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

5512

2015-2016 Regular Sessions

I N A S S E M B L Y

February 24, 2015

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:

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

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

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

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

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

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

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

(B) "SEXUAL HARASSMENT" SHALL ALSO MEAN THE UNLAWFUL SEX DISCRIMINATION AGAINST PERSONS WHO WERE QUALIFIED FOR BUT DENIED AN EMPLOYMENT OPPORTUNITY OR BENEFIT DUE TO ANOTHER PERSON'S RECEIPT OF SUCH EMPLOYMENT OPPORTUNITY OR BENEFIT DUE TO HIS OR HER SUBMISSION TO THE EMPLOYER'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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3. IN DETERMINING WHETHER ALLEGED CONDUCT CONSTITUTES SEXUAL HARASSMENT, THE COMMISSIONER WILL LOOK AT THE RECORD AS A WHOLE AND AT THE TOTALITY OF THE CIRCUMSTANCES, SUCH AS THE NATURE OF THE SEXUAL ADVANCES AND THE CONTEXT IN WHICH THE ALLEGED INCIDENTS OCCURRED. THE COMMISSIONER SHALL ALSO CONSIDER THE IMMEDIATE AND APPROPRIATE CORRECTIVE ACTIONS TAKEN BY THE EMPLOYER AND ACTIONS TAKEN BY THE EMPLOYER TO PREVENT SEXUAL HARASSMENT. THE DETERMINATION OF THE LEGALITY OF A PARTICULAR ACTION WILL BE MADE FROM THE FACTS, ON A CASE BY CASE BASIS.

S 3. Paragraph c of subdivision 4 of section 297 of the executive law, as amended by chapter 166 of the laws of 2000, subparagraph (vi) as amended by section 1 of part AA of chapter 57 of the laws of 2009, is amended to read as follows:

c. Within one hundred eighty days after the commencement of such hearing, a determination shall be made and an order served as hereinafter provided. If, upon all the evidence at the hearing, the commissioner shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commissioner shall state findings of fact and shall issue and cause to be served on such respondent an order, based on such findings and setting them forth, and including such of the following provisions as in the judgment of the division will effectuate the purposes of this article: (i) requiring such respondent to cease and desist from such unlawful discriminatory practice; (ii) requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, granting the credit which was the subject of any complaint, evaluating applicants for membership in a place of accommodation without discrimination based on race, creed, color, national origin, sex, disability or marital status, and without retaliation or discrimination based on opposition to practices forbidden by this article or filing a complaint, testifying or assisting in any proceeding under this article; (iii) awarding of compensatory damages to the person aggrieved by such practice; (iv) awarding of punitive damages, in cases of housing discrimination only, in an amount not to exceed ten thousand dollars, AND IN CASES OF SEXUAL HARASSMENT ONLY, IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS, to the person aggrieved by such practice; (v) requiring payment to the state of profits obtained by a respondent through the commission of unlawful discriminatory acts described in subdivision three-b of section two hundred ninety-six of this article; and (vi) assessing civil fines and penalties, in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious; (vii) requiring a report of the manner of compliance. If, upon all the evidence, the commissioner shall find that a respondent has not engaged in any such unlawful discriminatory practice, he or she shall state findings of fact and shall issue and cause to be served on the complainant an order based on such findings and setting them forth dismissing the said complaint as to such respondent. A copy of each order issued by the commissioner shall be delivered in all cases to the attorney general, the secretary of

state, if he or she has issued a license to the respondent, and such other public officers as the division deems proper, and if any such order issued by the commissioner concerns a regulated creditor, the commissioner shall forward a copy of any such order to the superintendent. A copy of any complaint filed against any respondent who has previously entered into a conciliation agreement pursuant to paragraph a of subdivision three of this section or as to whom an order of the division has previously been entered pursuant to this paragraph shall be delivered to the attorney general, to the secretary of state if he or she has issued a license to the respondent and to such other public officers as the division deems proper, and if any such respondent is a regulated creditor, the commissioner shall forward a copy of any such complaint to the superintendent.

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

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

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