

# STATE OF NEW YORK

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Cal. No. 225

2019-2020 Regular Sessions

## IN ASSEMBLY

February 22, 2019

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Introduced by M. of A. WRIGHT, PEOPLES-STOKES, BARRON, BICHOTTE, COOK, CRESPO, DE LA ROSA, GALEF, O'DONNELL, ROZIC, SEAWRIGHT, SIMON, TAYLOR, L. ROSENTHAL, HUNTER, GLICK, ARROYO, ORTIZ, NIOU, GOTTFRIED, SIMOTAS, WALLACE, OTIS, BRONSON, WEPRIN, FALL, JAFFEE, STERN, FRONTUS, CRUZ, COLTON, DAVILA, REYES, DINOWITZ, LENTOL -- read once and referred to the Committee on Governmental Operations -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the state finance law, the public officers law, the labor law and the executive law, in relation to discrimination

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

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

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

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

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

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

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§ 2. 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.

§ 3. 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.

§ 4. 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, paragraph b of subdivision 1 as amended and subdivisions 2-a and 4 as added by chapter 160 of the laws of 2019, 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~~] discrimination prevention policy that employers may utilize in their adoption of a [~~sexual harassment~~] discrimination prevention policy required by this section. For the 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, gender identity or expression, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status.

a. Such model [~~sexual harassment~~] 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

1 constitute unlawful [~~sexual harassment~~] discrimination; (ii) include but  
2 not be limited to information concerning the federal and state statutory  
3 provisions concerning [~~sexual harassment~~] discrimination and remedies  
4 available to victims of [~~sexual harassment~~] discrimination and a state-  
5 ment that there may be applicable local laws; (iii) include a standard  
6 complaint form; (iv) include a procedure for the timely and confidential  
7 investigation of complaints and ensure due process for all parties; (v)  
8 inform employees of their rights of redress and all available forums for  
9 adjudicating [~~sexual harassment~~] discrimination complaints administra-  
10 tively and judicially; (vi) clearly state that [~~sexual harassment~~]  
11 discrimination is considered a form of employee misconduct and that  
12 sanctions will be enforced against individuals engaging in [~~sexual~~  
13 ~~harassment~~] discrimination and against supervisory and managerial  
14 personnel who knowingly allow such behavior to continue; and (vii)  
15 clearly state that retaliation against individuals who complain of  
16 [~~sexual harassment~~] discrimination or who testify or assist in any  
17 proceeding under the law is unlawful.

18 b. Every employer shall adopt the model [~~sexual harassment~~] discrimi-  
19 nation prevention policy promulgated pursuant to this subdivision or  
20 establish a [~~sexual harassment~~] discrimination prevention policy to  
21 prevent [~~sexual harassment~~] discrimination that equals or exceeds the  
22 minimum standards provided by such model [~~sexual harassment~~] discrimi-  
23 nation prevention policy. Such [~~sexual harassment~~] discrimination  
24 prevention policy shall be provided to all employees in writing as  
25 required by subdivision two-a of this section. Such model [~~sexual~~  
26 ~~harassment~~] discrimination prevention policy shall be publicly available  
27 and posted on the websites of both the department and the division of  
28 human rights.

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

32 a. Such model [~~sexual harassment~~] discrimination prevention training  
33 program shall be interactive and include: (i) an explanation of [~~sexual~~  
34 ~~harassment~~] discrimination consistent with guidance issued by the  
35 department in consultation with the division of human rights; (ii) exam-  
36 ples of conduct that would constitute unlawful [~~sexual harassment~~]  
37 discrimination; (iii) information concerning the federal and state stat-  
38 utory provisions concerning [~~sexual harassment~~] discrimination and reme-  
39 dies available to victims of [~~sexual harassment~~] discrimination; and  
40 (iv) information concerning employees' rights of redress and all avail-  
41 able forums for adjudicating complaints.

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

46 c. Every employer shall utilize the model [~~sexual harassment~~] discrim-  
47 ination prevention training program pursuant to this subdivision or  
48 establish a training program for employees to prevent [~~sexual harass-~~  
49 ~~ment~~] discrimination that equals or exceeds the minimum standards  
50 provided by such model training. Such [~~sexual harassment~~] discrimination  
51 prevention training shall be provided to all employees on an annual  
52 basis.

