

# STATE OF NEW YORK

3377

2019-2020 Regular Sessions

## IN SENATE

February 6, 2019

Introduced by Sens. GOUNARDES, KRUEGER, BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, in relation to unlawful discriminatory practices involving sexual harassment

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

1 Section 1. Section 296 of the executive law is amended by adding  
2 three new subdivisions 1-b, 22 and 23 to read as follows:

3 1-b. It shall be an unlawful discriminatory practice for an employer  
4 to:

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

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

20 22. In any case brought pursuant to the provisions of this article on  
21 the basis of sex or sexual harassment only, where a person alleges that  
22 a covered entity has deprived such person of equal terms and conditions  
23 of employment, liability for such alleged unlawful discriminatory act  
24 shall attach where the complainant or plaintiff demonstrates that the

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

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1 conduct complained of was motivated in whole or in part by the person's  
2 sex, regardless of the level of pervasiveness or severity of the  
3 discrimination or harassment. A covered entity may demonstrate as an  
4 affirmative defense to liability pursuant to this subdivision that the  
5 discrimination or harassment complained of consisted of no greater than  
6 what a reasonable victim of discrimination or harassment would consider  
7 petty slights and trivial annoyances.

8 23. In any case brought pursuant to the provisions of this article on  
9 the basis of sex or sexual harassment only, it shall not be defense or a  
10 partial defense that the employee failed to complain about, or utilize  
11 any particular complaint procedure to complain about, such unlawful  
12 discriminatory act or acts when the person to whom the employee would or  
13 would be required to complain is the person whose conduct is the subject  
14 of the complaint.

15 § 2. Subdivision 5 of section 292 of the executive law, as amended by  
16 chapter 363 of the laws of 2015, is amended to read as follows:

17 5. The term "employer" does not include any employer with fewer than  
18 four persons in his or her employ except as set forth in section two  
19 hundred ninety-six-b of this article, provided, however, that in the  
20 case of an action for discrimination based on sex pursuant to subdivi-  
21 sion one of section two hundred ninety-six of this article [~~with~~  
22 ~~respect to~~] or, in the case of sexual harassment [~~only~~,] pursuant to  
23 subdivision one-b of section two hundred ninety-six of this article, the  
24 term "employer" shall include all employers within the state.

25 § 3. The division of human rights shall be authorized to promulgate,  
26 amend or repeal rules or regulations on an emergency basis to implement  
27 the provisions of this act.

28 § 4. This act shall take effect immediately.