

3863

2013-2014 Regular Sessions

I N S E N A T E

February 25, 2013

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed 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.

15 S 760. LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS
16 THAT THE SOCIAL AND ECONOMIC WELL-BEING OF THE STATE IS DEPENDENT UPON
17 HEALTHY AND PRODUCTIVE EMPLOYEES. AT LEAST ONE-THIRD OF ALL EMPLOYEES
18 DIRECTLY EXPERIENCE HEALTH ENDANGERING WORKPLACE BULLYING, ABUSE AND
19 HARASSMENT DURING THEIR WORKING LIVES. SUCH FORM OF MISTREATMENT IS
20 FOUR TIMES MORE PREVALENT THAN SEXUAL HARASSMENT ALONE. WORKPLACE
21 BULLYING, MOBBING AND HARASSMENT CAN INFLICT SERIOUS HARM UPON TARGETED
22 EMPLOYEES, INCLUDING FEELINGS OF SHAME AND HUMILIATION, SEVERE ANXIETY,
23 DEPRESSION, SUICIDAL TENDENCIES, IMPAIRED IMMUNE SYSTEMS, HYPERTENSION,
24 INCREASED RISK OF CARDIOVASCULAR DISEASE, AND SYMPTOMS CONSISTENT WITH
25 POST-TRAUMATIC STRESS DISORDER.

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

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

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

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

16 THE PURPOSE OF THIS ARTICLE SHALL BE TO PROVIDE LEGAL REDRESS FOR
17 EMPLOYEES WHO HAVE BEEN HARMED PSYCHOLOGICALLY, PHYSICALLY OR ECONOM-
18 ICALLY BY DELIBERATE EXPOSURE TO ABUSIVE WORK ENVIRONMENTS; AND TO
19 PROVIDE LEGAL INCENTIVES FOR EMPLOYERS TO PREVENT AND RESPOND TO ABUSIVE
20 MISTREATMENT OF EMPLOYEES AT WORK.

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

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

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

37 3. "ADVERSE EMPLOYMENT ACTION" MEANS AN OUTCOME WHICH NEGATIVELY
38 IMPACTS AN EMPLOYEE, INCLUDING, BUT NOT LIMITED TO, A TERMINATION,
39 DEMOTION, UNFAVORABLE REASSIGNMENT, FAILURE TO PROMOTE, DISCIPLINARY
40 ACTION OR REDUCTION IN COMPENSATION.

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

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

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

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

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

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

51 S 762. ABUSIVE WORK ENVIRONMENT. 1. NO EMPLOYEE SHALL BE SUBJECTED TO
52 AN ABUSIVE WORK ENVIRONMENT.

53 2. NO EMPLOYER OR EMPLOYEE SHALL RETALIATE IN ANY MANNER AGAINST AN
54 EMPLOYEE WHO HAS OPPOSED ANY UNLAWFUL EMPLOYMENT PRACTICE UNDER THIS
55 ARTICLE, OR WHO HAS MADE A CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED
56 IN ANY MANNER IN AN INVESTIGATION OR PROCEEDING UNDER THIS ARTICLE,

1 INCLUDING, BUT NOT LIMITED TO, INTERNAL COMPLAINTS AND PROCEEDINGS,
2 ARBITRATION AND MEDIATION PROCEEDINGS AND LEGAL ACTIONS.

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

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

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

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

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

16 2. IT SHALL BE AN AFFIRMATIVE DEFENSE FOR AN EMPLOYEE ONLY THAT THE
17 EMPLOYEE COMMITTED A VIOLATION OF SUCH SECTION AT THE DIRECTION OF THE
18 EMPLOYER, UNDER ACTUAL OR IMPLIED THREAT OF AN ADVERSE EMPLOYMENT
19 ACTION.

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

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

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

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

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

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

40 S 767. ENFORCEMENT. 1. THE PROVISIONS OF THIS ARTICLE ARE ENFORCEABLE
41 SOLELY BY MEANS OF A CIVIL CAUSE OF ACTION COMMENCED BY AN INJURED
42 EMPLOYEE.

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

46 S 768. EFFECT ON COLLECTIVE BARGAINING AGREEMENTS. THIS ARTICLE SHALL
47 NOT PREVENT, INTERFERE, EXEMPT OR SUPERSEDE ANY CURRENT PROVISIONS OF AN
48 EMPLOYEE'S EXISTING COLLECTIVE BARGAINING AGREEMENT WHICH PROVIDES
49 GREATER RIGHTS AND PROTECTIONS THAN PRESCRIBED IN THIS ARTICLE NOR SHALL
50 THIS ARTICLE PREVENT ANY NEW PROVISIONS OF THE COLLECTIVE BARGAINING
51 AGREEMENT WHICH PROVIDE GREATER RIGHTS AND PROTECTIONS FROM BEING IMPE-
52 MENTED AND APPLICABLE TO SUCH EMPLOYEE WITHIN SUCH COLLECTIVE BARGAINING
53 AGREEMENT. WHERE THE COLLECTIVE BARGAINING AGREEMENT PROVIDES GREATER
54 RIGHTS AND PROTECTIONS THAN PRESCRIBED IN THIS ARTICLE, THE RECOGNIZED
55 COLLECTIVE BARGAINING AGENT MAY OPT TO ACCEPT OR REJECT TO BE COVERED BY
56 THE PROVISIONS OF THIS ARTICLE.

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

4 2. THE REMEDIES PROVIDED IN THIS ARTICLE SHALL BE IN ADDITION TO ANY
5 REMEDIES PROVIDED UNDER ANY OTHER PROVISION OF LAW, AND NOTHING IN THIS
6 ARTICLE SHALL RELIEVE ANY PERSON FROM ANY LIABILITY, DUTY, PENALTY OR
7 PUNISHMENT PROVIDED BY ANY OTHER PROVISION OF LAW, EXCEPT THAT IF AN
8 EMPLOYEE RECEIVES WORKERS' COMPENSATION FOR MEDICAL COSTS FOR THE SAME
9 INJURY OR ILLNESS PURSUANT TO BOTH THIS ARTICLE AND THE WORKERS' COMPEN-
10 SATION LAW, OR COMPENSATION UNDER BOTH THIS ARTICLE AND SUCH LAW IN CASH
11 PAYMENTS FOR THE SAME PERIOD OF TIME NOT WORKING AS A RESULT OF THE
12 COMPENSABLE INJURY OR ILLNESS OR THE UNLAWFUL EMPLOYMENT PRACTICE, THE
13 PAYMENTS OF WORKERS' COMPENSATION SHALL BE REIMBURSED FROM DAMAGES PAID
14 UNDER THIS ARTICLE.

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