STATE OF NEW YORK

3065--A

2023-2024 Regular Sessions

IN SENATE

January 27, 2023

Introduced by Sens. RAMOS, BROUK, JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to requiring training to reduce abusive conduct and bullying, and cyberbullying in the workplace

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

Section 1. Legislative intent. The legislature hereby finds and declares that abusive conduct and bullying in the workplace undermines the morale, health, dignity and well-being of public servants and can lead to stress, absenteeism, physical violence and reduced productivity. The legislature further finds and declares it is in the best interest of taxpayers that all state agencies, departments, offices, and taxpayer supported workplaces are free from bullying and other abusive behavior and that annual training should be required to help reduce the incidence of bullying and abusive behavior in the workplace.

§ 2. The labor law is amended by adding a new section 27-e to read as follows:

§ 27-e. Abusive conduct and bullying in the workplace prevention training, reporting and remediation. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "abusive conduct" shall mean the verbal, non-verbal, or physical conduct of an employee to another employee that, based on its severity, nature and frequency of occurrence, a reasonable person would determine:

(1) is intended to cause intimidation, humiliation, marginalization, or unwarranted distress; or

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

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(2) results in substantial physical or psychological harm as a result of intimidation, humiliation, marginalization, or unwarranted distress; or

(3) exploits an employee's known physical or psychological disability. A single act does not constitute abusive conduct unless it is especially severe and egregious.

(b) "bullying" shall mean the creation of a hostile work environment by conduct or by threats, intimidation or abuse, including cyberbullying, that:

(1) has or would have the effect of unreasonably and substantially interfering with an employee's performance, opportunities or benefits, or mental, emotional or physical well-being; or

(2) reasonably causes or would reasonably be expected to cause an employee to fear for his or her physical safety; or

(3) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to an employee; or

(4) occurs away from the worksite and creates or would foreseeably create a risk of substantial disruption within the work environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach the work location. Acts of bullying shall include, but not be limited to, those acts based on a person's actual or perceived race, creed, color, weight, national origin, ethnic group, disability, familial status, sexual orientation, military status, gender identity or expression or sex. For the purposes of this definition the term "threats, intimidation or abuse" shall include verbal and non-verbal actions.

(c) "cyberbullying" shall mean harassment or bullying as defined in paragraph (b) of this subdivision, including subparagraphs one, two, three and four of such paragraph, where such harassment or bullying occurs through any form of electronic communication.

(d) "employer" shall mean the state of New York.

(e) "employee" shall mean a public employee working for an employer.

(f) "workplace" shall mean any location, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by an employer.

(g) "supervisor" shall mean any person within an employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits written notice.

(h) "retaliatory action" shall mean the discharge, suspension, demotion, penalization, or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

2. The commissioner, in consultation with the commissioner of human rights and in conjunction with the representatives of employees, shall develop a written policy statement outlining the responsibility of all state employees to behave in a respectful and civil manner. Such policy statement shall include, at a minimum:

(a) clear standards outlining appropriate behavior in the workplace; and

(b) a process for reporting incidents of bullying, cyberbullying and/or abusive conduct; and

(c) dispute resolution procedures, including non-disciplinary procedures, that align with current practices and collective bargaining agreements, if any; and

(d) resources for victims of abusive conduct, bullying, or cyberbullying to get assistance.

3. The commissioner, in consultation with the commissioner of human rights and in conjunction with the representatives of employees, shall develop a training program designed to prevent abusive conduct, bullying, and cyberbullying in the workplace for all employees.

(a) Such training shall be interactive and include: (i) a review of the policy statement developed pursuant to subdivision two of this section; (ii) an explanation of abusive conduct, bullying and cyberbullying; (iii) examples of conduct that would constitute abusive conduct, bullying and cyberbullying and the ramifications of abusive workplace behavior, bullying and cyberbullying; (iv) resources available to employees who believe they have been subjected to abusive conduct, bullying, or cyberbullying, and (v) information concerning employees' right of redress and all available forms for adjudicating complaints.

(b) The training shall include information addressing conduct by supervisors and any additional responsibilities for such supervisors to address incidents of abusive conduct, bullying, and cyberbullying in the workplace, including specific training for all supervisors on managing conflict and dispute resolution techniques. No employer shall take retaliatory action against any employee because the employee seeks any form of redress available to them in relation to abusive conduct, bullying, or cyberbullying.

4. Each employee shall receive such training as soon as reasonably practicable and on an annual basis thereafter, provided, however, that all employees shall receive such training no later than one year after the effective date of this section.

5. It shall be the duty of an employer to:

(a) be vigilant for signs of abusive conduct, bullying, or cyberbullying at work through observation, information seeking, and efforts to proactively resolve any abusive conduct, bullying, or cyberbullying of which they are aware before such inappropriate behavior escalates; and

(b) deal sensitively with employees involved in a complaint; and

(c) explain the resources available to employees who believe they have been subjected to abusive conduct, bullying, or cyberbullying, and information concerning employees' right of redress and all available forms for adjudicating complaints; and

(d) ensure that an employee is not subjected to any retaliatory action because the employee seeks any form of redress available to them in relation to abusive conduct, bullying, or cyberbullying; and

(e) monitor and follow up on the situation after a complaint is made to prevent recurrence of such behavior.

6. (a) Each employer shall establish a process by which any employee, group of employees, supervisor, or a representative of employees who believes that a violation of this section has occurred may file a written notice of complaint with such employer.

(b) Where an employee or representative of an employee files a written notice of complaint with the employer pursuant to this subdivision, the employer shall investigate such allegations of abusive conduct, bullying, or cyberbullying, secure written documentation from all parties involved and work to resolve the issues in a timely manner provided, further that:

(1) any employee or supervisor seeking to file a complaint shall confine that complaint to the precise details of each incident of alleged abusive conduct, bullying, or cyberbullying; and

(2) complaints alleging abusive conduct, bullying, or cyberbullying should be reported to the complainant's immediate supervisor. Supervisors shall consult with the agency's human resources office and provide a response and/or update to the complainant within fourteen calendar days. If the alleged abusive conduct, bullying, or cyberbullying is from the immediate supervisor, the complaint shall be reported to the supervisor's supervisor or directly to the agency's human resources office.

(3) complaints from multiple employees within the same agency may be brought to the New York state office of employee relations.

7. If an employer finds after the completion of the investigation prescribed in subdivision six of this section that a violation of this section has occurred, such employer shall work to immediately remedy the situation in accordance with the existing disciplinary policies and procedures and in accordance with the terms and conditions of the collective bargaining agreement, if any.

8. Each employer shall document and maintain for at least three years after the date a report was filed, records of any reported incidents of abusive conduct, bullying, or cyberbullying and provide a summary report and any supporting documentation, including any complaint forms, to the commissioner or their designee, and the representative of employees on December thirty-first, in the first year succeeding the effective date of this section and each year thereafter. Such report shall include the date of each incident, the nature of the incident and the steps the employer took to address such behavior.

9. Beginning in the third year succeeding the effective date of this section, and every succeeding four years thereafter, the department, in conjunction with the representative of employees, shall evaluate, using criteria within this section, the impact of the current abusive conduct and bullying in the workplace prevention training program. Upon the completion of each evaluation, the department, in conjunction with the representative of employees, shall update the training as needed.

10. The commissioner may promulgate regulations consistent with existing procedures and collective bargaining agreements, if any, deemed necessary for the purposes of carrying out the provisions of this section, provided, however, that such regulations shall include a written policy statement outlining the responsibility of all state employees to behave in a respectful and civil manner.

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