



PROGRAM MATERIALS
Program #29173
October 4, 2019

Conducting Effective Workplace Investigations

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EMPLOYMENT AND LABOR | WEBINAR SERIES



October 4, 2019

Conducting Effective Workplace Investigations

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Agenda

- Best practices for conducting effective workplace investigations with an emphasis on investigations arising out of allegations of harassment or discrimination including
 - Legal requirements and training
 - Best practices for interviews, gathering information and documentation
 - Best practices for completing an investigative report



Legal Requirements & Relevant Law





Faragher/Ellerth Defense

- No tangible adverse employment action was taken against the plaintiff (for example, no discharge, demotion, or undesirable reassignment).
- The employer exercised reasonable care to prevent and promptly correct the harassing behavior. For example, a harassment policy demonstrates reasonable care to prevent harassing behavior.
- Investigations are conducted in response to a complaint and prompt corrective action is taken, if necessary



Faragher/Ellerth Defense

- The plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to otherwise avoid harm (for example, by not taking advantage of reporting procedures outlined in an anti-harassment policy).



New Sexual Harassment Requirements For All Employers in New York

- A written sexual harassment policy equal to or exceeding the standards of a model policy must be adopted (Labor Law Section 201-g) - Effective October 9, 2018
- Annual “interactive” training on sexual harassment must be provided to all employees (Labor Law Section 201-g) -Effective October 9, 2019
- A “prompt and thorough” investigation must be conducted that ensures the due process rights of all parties
- While complainants should be encouraged to complete a complaint form, verbal complaints must be investigated with the same vigor as written complaints





Requirements for Investigations Under the Law in New York

- Upon receipt of complaint – immediate review and interim actions if necessary
- Relevant documents, emails and phone records must be preserved
- Interview all parties involved, including witnesses
- Create a written memorandum of the investigation and include
 - list of all documents reviewed and summary of all documents reviewed
 - list of names of those interviewed and summary of statements
 - timeline of events
 - summary of prior incidents, reported and unreported
 - the basis for decision and final resolution of the complaint, along with summary of corrective action



Requirements for Investigations Under the Law, cont'd

- Keep written documentation and results of investigation in a secure and confidential location
- Promptly notify individual who filed complaint and individual accused about results and any corrective action taken
- Inform the individual who filed the complaint about the external remedies available to him or her





Investigations



What To Do When a Complaint is Made

- Be prompt
- Advise *employee* to report to appropriate individual(s) – Human Resources Director, Personnel Officer, etc.
- You should also report complaint to Human Resources for immediate investigation
- Do not retaliate, treat the person differently or take any personnel action without first speaking with Human Resources or appropriate individual
- Designee or investigator should immediately review allegations and assess whether any interim measures are necessary during the investigation, for example separation of employees or other measures





Promptness

- It is important to conduct the investigation as soon as possible after a complaint has been made
- This includes informal complaints
- Even if the complainant asks that no investigation be conducted, the employer may be obligated to do so



Assessment of Complaint

- Review the allegations in the complaint
 - Does it involve discrimination, harassment, inequity, etc.
 - Know what you are dealing with
- Determine if the complainant needs to be removed from a situation
- Consider what information is needed to investigate the complaint
- Consider the potential for physical evidence



Investigation Process – General Overview

- Accused individual (and supervisor, if applicable) should be notified of complaint, although not necessarily of the complainant
- Relevant documents, emails or phone records should be requested, preserved and obtained
- Interviews should be conducted
- A final report should be written summarizing the investigation





Investigation Process – General Overview, cont'd

- Determine and assess whether any corrective action should be taken
- The individual who complained and the individual(s) accused should be notified of a final determination and that appropriate administrative action has been taken
- Retaliation and protection from retaliation should be discussed and monitored
- The investigation should be kept confidential to the extent possible





