STATE OF NEW YORK

7195

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, the legislative law and the state finance law, in relation to establishing sexual harassment prevention protocols within the public sector

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

Section 1. Article 7 of the civil service law is amended by adding a new title D to read as follows:

TITLE D

PREVENTION OF SEXUAL HARASSMENT BY EMPLOYEES

Section 110. Adoption of anti-sexual harassment policy.

111. Posting of notice.

112. Preparation of training program.

§ 110. Adoption of anti-sexual harassment policy. 1. The head of each department, division, board, commission, bureau, public benefit corporation, public authority or commission shall:

(a) Issue a strong management policy statement defining and prohibiting sexual harassment in the workplace. The policy statement should inform employees of their rights of redress, and the availability of complaint resolution channels and assistance with incidents of sexual harassment. Such policy statement shall make clear that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue. Such policy statement shall specify that the definition of an employee shall include interns, temporary employees, and individuals employed pursuant to a fellowship program solely for the purposes of rights and remedies due to an incident of sexual harassment.

(b) Widely distribute the policy statement by providing it to all employees, including it in new employee orientation materials, and publicizing it in internal employee publications.

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

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(c) Conduct appropriate training to instruct and sensitize all employees.

(d) Develop guidelines to ensure the swift and thorough investigation of allegations and complaints of sexual harassment and enforcement of appropriate sanctions including disciplinary actions. The affirmative action or a similarly situated employee officer shall have responsibility for processing such complaints. All investigations shall be conducted with due regard for confidentiality to ensure protection of the complainant and the accused. Victims shall be informed of the various administrative and legal remedies available in addition to any internal resolution process. The complaint procedure shall provide for subsequent review to determine if the sexual harassment being alleged, if found to be meritorious, has effectively ceased.

(e) Enact a timeline within the adopted guidelines, providing for an initial determination on the validity of an allegation of sexual harassment within sixty days of an incident being reported by an employee who has been subject to such harassment, and a recommendation of action to be taken in light of the initial determination within ninety days.

(f) Provide the governor's office of employee relations with a copy of the policy statement and a brief description of the actions taken and planned in regard to preventing and combating sexual harassment in the workplace, and report all complaints and their resolution to the governor's office of employee relations.

2. The governor's office of employee relations shall prepare a model policy to be distributed to each entity covered under subdivision one of this section. For any covered entity under the direct authority of the executive branch, its designated officer may either adopt the model policy or make specific changes to the model policy that take into account particular circumstances facing such agency. Notice must be provided to the governor's office of employee relations when changes to such model policy are made.

3. The governor's office of employee relations shall provide information to the entities covered under this section to assist in the implementation and the operation of provisions under this section.

4. Nothing in this section shall be construed to conflict with any other rights of individuals under state or federal law.

§ 111. Posting of notice. 1. The department, in coordination with the governor's office of employee relations and the division of human rights, shall produce a poster no less than eight and a half feet long and eleven and a half feet wide to be distributed to and posted conspicuously by all employers in the state which states at a minimum (a) that sexual harassment is a violation of state and federal law; (b) descriptions and examples of sexual harassment; (c) a statement of the range of consequences for committing sexual harassment and/or retaliating against an individual who complains of sexual harassment; (d) the identity of the appropriate state and federal employment discrimination enforcement agencies; and (e) contact information for such agencies.

2. The department may utilize a poster generated by the division of human rights to the extent that such poster conforms with the requirements of this section and is otherwise compliant with the application of article fifteen-A of the executive law to the state workforce.

§ 112. Preparation of training program. 1. Pursuant to section one hundred ten of this title, each department, division, board, commission, bureau, public benefit corporation, public authority or commission shall conduct appropriate training to prevent sexual harassment in the workplace.

2. All training to prevent sexual harassment in the workplace shall include information concerning the federal and state statutory provisions regarding sexual harassment and remedies available to victims of sexual harassment.

3. All employees shall complete a training of a minimum of two hours within the first six months of employment, or within six months of the effective date of this section if an employee was employed on or before such effective date.

4. In addition to the requirements of subdivision three of this section, all supervisory employees, as deemed by the department, shall complete an annual training of a minimum of one hour, except where a supervisory employee is subject to subdivision three of this section, in which case such employee shall be exempt from training in the first calendar year of employment.

5. Training curriculum and scheduling of such trainings required under this title shall be coordinated by the governor's office of employee relations.

