STATE OF NEW YORK

8607

IN SENATE

May 10, 2018

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, the civil practice law and rules, the public officers law, the general obligations law and the labor law, in relation to discrimination; and to amend subpart E of part KK of chapter 57 of the laws of 2018, amending the labor law, relating to the establishment of a model policy regarding the prevention of sexual harassment and a model training program to prevent sexual harassment in the workplace, in relation to the effectiveness thereof

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

Section 1. The section heading and paragraph (a) of subdivision 1 of section 139-l of the state finance law, as added by section 1 of subpart A of part KK of chapter 57 of the laws of 2018, are amended to read as follows:

Statement on [~~sexual harassment~~] **discrimination**, in bids.

(a) Every bid hereafter made to the state or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing [~~sexual harassment~~] **discrimination** prevention in the workplace and provides annual [~~sexual harassment~~] **discrimination** prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law."

§ 2. Subdivisions 2 and 3 of section 7515 of the civil practice law and rules, as added by section 1 of subpart B of part KK of chapter 57 of the laws of 2018, are amended to read as follows:

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

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2. The term "prohibited clause" shall mean any clause or provision in any contract which requires as a condition of the enforcement of the contract or obtaining remedies under the contract that the parties submit to mandatory arbitration to resolve any allegation or claim of [~~an unlawful discriminatory practice of sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**.

3. 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 matter 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 facts found or determination made by the arbitrator or panel of arbitrators in its application to a party alleging [~~an unlawful discriminatory practice based on sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law** shall be final and not subject to independent court review.

§ 3. The section heading and subdivision 2 of section 17-a of the public officers law, as added by section 1 of subpart C of part KK of chapter 57 of the laws of 2018, are amended to read as follows:

Reimbursement of funds paid by state agencies and state entities for the payment of awards adjudicated in [~~sexual harassment~~] **discrimination** claims.

2. Notwithstanding any law to the contrary, any employee who has been subject to a final judgment of personal liability for intentional wrongdoing related to a claim of [~~sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**, shall reimburse any state agency or entity that makes a payment to a plaintiff for an adjudicated award based on a claim of [~~sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law** resulting in a judgment, for his or her proportionate share of such judgment. Such employee shall personally reimburse such state agency or entity within ninety days of the state agency or entity's payment of such award.

§ 4. The section heading and subdivision 2 of section 18-a of the public officers law, as added by section 2 of subpart C of part KK of chapter 57 of the laws of 2018, are amended to read as follows:

Reimbursement of funds paid by a public entity for the payment of awards adjudicated in [~~sexual harassment~~] **discrimination** claims.

2. Notwithstanding any law to the contrary, any employee who has been subject to a final judgment of personal liability for intentional wrongdoing related to a claim of [~~sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**, shall reimburse any public entity that makes a payment to a plaintiff for an adjudicated award based on a claim of [~~sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law** resulting in a judgment, for his or her proportionate share of such judgment. Such employee shall personally reimburse such public entity within ninety days of the public entity's payment of such award.

§ 5. Section 5-336 of the general obligations law, as added by section 1 of subpart D of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

§ 5-336. Nondisclosure agreements. Notwithstanding any other law to the contrary, no employer, its officers or employees shall have the authority to include or agree to include in any settlement, agreement or other resolution of any claim, the factual foundation for which involves [~~sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**, any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant's preference. Any such term or condition must be provided to all parties, and the complainant shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the complainant's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the complainant may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

§ 6. Section 5003-b of the civil practice law and rules, as added by section 2 of subpart D of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

§ 5003-b. Nondisclosure agreements. Notwithstanding any other law to the contrary, for any claim or cause of action, whether arising under common law, equity, or any provision of law, the factual foundation for which involves [~~sexual harassment~~] **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, no employer, its officer or employee shall have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the plaintiff's preference. Any such term or condition must be provided to all parties, and the plaintiff shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the plaintiff's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the plaintiff may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

§ 7. Section 201-g of the labor law, as added by section 1 of subpart E of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

§ 201-g. Prevention of [~~sexual harassment~~] **discrimination**. 1. The department shall consult with the division of human rights to create and publish a model [~~sexual harassment~~] **discrimination** prevention guidance document and [~~sexual harassment prevention~~] **discrimination prevention** policy that employers may utilize in their adoption of [~~a sexual harassment prevention~~] **the** policy required by this section. **For purposes of this section, "discrimination" shall mean unlawful discriminatory practice, as defined in section two hundred ninety-six of the executive law and/or discrimination or harassment based on race, color, sex, national origin, creed, sexual orientation, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status.**

a. Such model [~~sexual harassment prevention~~] **discrimination prevention** policy shall: (i) prohibit [~~sexual harassment~~] **discrimination** consistent

with guidance issued by the department in consultation with the division of human rights and provide examples of prohibited conduct that would constitute unlawful [~~sexual harassment~~] **discrimination**; (ii) include but not be limited to information concerning the federal and state statutory provisions concerning [~~sexual harassment~~] **discrimination** and remedies available to victims of [~~sexual harassment~~] **discrimination** and a statement that there may be applicable local laws; (iii) include a standard complaint form; (iv) include a procedure for the timely and confidential investigation of complaints and ensure due process for all parties; (v) inform employees of their rights of redress and all available forums for adjudicating [~~sexual harassment~~] **discrimination** complaints administratively and judicially; (vi) clearly state that [~~sexual harassment~~] **discrimination** is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in [~~sexual harassment~~] **discrimination** and against supervisory and managerial personnel who knowingly allow such behavior to continue; and (vii) clearly state that retaliation against individuals who complain of [~~sexual harassment~~] **discrimination** or who testify or assist in any proceeding under the law is unlawful.

