

# STATE OF NEW YORK

S. 1915

A. 1890

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

January 17, 2019

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

IN ASSEMBLY -- 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 -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, the civil practice law and rules, the public officers law, the general obligations law, the labor law and the executive 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:

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

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

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1 party thereto certifies as to its own organization, under penalty of  
2 perjury, that the bidder has and has implemented a written policy  
3 addressing [~~sexual harassment~~] discrimination prevention in the work-  
4 place and provides annual [~~sexual harassment~~] discrimination prevention  
5 training to all of its employees. Such policy shall, at a minimum, meet  
6 the requirements of section two hundred one-g of the labor law."

7 § 2. Paragraphs 2 and 3 of subsection (a) of section 7515 of the civil  
8 practice law and rules, as added by section 1 of subpart B of part KK of  
9 chapter 57 of the laws of 2018, are amended to read as follows:

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

17 3. The term "mandatory arbitration clause" shall mean a term or  
18 provision contained in a written contract which requires the parties to  
19 such contract to submit any matter thereafter arising under such  
20 contract to arbitration prior to the commencement of any legal action to  
21 enforce the provisions of such contract and which also further provides  
22 language to the effect that the facts found or determination made by the  
23 arbitrator or panel of arbitrators in its application to a party alleg-  
24 ing [~~an unlawful discriminatory practice based on sexual harassment~~] discrimination, in violation of laws prohibiting discrimination, includ-  
25 ing but not limited to, article fifteen of the executive law shall be  
26 final and not subject to independent court review.

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

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

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

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

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

50 2. Notwithstanding any law to the contrary, any employee who has been  
51 subject to a final judgment of personal liability for intentional wrong-  
52 doing related to a claim of [~~sexual harassment~~] discrimination, in  
53 violation of laws prohibiting discrimination, including but not limited  
54 to, article fifteen of the executive law, shall reimburse any public  
55 entity that makes a payment to a plaintiff for an adjudicated award  
56

1 based on a claim of [~~sexual harassment~~] discrimination, in violation of  
2 laws prohibiting discrimination, including but not limited to, article  
3 fifteen of the executive law resulting in a judgment, for his or her  
4 proportionate share of such judgment. Such employee shall personally  
5 reimburse such public entity within ninety days of the public entity's  
6 payment of such award.

7 § 5. Section 5-336 of the general obligations law, as added by section  
8 1 of subpart D of part KK of chapter 57 of the laws of 2018, is amended  
9 to read as follows:

10 § 5-336. Nondisclosure agreements. Notwithstanding any other law to  
11 the contrary, no employer, its officers or employees shall have the  
12 authority to include or agree to include in any settlement, agreement or  
13 other resolution of any claim, the factual foundation for which involves  
14 [~~sexual harassment~~] discrimination, in violation of laws prohibiting  
15 discrimination, including but not limited to, article fifteen of the  
16 executive law, any term or condition that would prevent the disclosure  
17 of the underlying facts and circumstances to the claim or action unless  
18 the condition of confidentiality is the complainant's preference. Any  
19 such term or condition must be provided to all parties, and the  
20 complainant shall have twenty-one days to consider such term or condi-  
21 tion. If after twenty-one days such term or condition is the  
22 complainant's preference, such preference shall be memorialized in an  
23 agreement signed by all parties. For a period of at least seven days  
24 following the execution of such agreement, the complainant may revoke  
25 the agreement, and the agreement shall not become effective or be  
26 enforceable until such revocation period has expired.

