STATE OF NEW YORK

357

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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

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:

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

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

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

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

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

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

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(a) inappropriate or unwanted touching;

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

(c) referring to another individual by a name or nickname of a romantic, demeaning, or sexual nature;

(d) inappropriate gestures of a sexual nature;

(e) unwanted proposals for sexual activity;

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

(g) undue attention to or questions about a person's sexual relationships, sexual history, sexual orientation, or gender identity.

4. Reports required to be submitted pursuant to this section shall be on forms and according to such procedures as the division shall establish.

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

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

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

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

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

(1) damages equal to the amount of any wages, salary, employment benefits, or other compensation denied to or lost by such employee by reason of the violation;

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

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

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

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

(1) the affected employee or employees; or

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

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

6. (a) Nothing in this section shall be construed to interfere with the right of an employee or non-employee to enter into a confidentiality or non-disclosure agreement with his or her employer with respect to a claim of discrimination on the basis of sex, including verbal and phys-

ical sexual harassment, the investigation of such a claim, or the out-of-court settlement of such a claim.

(b) An employer may not use a confidentiality or non-disclosure agreement described in paragraph (a) of this subdivision as a basis for failing or refusing to submit to the division the information required by subdivisions one and two of this section.

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

7. As used in this section:

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

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

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

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

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

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

(c) a summary of any action taken by the division based upon any such charges or complaints collected pursuant to this section, such as litigation or settlements facilitated by the division pertaining to discrimination on the basis of sex, including verbal and physical sexual harassment, including a brief description of any outcome of such actions.

§ 4. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law. 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 on or before such date.