STATE OF NEW YORK

6594

2019-2020 Regular Sessions

IN SENATE

June 17, 2019

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

AN ACT to amend the executive law, in relation to increased protections for protected classes and special protections for employees who have been sexually harassed; and to amend a chapter of the laws of 2019, amending the executive law relating to increased protections for protected classes and special protections for employees who have been sexually harassed, as proposed in legislative bills numbers A. 8421 and S. 6577, in relation to the effectiveness thereof

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

Section 1. Subdivision 5 of section 292 of the executive law, as amended by a chapter of the laws of 2019 amending the executive law and other laws relating to increased protections for protected classes and special protections for employees who have been sexually harassed, as proposed in legislative bills numbers S. 6577 and A. 8421, is amended to read as follows:

5. The term "employer" shall include all employers within the state[~~, including the state and all political subdivisions thereof~~].

§ 2. Paragraph (h) of subdivision 1 of section 296 of the executive law, as added by a chapter of the laws of 2019 amending the executive law and other laws relating to increased protections for protected classes and special protections for employees who have been sexually harassed, as proposed in legislative bills numbers S. 6577 and A. 8421, is amended to read as follows:

(h) For an employer, licensing agency, employment agency or labor organization to subject any individual to harassment because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, or because the individual has opposed any

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

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practices forbidden under this article or because the individual has filed a complaint, testified or assisted in any proceeding under this article, regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims. Such harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions or privileges of employment because of the individual's membership in one or more of these protected categories. The fact that such individual did not make a complaint about the harassment to such employer, licensing agency, employment agency or labor organization shall not be determinative of whether such employer, licensing agency, employment agency or labor organization shall be liable. Nothing in this section shall imply that an employee must demonstrate the existence of an individual to whom the employee's treatment must be compared. It shall be an affirmative defense to liability under this subdivision that the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic **or characteristics** would consider petty slights or trivial inconveniences.

§ 3. Subdivision 10 of section 297 of the executive law, as amended by a chapter of the laws of 2019 amending the executive law and other laws relating to increased protections for protected classes and special protections for employees who have been sexually harassed, as proposed in legislative bills numbers S. 6577 and A. 8421, is amended to read as follows:

10. With respect to all cases of housing discrimination and housing related credit discrimination in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing or substantially prevailing party; and with respect to a claim of credit discrimination where sex is a basis of such discrimination, and with respect to all claims of employment discrimination in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court [~~shall~~] **may in its discretion** award reasonable attorney's fees attributable to such claim to any prevailing party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous; and further provided that in a proceeding brought in the division of human rights, the commissioner may only award attorney's fees as part of a final order after a public hearing held pursuant to subdivision four of this section. In no case shall attorney's fees be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorney's fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer. In cases of employment discrimination, a respondent shall only be liable for attorney's fees under this subdivision if the respondent has been found liable for having committed an unlawful discriminatory practice. In order to find the action or proceeding to be frivolous, the court or the commissioner must find in writing one or more of the following:

(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

(b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith

argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

§ 4. Subdivision (d) of section 16 of a chapter of the laws of 2019, amending the executive law relating to increased protections for protected classes and special protections for employees who have been sexually harassed, as proposed in legislative bills numbers A. 8421 and S. 6577, is amended to read as follows:

(d) Sections one, one-a, two, three, four, five, six and thirteen shall only apply to claims [~~filed~~] **accrued** under such sections on or after the effective date of such sections.

§ 5. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2019 amending the executive law and other laws relating to increased protections for protected classes and special protections for employees who have been sexually harassed, as proposed in legislative bills numbers S. 6577 and A. 8421, takes effect.