Preparing For the Investigation

- Choose someone in a position of authority to oversee the investigation – the same investigator should interview all witnesses
- Consider potential conflicts of interests (actual or perceived)
- Be aware that every investigation is potential evidence in a later lawsuit or administrative proceeding
- Consistently prompt, thorough and effective investigations demonstrate the employer's commitment to ridding the workplace of unlawful harassment and discrimination





The Investigator

- The investigator should have the right demeanor to conduct the investigations and ability to take detailed notes and write a report. Although training in investigations is not currently required under the law, it is **HIGHLY RECOMMENDED**
 - Fair
 - Objective
 - Concerned for both complainant and respondent
 - Unrevealing of personal views
 - Not leaping to conclusions
 - Not promising a particular result





Steps in Conducting the Investigation



Contact the Complainant

- Tell the Complainant
 - You received the complaint
 - Encourage the complainant to complete a “Complaint Form”
 - The company takes these matters very seriously and does not tolerate retaliation
 - If the complainant feels they have been a victim of retaliation to report it immediately to the investigator
 - The investigator should provide an overview of how the investigation will proceed





Contact the Supervisors

- The investigator should immediately call the department head or supervisor in the department from which the complaint originated
- The department head should be advised how the investigation will progress and secure his or her cooperation
- Check with the supervisor to find out whether any prior complaints were made against the alleged perpetrator
- All contact with departments and/or employees should be noted in the case file by date and time and substance of conversation



Contact the Implicated Individual

- A letter or email should also be immediately sent to the alleged harasser or alleged discriminator advising that person that a complaint has been filed against him/her and warning that retaliation will not be tolerated
- The letter to the harasser should be either hand delivered or mailed (first class mail and certified return receipt requested).
- Email may also be acceptable – mark letter or email confidential





Examine Work Areas

- The investigator should visit relevant work sites, make note of significant circumstances (e.g., the proximity of workstations, sightlines witnesses may have had, noise level, etc.) and take photos, if applicable





Secure and Review Potential Evidence



- The investigator should visit the human resources department at the relevant site and review the personnel files of the complainant and alleged harasser
- If nothing is found in the personnel file relevant to the investigation, you should make a note of that fact in your file
- Although the list isn't exhaustive, evidence may include documents, e-mails, computer files, hard drives, video recordings, surveillance tapes, audio recordings and voicemail
- Issue "investigation hold" notices to relevant staff to suspend any internally scheduled record destruction

Presenter to read NY Code

This code is required for all attorneys wishing to receive CLE credit in the state of NY and taking the program 'on-demand' at Celesq AttorneysEd Center either online or via CD

Please notate it carefully

The presenter will only be able to read the code twice and will not be able to repeat it or email it to you.

Thank you!



Interviews

- Within a week of receiving the complaint, interviews should be scheduled with the harasser and other witnesses to the complaint
 - Some interviews may be conducted over the phone
 - However, in order to effectively judge the demeanor and credibility of the witness, in person interviews are preferred
 - The interviews should be scheduled as quickly as possible
 - Note if any witnesses are in a union and/or subject to a collective bargaining agreement





Order of Interviews

- Interview the complainant first to identify the full scope of the complaint
- Then interview witnesses (accused close to last)
- Interview each witness separately
- Ask open ended questions first, specific questions after
- Follow up interviews should be conducted, if necessary, to address inconsistencies or new information



Interviewing the Complainant

- Give the complainant the opportunity to provide a statement
- Ask for details and any documentation
- Gently ask for witnesses
- Ask about any prior occurrences
- At the conclusion of the interview:
 - Invite the complainant to contact you with additional information
 - Do not promise complete confidentiality
 - Communicate a realistic timetable
 - Let complainant know that retaliation is prohibited and he/she should inform you immediately if retaliation occurs





Interviewing Witnesses

- Provide an introduction with a short explanation of what is going on
- Invite the witness to share anything else he/she thinks is relevant or would like considered
- Invite the witness to contact you if he/she later remembers or would like to share anything else
- Encourage the witness to keep the matter confidential
- Explain that discussing the matter with others in the workplace could be perceived as retaliation