53 2-a. a. Every employer shall provide his or her employees, in writing  
54 in English and in the language identified by each employee as the prima-  
55 ry language of such employee, at the time of hiring and at every annual  
56 [~~sexual harassment~~] discrimination prevention training provided pursuant

1 to subdivision two of this section, a notice containing such employer's  
2 [~~sexual harassment~~] discrimination prevention policy and the information  
3 presented at such employer's [~~sexual harassment~~] discrimination  
4 prevention training program.

5 b. The commissioner shall prepare templates of the model [~~sexual~~  
6 ~~harassment~~] discrimination prevention policy created and published  
7 pursuant to subdivision one of this section and the model [~~sexual~~  
8 ~~harassment~~] discrimination prevention training program produced pursuant  
9 to subdivision two of this section. The commissioner shall determine, in  
10 his or her discretion, which languages to provide in addition to  
11 English, based on the size of the New York state population that speaks  
12 each language and any other factor that the commissioner shall deem  
13 relevant. All such templates shall be made available to employers in  
14 such manner as determined by the commissioner.

15 c. When an employee identifies as his or her primary language a  
16 language for which a template is not available from the commissioner,  
17 the employer shall comply with this subdivision by providing that  
18 employee an English-language notice.

19 d. An employer shall not be penalized for errors or omissions in the  
20 non-English portions of any notice provided by the commissioner.

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

24 4. Beginning in the year two thousand twenty-two, and every succeeding  
25 four years thereafter, the department in consultation with the division  
26 of human rights shall evaluate, using the criteria within this section,  
27 the impact of the current model [~~sexual harassment~~] discrimination  
28 prevention guidance document and [~~sexual harassment~~] discrimination  
29 prevention policy. Upon the completion of each evaluation the department  
30 shall update the model [~~sexual harassment~~] discrimination prevention  
31 guidance document and [~~sexual harassment~~] discrimination prevention  
32 policy as needed.

33 § 5. Section 296-d of the executive law, as amended by chapter 160 of  
34 the laws of 2019, is amended to read as follows:

35 § 296-d. Unlawful discriminatory practices relating to non-employees.  
36 It shall be an unlawful discriminatory practice for an employer to  
37 permit unlawful discrimination or harassment based on race, color, sex,  
38 national origin, creed, sexual orientation, gender identity or  
39 expression, age, disability, military status, familial status, marital  
40 status, predisposing genetic characteristics, or domestic violence  
41 victim status against non-employees in its workplace. An employer may  
42 be held liable to a non-employee who is a contractor, subcontractor,  
43 vendor, consultant or other person providing services pursuant to a  
44 contract in the workplace or who is an employee of such contractor,  
45 subcontractor, vendor, consultant or other person providing services  
46 pursuant to a contract in the workplace, with respect to an unlawful  
47 discriminatory practice or harassment based on race, color, sex,  
48 national origin, creed, sexual orientation, gender identity or  
49 expression, age, disability, military status, familial status, marital  
50 status, predisposing genetic characteristics, or domestic violence  
51 victim status, when the employer, its agents or supervisors knew or  
52 should have known that such non-employee was subjected to an unlawful  
53 discriminatory practice or harassment based on race, color, sex,  
54 national origin, creed, sexual orientation, gender identity or  
55 expression, age, disability, military status, familial status, marital  
56 status, predisposing genetic characteristics, or domestic violence

1 victim status in the employer's workplace, and the employer failed to  
2 take immediate and appropriate corrective action. In reviewing such  
3 cases involving non-employees, the extent of the employer's control and  
4 any other legal responsibility which the employer may have with respect  
5 to the conduct of the person who engaged in the unlawful discriminatory  
6 practice shall be considered.

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

16 § 7. This act shall take effect immediately; provided however:

17 (a) section one of this act shall take effect on the first of January  
18 next succeeding the date on which it shall have become a law; and

19 (b) section four of this act shall take effect on the one hundred  
20 eightieth day after it shall have become a law.

21 (c) Effective immediately, the addition, amendment and/or repeal of  
22 any rule or regulation necessary for the implementation of this act on  
23 its effective date are authorized to be made and completed on or before  
24 such effective date.