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

30 § 5003-b. Nondisclosure agreements. Notwithstanding any other law to  
31 the contrary, for any claim or cause of action, whether arising under  
32 common law, equity, or any provision of law, the factual foundation for  
33 which involves [~~sexual harassment~~] discrimination, in violation of laws  
34 prohibiting discrimination, including but not limited to, article  
35 fifteen of the executive law, in resolving, by agreed judgment, stipu-  
36 lation, decree, agreement to settle, assurance of discontinuance or  
37 otherwise, no employer, its officer or employee shall have the authority  
38 to include or agree to include in such resolution any term or condition  
39 that would prevent the disclosure of the underlying facts and circum-  
40 stances to the claim or action unless the condition of confidentiality  
41 is the plaintiff's preference. Any such term or condition must be  
42 provided to all parties, and the plaintiff shall have twenty-one days to  
43 consider such term or condition. If after twenty-one days such term or  
44 condition is the plaintiff's preference, such preference shall be memo-  
45 rialized in an agreement signed by all parties. For a period of at least  
46 seven days following the execution of such agreement, the plaintiff may  
47 revoke the agreement, and the agreement shall not become effective or be  
48 enforceable until such revocation period has expired.

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

52 § 201-g. Prevention of [~~sexual harassment~~] discrimination. 1. The  
53 department shall consult with the division of human rights to create and  
54 publish a model [~~sexual harassment~~] discrimination prevention guidance  
55 document and [~~sexual harassment prevention~~] discrimination prevention  
56 policy that employers may utilize in their adoption of [~~a sexual harass-~~

~~ment-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~~] discrimi-

1 nation that equals or exceeds the minimum standards provided by such  
2 model training. Such [~~sexual harassment prevention~~] training program  
3 shall be provided to all employees on an annual basis.

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

7 § 8. Section 2 of subpart E of part KK of chapter 57 of the laws of  
8 2018, amending the labor law, relating to the establishment of a model  
9 policy regarding the prevention of sexual harassment and a model train-  
10 ing program to prevent sexual harassment in the workplace, is amended to  
11 read as follows:

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

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

22 § 296-d. [~~Sexual harassment~~] Discrimination relating to non-employees.  
23 It shall be an unlawful discriminatory practice for an employer to  
24 permit [~~sexual harassment~~] discrimination or harassment based on race,  
25 color, sex, national origin, creed, sexual orientation, age, disability,  
26 military status, familial status, marital status, predisposing genetic  
27 characteristics, or domestic violence victim status of non-employees in  
28 its workplace. An employer may be held liable to a non-employee who is  
29 a contractor, subcontractor, vendor, consultant or other person provid-  
30 ing services pursuant to a contract in the workplace or who is an  
31 employee of such contractor, subcontractor, vendor, consultant or other  
32 person providing services pursuant to a contract in the workplace, with  
33 respect to [~~sexual harassment~~] discrimination or harassment based on  
34 race, color, sex, national origin, creed, sexual orientation, age, disa-  
35 bility, military status, familial status, marital status, predisposing  
36 genetic characteristics, or domestic violence victim status, when the  
37 employer, its agents or supervisors knew or should have known that such  
38 non-employee was subjected to [~~sexual harassment~~] discrimination or  
39 harassment based on race, color, sex, national origin, creed, sexual  
40 orientation, age, disability, military status, familial status, marital  
41 status, predisposing genetic characteristics, or domestic violence  
42 victim status in the employer's workplace, and the employer failed to  
43 take immediate and appropriate corrective action. In reviewing such  
44 cases involving non-employees, the extent of the employer's control and  
45 any other legal responsibility which the employer may have with respect  
46 to the conduct of the harasser shall be considered.

47 § 10. Subdivision 5 of section 292 of the executive law, as amended by  
48 chapter 363 of the laws of 2015, is amended to read as follows:

49 5. The term "employer" [~~does not include any employer with fewer than~~  
50 ~~four persons in his or her employ except as set forth in section two~~  
51 ~~hundred ninety six b of this article, provided, however, that in the~~  
52 ~~case of an action for discrimination based on sex pursuant to subdivi-~~  
53 ~~sion one of section two hundred ninety six of this article, with respect~~  
54 ~~to sexual harassment only, the term "employer"~~] shall include all  
55 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.