

STATE OF NEW YORK

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IN ASSEMBLY

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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 -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the state finance law, the public officers law, and the labor 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

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

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1 training to all of its employees. Such policy shall, at a minimum, meet
2 the requirements of section two hundred one-g of the labor law."

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

6 Reimbursement of funds paid by state agencies and state entities for
7 the payment of awards adjudicated in [~~sexual harassment~~] discrimination
8 claims.

9 2. Notwithstanding any law to the contrary, any employee who has been
10 subject to a final judgment of personal liability for intentional wrong-
11 doing related to a claim of [~~sexual harassment~~] discrimination, in
12 violation of laws prohibiting discrimination, including but not limited
13 to, article fifteen of the executive law, shall reimburse any state
14 agency or entity that makes a payment to a plaintiff for an adjudicated
15 award based on a claim of [~~sexual harassment~~] discrimination, in
16 violation of laws prohibiting discrimination, including but not limited
17 to, article fifteen of the executive law resulting in a judgment, for
18 his or her proportionate share of such judgment. Such employee shall
19 personally reimburse such state agency or entity within ninety days of
20 the state agency or entity's payment of such award.

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

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

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

38 § 4. Section 201-g of the labor law, as added by section 1 of subpart
39 E of part KK of chapter 57 of the laws of 2018, paragraph b of subdivi-
40 sion 1 as amended and subdivisions 2-a and 4 as added by chapter 160 of
41 the laws of 2019, is amended to read as follows:

42 § 201-g. Prevention of [~~sexual harassment~~] discrimination. 1. The
43 department shall consult with the division of human rights to create and
44 publish a model [~~sexual harassment~~] discrimination prevention guidance
45 document and [~~sexual harassment~~] discrimination prevention policy that
46 employers may utilize in their adoption of a [~~sexual harassment~~]
47 discrimination prevention policy required by this section. For the
48 purposes of this section, "discrimination" shall mean unlawful discrimi-
49 natory practice, as defined in section two hundred ninety-six of the
50 executive law and/or discrimination or harassment based on race, color,
51 sex, national origin, creed, sexual orientation, gender identity or
52 expression, age, disability, military status, familial status, marital
53 status, predisposing genetic characteristics, or domestic violence
54 victim status.

55 a. Such model [~~sexual harassment~~] discrimination prevention policy
56 shall: (i) prohibit [~~sexual harassment~~] discrimination consistent with

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

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

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

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

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

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

55 2-a. a. Every employer shall provide his or her employees, in writing
56 in English and in the language identified by each employee as the prima-

ry language of such employee, at the time of hiring and at every annual [~~sexual harassment~~] discrimination prevention training provided pursuant to subdivision two of this section, a notice containing such employer's [~~sexual harassment~~] discrimination prevention policy and the information presented at such employer's [~~sexual harassment~~] discrimination prevention training program.

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

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

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

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

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

§ 5. 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.

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

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

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

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