STATE OF NEW YORK

3632

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. ENGLEBRIGHT, COLTON, GUNTHER, L. ROSENTHAL, J. RIVERA, PRETLOW, WEPRIN, LUPARDO, ABBATE, BENEDETTO, DINOWITZ, HEVESI, PEOPLES-STOKES, STECK, AUBRY, REYES, RICHARDSON, DeSTEFANO, CRUZ, SAYEGH, JACOBSON, LAVINE, REILLY, JONES, BARRON, FRONTUS -- Multi-Sponsored by -- M. of A. BRABENEC, COOK, CUSICK, CYMBROWITZ, DAVILA, FAHY, GALEF, J. M. GIGLIO, GOODELL, GOTTFRIED, McDONOUGH, MONTESANO, O'DONNELL, PAULIN, PERRY, RA, RAMOS, RODRIGUEZ, SCHMITT, THIELE -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing healthy workplaces

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

Section 1. The labor law is amended by adding a new article 20-D to read as follows:

ARTICLE 20-D

HEALTHY WORKPLACES

Section 760. Legislative findings and intent.
761. Definitions.
762. Abusive work environment.
763. Employer liability.
764. Employee liability.
765. Affirmative defenses.
766. Remedies.
767. Enforcement.
768. Effect on collective bargaining agreements.
769. Effect of other laws.

§ 760. Legislative findings and intent. The legislature hereby finds that the social and economic well-being of the state is dependent upon healthy and productive employees. At least one-third of all employees directly experience health endangering workplace bullying, abuse and harassment during their working lives. Such form of mistreatment is

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

LBD04675-01-1

four times more prevalent than sexual harassment alone. Workplace bullying, mobbing and harassment can inflict serious harm upon targeted employees, including feelings of shame and humiliation, severe anxiety, depression, suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular disease, and symptoms consistent with post-traumatic stress disorder.

Furthermore, the legislature finds that abusive work environments can have serious consequences for employers, including reduced employee productivity and morale, higher turnover and absenteeism rates, and significant increases in medical and workers' compensation claims.

The legislature hereby finds that if mistreated employees who have been subjected to abusive treatment in the workplace cannot establish that the behavior was motivated by race, color, sex, sexual orientation, national origin or age, such employees are unlikely to be protected by the law against such mistreatment.

The legislature hereby declares that legal protection from abusive work environments should not be limited to behavior grounded in a protected class status as required by employment discrimination statutes. Existing workers' compensation provisions and common law tort law are inadequate to discourage such mistreatment or to provide adequate redress to employees who have been harmed by abusive work environments.

The purpose of this article shall be to provide legal redress for employees who have been harmed psychologically, physically or economically by deliberate exposure to abusive work environments; and to provide legal incentives for employers to prevent and respond to abusive mistreatment of employees at work.

§ 761. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Abusive conduct" means acts, omissions, or both, that a reasonable person would find abusive, based on the severity, nature, and frequency of the conduct, including, but not limited to: repeated verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or the sabotage or undermining of an employee's work performance. It shall be considered an aggravating factor if the conduct exploited an employee's known psychological or physical illness or disability. A single act normally shall not constitute abusive conduct, but an especially severe and egregious act may meet this standard.

2. "Abusive work environment" means an employment condition when an employer or one or more of its employees, acting with intent to cause pain or distress to an employee, subjects that employee to abusive conduct that causes physical harm, psychological harm or both.

3. "Adverse employment action" means an outcome which negatively impacts an employee, including, but not limited to, a termination, demotion, unfavorable reassignment, failure to promote, disciplinary action or reduction in compensation.

4. "Constructive discharge" means an adverse employment action where:

(a) the employee reasonably believed he or she was subjected to an abusive work environment;

(b) the employee resigned because of that conduct; and

(c) the employer was aware of the abusive conduct prior to the resignation and failed to stop it.

5. "Physical harm" means the impairment of a person's physical health or bodily integrity, as established by competent evidence.

6. "Psychological harm" means the impairment of a person's mental health, as established by competent evidence.

§ 762. Abusive work environment. 1. No employee shall be subjected to an abusive work environment.

2. No employer or employee shall retaliate in any manner against an employee who has opposed any unlawful employment practice under this article, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this article, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings and legal actions.

§ 763. Employer liability. 1. An employer shall be vicariously liable for a violation of section seven hundred sixty-two of this article committed by its employee.

2. Where the alleged violation of such section does not include an adverse employment action, it shall be an affirmative defense for an employer only that:

(a) the employer exercised reasonable care to prevent and correct promptly any actionable behavior; and

(b) the complainant employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

§ 764. Employee liability. 1. An employee may be individually liable for a violation of section seven hundred sixty-two of this article.

2. It shall be an affirmative defense for an employee only that the employee committed a violation of such section at the direction of the employer, under actual or implied threat of an adverse employment action.

§ 765. Affirmative defenses. It shall be an affirmative defense that:

1. the complaint is based on an adverse employment action reasonably made for poor performance, misconduct or economic necessity;

2. the complaint is based on a reasonable performance evaluation; or

3. the complaint is based on an employer's reasonable investigation about potentially illegal or unethical activity.

§ 766. Remedies. 1. Where a defendant has been found liable for a violation of section seven hundred sixty-two of this article, the court may enjoin such defendant from engaging in the unlawful employment practice and may order any other relief that is deemed appropriate including, but not limited to, reinstatement, removal of the offending party from the plaintiff's work environment, reimbursement for lost wages, front pay, medical expenses, compensation for pain and suffering, compensation for emotional distress, punitive damages and attorney fees.

2. Where an employer is liable for a violation of section seven hundred sixty-two of this article that did not include an adverse employment action, emotional distress damages and punitive damages may be awarded only when the actionable conduct was extreme and outrageous. This limitation does not apply to individually named employee defendants.

§ 767. Enforcement. 1. The provisions of this article are enforceable solely by means of a civil cause of action commenced by an injured employee.

2. An action to enforce the provisions of this article shall be commenced within one year of the last act that constitutes the alleged violation of section seven hundred sixty-two of this article.

§ 768. Effect on collective bargaining agreements. This article shall not prevent, interfere, exempt or supersede any current provisions of an employee's existing collective bargaining agreement which provides greater rights and protections than prescribed in this article nor shall this article prevent any new provisions of the collective bargaining

agreement which provide greater rights and protections from being implemented and applicable to such employee within such collective bargaining agreement. Where the collective bargaining agreement provides greater rights and protections than prescribed in this article, the recognized collective bargaining agent may opt to accept or reject to be covered by the provisions of this article.

§ 769. Effect of other laws. 1. No provision of this article shall be deemed to exempt any person or entity from any liability, duty or penalty provided by any other state law, rule or regulation.

2. The remedies provided in this article shall be in addition to any remedies provided under any other provision of law, and nothing in this article shall relieve any person from any liability, duty, penalty or punishment provided by any other provision of law, except that if an employee receives workers' compensation for medical costs for the same injury or illness pursuant to both this article and the workers' compensation law, or compensation under both this article and such law in cash payments for the same period of time not working as a result of the compensable injury or illness or the unlawful employment practice, the payments of workers' compensation shall be reimbursed from damages paid under this article.

§ 2. This act shall take effect immediately, and shall apply to abusive conduct occurring on or after such date.