Questioning Witnesses

- Do take notes (handwritten or typed)
- You can ask witnesses to sign a statement, but sometimes obtaining written statement puts people off or can be seen as coercive
- Have an outline of questions and plan going into the interviews
- If you are in a union environment, the target of the investigation should generally have a union representative present (if he or she elects)
- For other witnesses in a union environment, you may want to offer the employee an option to allow a union representative, after telling the employee he or she is not a target
- Do not have extra individuals in interviews, although an note taker or witness is okay





Questioning Witnesses

When speaking with a witness

- Ask open ended questions
- Do not ask questions rapid-fire
- If person pauses, do not hurry him/her
- Allow breaks as requested
- Do not interrupt (go back if you have to fill in the blanks)
- Get to specifics but do so with sensitivity
- Have tissues available, be prepared for emotional interviews





Questioning Witnesses, cont'd

- Discuss retaliation in detail and inform the witness that he or she is protected from retaliation
- Discuss with the witness that he or she should immediately contact the investigator if he or she perceives retaliation
- Allow the witness to submit any additional information for a designated time frame after the interview and/or encourage the witness to contact you if he or she thinks of anything relevant to the investigation
- Do collect any relevant document, photos, text messages, emails, etc. from any witnesses



Interviewing the Accused

- Prepare for interview
 - Make sure you have reviewed relevant documentation, notes of complainants and witness interviews, etc.
- Get the accused's side of the story including identification of witnesses the accused believes will support his/her story
- Avoid being confrontational
- Ask open ended questions with due sensitivity
- Make it clear you are not taking sides and instead trying to sort out the truth





Concluding the Investigation



Draft a Report



- The investigative report should contain the following
 - Statement of allegations
 - Applicable policies/guidelines
 - A list of individuals who were interviewed (with dates and if person was telephonic or in person)
 - Summary of each interview including
 - Title of person
 - Length of service
 - Summary of facts gathered from individual
 - Irrelevant facts/opinions should be omitted
 - If any witnesses have disciplinary history, evaluations or other relevant information regarding his/her credibility, this should be stated



Drafting the Report, cont'd

- Timeline of events
- Summary of any prior relevant incidents (Reported or unreported)
- Conclusion
 - Once report is finalized, a letter or email should be sent to the complainant, the department head and the alleged harasser



Reach a Conclusion

- Based upon investigator's evidence obtained during interviews and investigation, investigator should provide determination of whether conduct occurred
 - Standard is preponderance of the evidence or whether conduct “more likely than not” occurred (just over 50%)
- If the conduct complained of did not occur, the investigator should determine whether any conduct in violation of the Company Policy occurred
- Discuss investigation results and proposed action with limited individuals who need to know the results (e.g., Chief Executive officers and/or designee, senior human resources department staff and legal counsel)



