

# STATE OF NEW YORK

3941

2019-2020 Regular Sessions

## IN SENATE

February 21, 2019

Introduced by Sens. KRUEGER, BENJAMIN, GOUNARDES, LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the executive law, in relation to establishing sexual harassment prevention protocols within the private sector

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

1 Section 1. The labor law is amended by adding a new section 44 to  
2 read as follows:

3 § 44. Prevention of sexual harassment. 1. The department shall produce  
4 a strong model management policy statement defining and prohibiting  
5 sexual harassment in the workplace. Such model policy shall include  
6 recommendations on how employers may provide information and remedies to  
7 employees, including but not limited to a statement informing employees  
8 of their rights of redress, and the availability of complaint resolution  
9 channels and assistance with incidents of sexual harassment. Such model  
10 policy statement shall clearly state that sexual harassment is consid-  
11 ered a form of employee misconduct and that sanctions will be enforced  
12 against individuals engaging in sexual harassment and against superviso-  
13 ry and managerial personnel who knowingly allow such behavior to contin-  
14 ue.

15 2. The department shall produce a model training program to prevent  
16 sexual harassment in the workplace.

17 (a) Such model training program shall include information concerning  
18 the federal and state statutory provisions concerning sexual harassment  
19 and remedies available to victims of sexual harassment.

20 (b) Such department shall also include information in such model  
21 program specifically addressing conduct by supervisors as both partic-  
22 ipants in a general training program and in a supervisor-specific  
23 program to prevent sexual harassment in the workplace.

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

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1 3. The department may consult with the division of human rights in the  
2 production of information set forth under this section.

3 4. The commissioner shall promulgate regulations allowing for distrib-  
4 ution of the availability of the information set forth in this section  
5 to employers and the public.

6 § 2. Section 296 of the executive law is amended by adding two new  
7 subdivisions 1-b and 22 to read as follows:

8 1-b. It shall be an unlawful discriminatory practice for an employer  
9 to:

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

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

25 22. In any case brought pursuant to the provisions of this article on  
26 the basis of sex or sexual harassment only, where a person alleges that  
27 a covered entity has deprived such person of equal terms and conditions  
28 of employment, liability for such alleged unlawful discriminatory act  
29 shall attach where the complainant or plaintiff demonstrates that the  
30 conduct complained of was motivated in whole or in part by the person's  
31 sex, regardless of the level of pervasiveness or severity of the  
32 discrimination or harassment. A covered entity may demonstrate as an  
33 affirmative defense to liability pursuant to this subdivision that the  
34 discrimination or harassment complained of consisted of no greater than  
35 what a reasonable victim of discrimination or harassment would consider  
36 petty slights and trivial annoyances.

37 § 3. Subdivision 5 of section 292 of the executive law, as amended by  
38 chapter 363 of the laws of 2015, is amended to read as follows:

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

47 § 4. The executive law is amended by adding a new section 96-b to read  
48 as follows:

49 § 96-b. Notification of laws on sexual harassment in the workplace. 1.  
50 For any entity filing and paying filing fees under subdivision nine of  
51 section ninety-six of this article, the department shall respond to an  
52 authorized individual on behalf of the entity with notice of state law  
53 on sexual harassment in the workplace.

54 2. Notice provided to filing entities shall include information pursu-  
55 ant to section forty-four of the labor law and subdivision one-b of  
56 section two hundred ninety-six of this chapter. The secretary of state

1 shall promulgate regulations to adhere to this section including the  
2 nature of the required notice, the timing that such notice shall be  
3 delivered to an authorized individual on behalf of a filing entity, and  
4 any additional information to be included in such notice.

5 § 5. This act shall take effect on the one hundred eightieth day after  
6 it shall have become a law.