STATE OF NEW YORK

7193

IN SENATE

(Prefiled)

January 3, 2018

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

AN ACT to amend the labor law and the executive law, in relation to establishing sexual harassment prevention protocols within the private sector

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

Section 1. The labor law is amended by adding a new section 44 to read as follows:

§ 44. Prevention of sexual harassment. 1. The department shall produce a strong model management policy statement defining and prohibiting sexual harassment in the workplace. Such model policy shall include recommendations on how employers may provide information and remedies to employees, including but not limited to a statement informing employees of their rights of redress, and the availability of complaint resolution channels and assistance with incidents of sexual harassment. Such model policy statement shall clearly state 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.

2. The department shall produce a model training program to prevent sexual harassment in the workplace.

(a) Such model training program shall include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment.

(b) Such department shall also include information in such model program specifically addressing conduct by supervisors as both participants in a general training program and in a supervisor-specific program to prevent sexual harassment in the workplace.

3. The department may consult with the division of human rights in the production of information set forth under this section.

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

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4. The commissioner shall promulgate regulations allowing for distribution of the availability of the information set forth in this section to employers and the public.

§ 2. Section 296 of the executive law is amended by adding two new subdivisions 1-b and 22 to read as follows:

1-b. It shall be an unlawful discriminatory practice for an employer to:

(a) engage in unwelcome sexual advances towards, make requests for sexual favors from, or engage in other verbal or physical conduct of a sexual or sex-based nature with an employee when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment.

(b) For the purposes of this subdivision, "employer" shall include any individual who may hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or has responsibility to direct them or effectively recommend such action, if the use of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

22. In any case brought pursuant to the provisions of this article on the basis of sex or sexual harassment only, where a person alleges that a covered entity has deprived such person of equal terms and conditions of employment, liability for such alleged unlawful discriminatory act shall attach where the complainant or plaintiff demonstrates that the conduct complained of was motivated in whole or in part by the person's sex, regardless of the level of pervasiveness or severity of the discrimination or harassment. A covered entity may demonstrate as an affirmative defense to liability pursuant to this subdivision that the discrimination or harassment complained of consisted of no greater than what a reasonable victim of discrimination or harassment would consider petty slights and trivial annoyances.

§ 3. 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~~] or, in the case of sexual harassment [~~only,~~] pursuant to subdivision one-b of section two hundred ninety-six of this article, the term "employer" shall include all employers within the state.

§ 4. The executive law is amended by adding a new section 96-b to read as follows:

§ 96-b. Notification of laws on sexual harassment in the workplace. 1. For any entity filing and paying filing fees under subdivision nine of section ninety-six of this article, the department shall respond to an authorized individual on behalf of the entity with notice of state law on sexual harassment in the workplace.

2. Notice provided to filing entities shall include information pursuant to section forty-four of the labor law and subdivision one-b of section two hundred ninety-six of this chapter. The secretary of state shall promulgate regulations to adhere to this section including the nature of the required notice, the timing that such notice shall be

delivered to an authorized individual on behalf of a filing entity, and any additional information to be included in such notice.

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