

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 Assem-
bly, do enact as follows:

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

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

15 35. The term "sexual harassment" means unwelcome sexual advances,
16 requests for sexual favors, and other verbal or physical conduct of a
17 sexual nature when submission to or rejection of such conduct, explicit-
18 ly or implicitly, affects an individual's employment, unreasonably
19 interferes with an individual's work performance or creates an intim-
20 idating, hostile or offensive work environment without regard to actual
21 economic injury to or discharge of the individual.

22 § 2. The civil practice law and rules is amended by adding a new
23 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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1 § 5003-b. Actions for sexual harassment. With respect to all actions
2 to recover damages for sexual harassment, as defined in subdivision
3 thirty-five of section two hundred ninety-two of the executive law, no
4 court shall accept any settlement, including any confidentiality agree-
5 ment or provision, that provides for the non-disclosure or confidential-
6 ity of the acts constituting the sexual harassment and the admitted
7 perpetrator thereof. For the purposes of this section, every settlement
8 in which one dollar or more is to be paid shall be deemed to be an
9 admission of the act of sexual harassment. Provided, however, subject to
10 the provisions of the domestic relations law, a settlement agreement may
11 include a confidentiality provision only if such provision is approved
12 by the court for good cause in an open proceeding.

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

15 § 398-f. Mandatory arbitration clauses in contracts; prohibited. 1.
16 Definitions. As used in this section:

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

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

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

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

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

44 b. Mandatory arbitration clause null and void. The provisions of such
45 a mandatory arbitration clause shall be null and void. The inclusion of
46 such clause in a written contract shall not serve to impair the enforce-
47 ability of any other provision of such contract.

48 § 4. This act shall take effect on the first of January next succeed-
49 ing the date on which it shall have become a law.