§ 2. The legislative law is amended by adding a new section 7-h to read as follows:

§ 7-h. Prevention of sexual harassment in the legislature. It shall be the policy of the legislature to prevent sexual harassment among the members, officers, and employees of the legislature.

1. Each house shall issue a strong management policy statement defining and prohibiting sexual harassment in the workplace. Such policy statement shall inform employees of their rights of redress, and the availability of complaint resolution channels and assistance with incidents of sexual harassment. Such policy statement shall make clear that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue. Such policy statement shall specify that the definition of an employee include interns, temporary employees, and individuals employed pursuant to a fellowship program solely for the purposes of rights and remedies due to an incident of sexual harassment. Such policy statement shall be widely distributed by providing it to all employees, including it in new employee orientation materials, and publicizing it in internal employee publications and on their public websites. Each employee shall submit acknowledgement of his or her receipt of such policy statement.

2. Each house shall develop guidelines to ensure the swift and thorough investigation of allegations and complaints of sexual harassment and enforcement of appropriate sanctions including disciplinary actions. An officer shall be designated by each house in its management policy statement who shall have responsibility for processing complaints. Due to the sensitivity of the issue, particular efforts should be made to conduct investigations with due regard for confidentiality to ensure protection of the complainant and the accused. Although the intent is to address and resolve such matters at the workplace, victims shall be informed of the various administrative and legal remedies available. The complaint procedure should provide for subsequent review to determine if the sexual harassment has been effectively stopped. The speaker of the assembly and the temporary president of the senate may jointly designate an officer to handle investigations and disposition of allegations and complaints of sexual harassment in both houses, or may appoint an officer in each house respectively.

3. An officer who has been designated in each house or jointly designated by the speaker of the assembly and the temporary president of the senate, as the case may be, shall be required to investigate all complaints and issue a report summarizing findings and recommended action, including any referral to the respective standing committee on ethics in each house of the legislature, or law enforcement as may be necessary and appropriate, to remedy any discriminatory conduct found in such report. The officer shall provide an initial determination on the validity of an allegation of sexual harassment within sixty days of an incident being reported by an employee who has been subject to such harassment, and a recommendation of action to be taken in light of the initial determination within thirty days after the conclusion of the investigation and initial determination.

4. Upon the completion of an investigation and recommendation for action to be taken based on an allegation of sexual harassment, the officer designated pursuant to subdivision three of this section shall transmit to the legislative ethics commission the final report, and shall redact all identifying information within the report to ensure the confidentiality of the parties. The legislative ethics commission, upon receipt of such report, shall post a copy of the report on its website in a publicly accessible place.

5. Each house shall conduct appropriate training to instruct and sensitize all employees. All trainings shall include, at a minimum, information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment. Such training shall be (i) for members of the legislature, at least two hours within the first six months of a member's election; (ii) for officers or employees of the legislature, at least two hours within the first six months of employment; (iii) for both members and officers or employees of the legislature, at least two hours within six months of the effective date of this section if an officer or employee was employed on or before the effective date, and every year thereafter; and (iv) for employees of the legislature deemed to be supervisory employees by the appointing authority, an additional one hour every year.

6. Nothing in this section shall be construed to conflict with any other rights of individuals under state or federal law.

§ 3. The state finance law is amended by adding a new section 148 to read as follows:

§ 148. Prevention of sexual harassment by state contractors. 1. Definition. For the purposes of this section, "state contractor" shall mean a business which employs fifty people or more, or receives contracts with the state valued at an aggregate value of one million dollars or more per year.

2. Anti-sexual harassment policy. State contractors shall be required to adopt a strong management policy statement which (i) defines and prohibits sexual harassment in the workplace; (ii) provides examples of conduct which would be defined as unlawful sexual harassment; and (iii) informs employees of their rights of redress, the availability of complaint resolution channels and assistance with incidents of sexual harassment. Such policy statement shall be widely distributed by providing it to all employees, including it in new employee orientation, and publicizing it in internal employee publications.

3. Anti-sexual harassment training. State contractors shall be required to conduct appropriate training to prevent sexual harassment in the workplace. Such training programs shall include information

concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment. Training shall be a minimum of two hours on a yearly basis for all employees of a state contractor, except for all employees of a state contractor on the effective date of this section, where it shall be within six months of such effective date.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.