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:

Section 1. Section 296 of the executive law is amended by adding three new subdivisions 1-b, 22 and 23 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

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

LBD06473-02-9

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.

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

§ 2. 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.

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

§ 4. This act shall take effect immediately.