

STATE OF NEW YORK

630--A

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. ROZIC, SIMON -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to requiring employers to annually report to the division of human rights the number of settlements with employees and other individuals performing services in the workplace regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment; providing for legal remedies for violations of the reporting requirement; requiring the division of human rights to provide an annual report to the governor and the legislature; and to make conforming technical changes

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

1 Section 1. Sections 300 and 301 of the executive law are renumbered
2 sections 308 and 309.

3 § 2. The executive law is amended by adding a new section 300 to read
4 as follows:

5 § 300. Reporting of workplace sexual harassment claims. 1. Each
6 employer subject to the provisions of this article shall annually report
7 to the division the total number of settlements reached with employees
8 and non-employees regarding the resolution of claims of discrimination
9 on the basis of sex, including verbal and physical sexual harassment.

10 2. Settlements required to be reported under this section shall
11 include any agreement or arrangement where anything of value is
12 conferred to the individual raising the claim in return for such indi-
13 vidual declining to further pursue the claim, and any internal mediation
14 or other workplace resolution that results in the individual declining
15 to further pursue the claim.

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

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1 3. Claims of discrimination on the basis of sex include, but are not
2 limited to, claims of the following:

3 (a) inappropriate or unwanted touching;

4 (b) verbal comments about sex or of a sexual nature, which may include
5 comments to an individual about the individual's body or sexual or
6 romantic activity or the body or sexual or romantic activity of the
7 individual making the comments;

8 (c) referring to another individual by a name or nickname of a roman-
9 tic, demeaning, or sexual nature;

10 (d) inappropriate gestures of a sexual nature;

11 (e) unwanted proposals for sexual activity;

12 (f) showing another individual photos or other images that are sexual-
13 ly explicit or are otherwise of a sexual nature; and

14 (g) undue attention to or questions about a person's sexual relation-
15 ships, sexual history, sexual orientation, or gender identity.

16 4. Reports required to be submitted pursuant to this section shall be
17 on forms and according to such procedures as the division shall estab-
18 lish.

19 5. (a) It shall be an unlawful discriminatory practice for any person
20 engaged in any activity to which this section applies to retaliate or
21 discriminate against an individual because the individual has:

22 (1) inquired about an employer's compliance with the provisions of
23 this section;

24 (2) complained about an employer's lack of compliance with the
25 provisions of this section; or

26 (3) reported an employer's lack of compliance with the provisions of
27 this section to the division or to another agency, including law
28 enforcement agencies.

29 (b) In addition to civil rights protections and remedies for retali-
30 ation available under this article, any employer who violates the
31 provisions of paragraph (a) of this subdivision shall be liable to any
32 affected employee or non-employee for:

33 (1) damages equal to the amount of any wages, salary, employment bene-
34 fits, or other compensation denied to or lost by such employee by reason
35 of the violation;

36 (2) the interest on the amount described in subparagraph one of this
37 paragraph calculated at the applicable Internal Revenue Service (IRS)
38 quarterly interest rates used to compute back pay;

39 (3) an additional amount as liquidated damages equal to the sum of the
40 amount described in subparagraph one and the interest described in
41 subparagraph two of this paragraph; and

42 (4) such equitable relief as may be appropriate, including but not
43 limited to, employment, reinstatement and promotion.

44 (c) An action to recover the damages or equitable relief prescribed in
45 paragraph (b) of this subdivision may be maintained against any employer
46 in any federal or state court of competent jurisdiction by any one or
47 more employees for and on behalf of:

48 (1) the affected employee or employees; or

49 (2) the affected employee or employees and other employees similarly
50 situated.

51 (d) The court in such an action shall, in addition to any judgment
52 awarded to the plaintiff, allow reasonable attorneys' fees, reasonable
53 expert witness fees, and other costs of the action to be paid by the
54 defendant.

55 6. (a) Nothing in this section shall be construed to interfere with
56 the right of an employee or non-employee to enter into a confidentiality

1 or non-disclosure agreement with his or her employer with respect to a
2 claim of discrimination on the basis of sex, including verbal and phys-
3 ical sexual harassment, the investigation of such a claim, or the out-
4 of-court settlement of such a claim.

5 (b) An employer may not use a confidentiality or non-disclosure agree-
6 ment described in paragraph (a) of this subdivision as a basis for fail-
7 ing or refusing to submit to the division the information required by
8 subdivisions one and two of this section.

9 (c) A confidentiality or non-disclosure agreement as described in
10 paragraph (a) of this subdivision shall not be construed as prohibiting
11 any party to such agreement from cooperating with law enforcement inves-
12 tigations into any claims of discrimination on the basis of sex, includ-
13 ing verbal and physical sexual harassment.

14 7. As used in this section:

15 (a) "employer" includes all employers within the state; and

16 (b) "non-employee" means a person other than an employee who provides
17 services pursuant to a contract or other agreement in the workplace,
18 including but not limited to, a vendor, consultant, free-lancer or
19 employee of a temporary or staffing agency.

20 § 3. Section 295 of the executive law is amended by adding a new
21 subdivision 17 to read as follows:

22 17. Annually, on or before April first, the division shall submit to
23 the governor and to the legislature, and shall make available to the
24 public on its website, a report containing the following information
25 relating to claims of discrimination on the basis of sex, including
26 verbal and physical sexual harassment:

27 (a) the number of settlements that were reported to the division as
28 defined by and reported pursuant to this section;

29 (b) the number of charges alleging discrimination on the basis of sex
30 that were reported to the division, from any source, including verbal
31 and physical sexual harassment made directly to the division; and

32 (c) a summary of any action taken by the division based upon any such
33 charges or complaints collected pursuant to this section, such as liti-
34 gation or settlements facilitated by the division pertaining to discrim-
35 ination on the basis of sex, including verbal and physical sexual
36 harassment, including a brief description of any outcome of such
37 actions.

38 § 4. This act shall take effect on the first of January next succeed-
39 ing the date upon which it shall have become a law. Effective immediate-
40 ly the addition, amendment and/or repeal of any rule or regulation
41 necessary for the implementation of this act on its effective date are
42 authorized to be made and completed on or before such date.