b. Every employer shall adopt the model [~~sexual harassment~~] **discrimination** prevention policy promulgated pursuant to this subdivision or establish a [~~sexual harassment~~] **discrimination** prevention policy to prevent [~~sexual harassment~~] **discrimination** that equals or exceeds the minimum standards provided by such model [~~sexual harassment prevention~~] policy. Such [~~sexual harassment prevention~~] policy shall be provided to all employees in writing. Such model [~~sexual harassment prevention~~] policy shall be publicly available and posted on the websites of both the department and the division of human rights.

2. The department shall consult with the division of human rights and produce a model [~~sexual harassment~~] **discrimination** prevention training program to prevent [~~sexual harassment~~] **discrimination** in the workplace.

a. Such model [~~sexual harassment prevention~~] training program shall be interactive and include: (i) an explanation of [~~sexual harassment~~] **discrimination** consistent with guidance issued by the department in consultation with the division of human rights; (ii) examples of conduct that would constitute unlawful [~~sexual harassment~~] **discrimination**; (iii) information concerning the federal and state statutory provisions concerning [~~sexual harassment~~] **discrimination** and remedies available to victims of [~~sexual harassment~~] **discrimination**; and (iv) information concerning employees' rights of redress and all available forums for adjudicating complaints.

b. The department shall include information in such model [~~sexual harassment prevention~~] training program addressing conduct by supervisors and any additional responsibilities for such supervisors.

c. Every employer shall utilize [~~the~~] **such** model [~~sexual harassment prevention~~] training program pursuant to this subdivision or establish a training program for employees to prevent [~~sexual harassment~~] **discrimination** that equals or exceeds the minimum standards provided by such model training. Such [~~sexual harassment prevention~~] training **program** shall be provided to all employees on an annual basis.

3. The commissioner may promulgate regulations as he or she deems necessary for the purposes of carrying out the provisions of this section.

§ 8. Section 2 of subpart E of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the department of labor, in consultation with the division of human rights, is authorized to create the model [~~sexual harassment prevention~~] policy and the model [~~sexual harassment prevention~~] training program required to be created and published pursuant to section 201-g of the labor law as added by section one of this act.

§ 9. Section 296-d of the executive law, as added by section 1 of subpart F of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

§ 296-d. [~~Sexual harassment~~] **Discrimination** relating to non-employees. It shall be an unlawful discriminatory practice for an employer to permit [~~sexual harassment~~] **discrimination or harassment based on race, color, sex, national origin, creed, sexual orientation, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status** of non-employees in its workplace. An employer may be held liable to a non-employee who is a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace, with respect to [~~sexual harassment~~] **discrimination or harassment based on race, color, sex, national origin, creed, sexual orientation, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status**, when the employer, its agents or supervisors knew or should have known that such non-employee was subjected to [~~sexual harassment~~] **discrimination or harassment based on race, color, sex, national origin, creed, sexual orientation, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status** in the employer's workplace, and the employer failed to take immediate and appropriate corrective action. In reviewing such cases involving non-employees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of the harasser shall be considered.

§ 10. Subdivision 5 of section 292 of the executive law, as amended by chapter 363 of the laws of 2015, is amended 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.

§ 11. Subdivisions 9 and 10 of section 63 of the executive law, subdivision 9 as amended by chapter 359 of the laws of 1969, are amended to read as follows:

9. Bring and prosecute or defend upon request of the [~~industrial~~] commissioner **of labor** or the state division of human rights, any civil action or proceeding, the institution or defense of which in his judgment is necessary for effective enforcement of the laws of this state against discrimination by reason of age, race, **sex,** creed, color [~~or~~]**,** national origin, **sexual orientation, military status, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status,** or for enforcement of any order or

determination of such commissioner or division made pursuant to such laws.

10. Prosecute every person charged with the commission of a criminal offense in violation of any of the laws of this state against discrimination because of **age,** race, **sex,** creed, color, [~~or~~] national origin, **sexual orientation, military status, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status,** in any case where in his judgment, because of the extent of the offense, such prosecution cannot be effectively carried on by the district attorney of the county wherein the offense or a portion thereof is alleged to have been committed, or where in his judgment the district attorney has erroneously failed or refused to prosecute. In all such proceedings, the attorney-general may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.

§ 12. Severability clause. If any clause, sentence, paragraph, subdivision, section or subpart of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or subject thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 13. This act shall take effect immediately; provided, however, that:

a. Section one of this act shall take effect on the same date and in the same manner as subpart A of part KK of chapter 57 of the laws of 2018, takes effect;

b. Section two of this act shall take effect on the same date and in the same manner as subpart B of part KK of chapter 57 of the laws of 2018, takes effect;

c. Sections five and six of this act shall take effect on the same date and in the same manner as subpart D of part KK of chapter 57 of the laws of 2018, takes effect; and

d. Sections seven and eight of this act shall take effect on the same date and in the same manner as subpart E of part KK of chapter 57 of the laws of 2018, takes effect.