STATE OF NEW YORK

6972

2017-2018 Regular Sessions

IN SENATE

December 15, 2017

Introduced by Sens. YOUNG, PHILLIPS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, the civil practice law and rules and the general business law, in relation to discrimination based upon sexual harassment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 292 of the executive law, as amended by chapter 363 of the laws of 2015, is amended and a new subdivision 35 is added to read as follows:

5. The term "employer" does not include any employer with fewer than four persons in his or her employ except as set forth in section two hundred ninety-six-b of this article, provided, however, that in the case of an action for discrimination based on sex pursuant to subdivision one of section two hundred ninety-six of this article, with respect to sexual harassment only, the term "employer" shall include all employers within the state. **Provided, further, that in an action for an unlawful discriminatory practice pursuant to subdivision one of section two hundred ninety-six of this article, with respect to sexual harassment only, the term "employer" shall include those entities benefitting from or utilizing the services of an independent contractor.**

35. The term "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct, explicitly or implicitly, affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment without regard to actual economic injury to or discharge of the individual.

§ 2. The civil practice law and rules is amended by adding a new section 5003-b to read as follows:

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

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§ 5003-b. Actions for sexual harassment. With respect to all actions to recover damages for sexual harassment, as defined in subdivision thirty-five of section two hundred ninety-two of the executive law, no court shall accept any settlement, including any confidentiality agreement or provision, that provides for the non-disclosure or confidentiality of the acts constituting the sexual harassment and the admitted perpetrator thereof. For the purposes of this section, every settlement in which one dollar or more is to be paid shall be deemed to be an admission of the act of sexual harassment. Provided, however, subject to the provisions of the domestic relations law, a settlement agreement may include a confidentiality provision only if such provision is approved by the court for good cause in an open proceeding.

§ 3. The general business law is amended by adding a new section 398-f to read as follows:

§ 398-f. Mandatory arbitration clauses in contracts; prohibited. 1. Definitions. As used in this section:

a. The term "employer" shall have the same meaning as provided in subdivision five of section two hundred ninety-two of the executive law.

b. The term "sexual harassment" shall have the same meaning as provided in subdivision thirty-five of section two hundred ninety-two of the executive law.

c. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract which requires the parties to such contract to submit any controversy thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the decision of the arbitrator or panel of arbitrators in its application to a party alleging an unlawful discriminatory practice based on sexual harassment shall be final and not subject to court review.

d. The term "arbitration" shall mean the use of a decision making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of article seventy-five of the civil practice law and rules.

2. a. Prohibition. No written contract, entered into on or after the effective date of this section, to which an employer is a party, shall contain a mandatory arbitration clause relating to unlawful discriminatory practices based on sexual harassment. Nothing contained in this section shall be construed to prohibit an employer from incorporating a provision within such contract, that is not related to any manner to sexual harassment, that the parties agree that the decision of the arbitrator or panel of arbitrators shall be final in its application to the parties and not subject to court review.

b. Mandatory arbitration clause null and void. The provisions of such a mandatory arbitration clause shall be null and void. The inclusion of such clause in a written contract shall not serve to impair the enforceability of any other provision of such contract.

§ 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.