

# STATE OF NEW YORK

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4109

2019-2020 Regular Sessions

## IN SENATE

February 28, 2019

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Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the state finance law, the civil practice law and rules, the public officers law, the general obligations law, the labor law and the executive 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  
18 training to all of its employees. Such policy shall, at a minimum, meet  
19 the requirements of section two hundred one-g of the labor law."

20 § 2. Paragraphs 2 and 3 of subdivision (a) of section 7515 of the  
21 civil practice law and rules, as added by section 1 of subpart B of part  
22 KK of chapter 57 of the laws of 2018, are amended to read as follows:

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

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2. The term "prohibited clause" shall mean any clause or provision in any contract which requires as a condition of the enforcement of the contract or obtaining remedies under the contract that the parties submit to mandatory arbitration to resolve any allegation or claim of ~~[an unlawful discriminatory practice of sexual harassment]~~ discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law.

3. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract which requires the parties to such contract to submit any matter thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the facts found or determination made by the arbitrator or panel of arbitrators in its application to a party alleging ~~[an unlawful discriminatory practice based on sexual harassment]~~ discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law shall be final and not subject to independent court review.

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

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

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

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

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

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

§ 5. Section 5-336 of the general obligations law, as added by section 1 of subpart D of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

§ 5-336. Nondisclosure agreements. Notwithstanding any other law to the contrary, no employer, its officers or employees shall have the authority to include or agree to include in any settlement, agreement or other resolution of any claim, the factual foundation for which involves ~~[sexual harassment]~~ discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law, any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant's preference. Any such term or condition must be provided to all parties, and the complainant shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the complainant's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the complainant may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

§ 6. Section 5003-b of the civil practice law and rules, as added by section 2 of subpart D of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

§ 5003-b. Nondisclosure agreements. Notwithstanding any other law to the contrary, for any claim or cause of action, whether arising under common law, equity, or any provision of law, the factual foundation for which involves ~~[sexual harassment]~~ discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, no employer, its officer or employee shall have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the plaintiff's preference. Any such term or condition must be provided to all parties, and the plaintiff shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the plaintiff's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the plaintiff may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

§ 7. Section 201-g of the labor law, as added by section 1 of subpart E of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

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

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

1 with guidance issued by the department in consultation with the division  
2 of 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 prevention~~]  
25 policy. Such [~~sexual harassment prevention~~] policy shall be provided to  
26 all employees in writing. Such model [~~sexual harassment prevention~~]  
27 policy shall be publicly available and posted on the websites of both  
28 the department and the division of human rights.

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

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

42 b. The department shall include information in such model [~~sexual~~  
43 ~~harassment prevention~~] training program addressing conduct by supervi-  
44 sors and any additional responsibilities for such supervisors.

45 c. Every employer shall utilize [~~the~~] such model [~~sexual harassment~~  
46 ~~prevention~~] training program pursuant to this subdivision or establish a  
47 training program for employees to prevent [~~sexual harassment~~] discrimi-  
48 nation that equals or exceeds the minimum standards provided by such  
49 model training. Such [~~sexual harassment prevention~~] training program  
50 shall be provided to all employees on an annual basis.

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

54 § 8. Section 296-d of the executive law, as added by section 1 of  
55 subpart F of part KK of chapter 57 of the laws of 2018, is amended to  
56 read as follows:

§ 296-d. [~~Sexual harassment~~] Discrimination relating to non-employees. It shall be an unlawful discriminatory practice for an employer to permit [~~sexual harassment~~] discrimination or harassment based on race, color, sex, national origin, creed, sexual orientation, gender identity or expression, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status of non-employees in its workplace. An employer may be held liable to a non-employee who is a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace, with respect to [~~sexual harassment~~] discrimination or harassment based on race, color, sex, national origin, creed, sexual orientation, gender identity or expression, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status, when the employer, its agents or supervisors knew or should have known that such non-employee was subjected to [~~sexual harassment~~] discrimination or harassment based on race, color, sex, national origin, creed, sexual orientation, gender identity or expression, age, disability, military status, familial status, marital status, predisposing genetic characteristics, or domestic violence victim status in the employer's workplace, and the employer failed to take immediate and appropriate corrective action. In reviewing such cases involving non-employees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of the harasser shall be considered.

§ 9. 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 sexual harassment only, the term "employer"~~] shall include all employers within the state.

§ 10. Subdivisions 9 and 10 of section 63 of the executive law, subdivision 9 as amended by chapter 359 of the laws of 1969, are amended to read as follows:

9. Bring and prosecute or defend upon request of the [~~industrial~~] commissioner of labor or the state division of human rights, any civil action or proceeding, the institution or defense of which in his judgment is necessary for effective enforcement of the laws of this state against discrimination by reason of age, race, sex, creed, color [~~or~~], national origin, sexual orientation, gender identity or expression, military status, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, or for enforcement of any order or determination of such commissioner or division made pursuant to such laws.

10. Prosecute every person charged with the commission of a criminal offense in violation of any of the laws of this state against discrimination because of age, race, sex, creed, color, [~~or~~] national origin, sexual orientation, gender identity or expression, military status, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, in any case where in his judgment, because of the extent of the offense, such prosecution cannot

1 be effectively carried on by the district attorney of the county wherein  
2 the offense or a portion thereof is alleged to have been committed, or  
3 where in his judgment the district attorney has erroneously failed or  
4 refused to prosecute. In all such proceedings, the attorney-general may  
5 appear in person or by his deputy or assistant before any court or any  
6 grand jury and exercise all the powers and perform all the duties in  
7 respect of such actions or proceedings which the district attorney would  
8 otherwise be authorized or required to exercise or perform.

9 § 11. Severability clause. If any clause, sentence, paragraph, subdi-  
10 vision, section or subpart of this act shall be adjudged by any court of  
11 competent jurisdiction to be invalid, such judgment shall not affect,  
12 impair, or invalidate the remainder thereof, but shall be confined in  
13 its operation to the clause, sentence, paragraph, subdivision, section  
14 or subject thereof directly involved in the controversy in which such  
15 judgment shall have been rendered. It is hereby declared to be the  
16 intent of the legislature that this act would have been enacted even if  
17 such invalid provisions had not been included herein.

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

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

21 (b) sections two, five, and six of this act shall take effect on the  
22 ninetieth day after they shall have become a law; and

23 (c) section seven of this act shall take effect on the one hundred  
24 eightieth day after it shall have become a law.

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