

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:

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

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

12 § 27-e. Abusive conduct and bullying in the workplace prevention
13 training, reporting and remediation. 1. For purposes of this section,
14 the following terms shall have the following meanings:

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

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

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

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

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

7 (b) "bullying" shall mean the creation of a hostile work environment
8 by conduct or by threats, intimidation or abuse, including cyberbully-
9 ing, that:

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

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

15 (3) reasonably causes or would reasonably be expected to cause phys-
16 ical injury or emotional harm to an employee; or

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

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

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

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

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

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

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

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

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

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

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

1 (d) resources for victims of abusive conduct, bullying, or cyberbully-
2 ing to get assistance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 10. The commissioner may promulgate regulations consistent with exist-
34 ing procedures and collective bargaining agreements, if any, deemed
35 necessary for the purposes of carrying out the provisions of this
36 section, provided, however, that such regulations shall include a writ-
37 ten policy statement outlining the responsibility of all state employees
38 to behave in a respectful and civil manner.

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