ninety-six of  
43 this article; and (vi) assessing civil fines and penalties, in an amount  
44 not to exceed fifty thousand dollars, to be paid to the state by a  
45 respondent found to have committed an unlawful discriminatory act, or  
46 not to exceed one hundred thousand dollars to be paid to the state by a  
47 respondent found to have committed an unlawful discriminatory act which  
48 is found to be willful, wanton or malicious; (vii) requiring a report of  
49 the manner of compliance. If, upon all the evidence, the commissioner  
50 shall find that a respondent has not engaged in any such unlawful  
51 discriminatory practice, he or she shall state findings of fact and  
52 shall issue and cause to be served on the complainant an order based on  
53 such findings and setting them forth dismissing the said complaint as to  
54 such respondent. A copy of each order issued by the commissioner shall  
55 be delivered in all cases to the attorney general, the secretary of  
56 state, if he or she has issued a license to the respondent, and such

1 other public officers as the division deems proper, and if any such  
2 order issued by the commissioner concerns a regulated creditor, the  
3 commissioner shall forward a copy of any such order to the superinten-  
4 dent. A copy of any complaint filed against any respondent who has  
5 previously entered into a conciliation agreement pursuant to paragraph a  
6 of subdivision three of this section or as to whom an order of the divi-  
7 sion has previously been entered pursuant to this paragraph shall be  
8 delivered to the attorney general, to the secretary of state if he or  
9 she has issued a license to the respondent and to such other public  
10 officers as the division deems proper, and if any such respondent is a  
11 regulated creditor, the commissioner shall forward a copy of any such  
12 complaint to the superintendent.

13 S 4. paragraph (a) of subdivision 2 of section 740 of the labor law,  
14 as amended by chapter 442 of the laws of 2006, is amended to read as  
15 follows:

16 (a) discloses, or threatens to disclose to a supervisor or to a public  
17 body an activity, policy or practice of the employer that is in  
18 violation of law, rule or regulation which violation creates and  
19 presents a substantial and specific danger to the public health or safe-  
20 ty, or which constitutes SEXUAL HARASSMENT OR health care fraud;

21 S 5. This act shall take effect on the sixtieth day after it shall  
22 have become a law.