

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:

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-d to
4 read as follows:
5 S 296-D. 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, subparagraph (vi) as
11 amended by section 1 of part AA of chapter 57 of the laws of 2009, is
12 amended to read as follows:

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

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

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

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

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