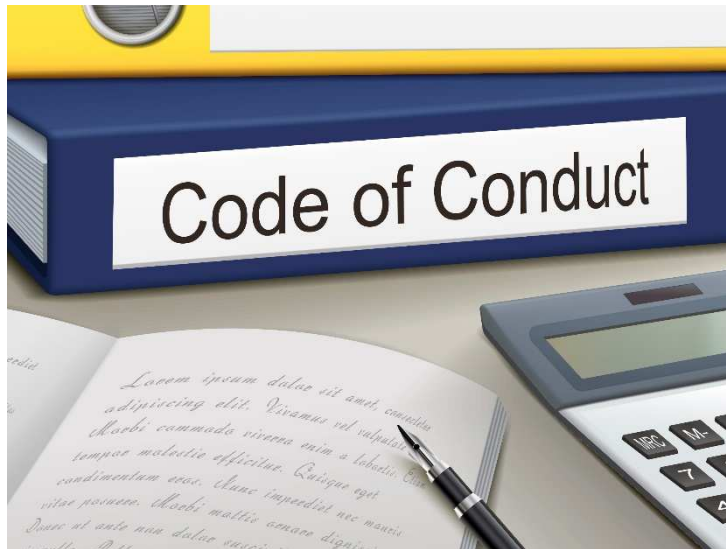


Make Recommendation

- Make a determination of responsibility or not, allegation by allegation
- Recommend remedial action to the Chief Executive Officer
 - Consider
 - Credibility of complainant, alleged harasser and other witnesses
 - Prior conduct, if any
 - Severity of harassment, including frequency of conduct
 - Alleged harasser's knowledge of company rules of conduct
 - Prior disciplinary "precedent" for identical or analogous misconduct
 - Public and employee relations issues
 - Length of service and prior disciplinary record may be considered, depending on level of alleged violation



Review Findings



- Consider if changes need to be implemented to the company policies and procedures
- Consider whether additional training or other corrective measures are needed in the workplace
- Keep your documentation in a safe and confidential place



Post Investigation

- Organize files and keep them secure. Ideally, files should be uniform and contain the same types of documents (notes, report, evidence, etc.)
- Monitor for retaliation – check in with supervisors
- Check in with complainant to see how things are going and ask about retaliation
- Report should only be released to CEO or high level officials with a need to know – not to employees or witnesses
- In public sector, argue personal privacy exemption under FOIL in opposition to a request for a release of a report



False Complaints

- While these may occur, we do not recommend that your policy contain any language threatening discipline for false complaints. This discourages people from coming forward to complain



Timeliness

- Try to complete investigations as timely as possible. There are no required timelines under the law, but the courts will look at whether you were “prompt and thorough”



Other Tips

- Because the legal standard is preponderance of evidence and not beyond a reasonable doubt, sometimes the investigator needs to make credibility determinations in situations where only two individuals witnessed an event
- The investigator should consider the totality of the interviews and evidence to determine whether it is more likely than not that something occurred
- The investigation may reveal new facts or other issues





Other Tips, cont'd

- While you want to focus the investigation on the complaint at hand, sometimes the investigation needs to be expanded depending on facts that witnesses may bring to your attention
- If new allegations surface during an investigation, these should also be investigated and corrective action taken, if applicable



Other Tips, cont'd

- If you have in-house counsel, consider his or her role in the process. For example, legal review of the sufficiency and adequacy of the investigation and findings is appropriate
- If in-house counsel investigates allegations, be aware of potential conflicts of interest in the event the matter heads to litigation
- In union environments, the union may request report in connection with grieving a discipline rendered after an investigation as an information request. Applicable labor laws and decisions may require disclosure under those circumstances



Case Study #1

- 59 year old employee who was harassed by her supervisor
- It was alleged the HR office conducted a “sham” investigation
- Jury awarded \$13 million dollars, was reduced to \$800,000.
- The verdict was based in part upon failure to conduct legitimate investigation



Case Study #2

- Employee complained about manager
- Company had a “conversation” with the manager but no documentation
- A couple of years later the employee complained again about the manager – nothing was addressed



Case Study #2

- A couple of years later, the employee went out with alleged emotional distress
- Investigation was conducted, but not all of the relevant witnesses were interviewed
- Company took corrective action, but terminated employee for alleged unrelated reason
- Employee maintained retaliation claim



Case Study #3

- Employee files complaint about a supervisor for sexual harassment
- Shortly thereafter, the supervisor retires
- Employer is not sure whether it needs to conduct an investigation since the alleged problem employee is gone
- Yes, investigation is necessary



Questions?

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

CHECKLIST FOR EMPLOYERS

Checklist Three: A Harassment Reporting System and Investigations

A reporting system that allows employees to file a report of harassment they have experienced or observed, and a process for undertaking investigations, are essential components of a holistic harassment prevention effort.

Check the box below if your anti-harassment effort contains the following elements:

- A fully-resourced reporting process that allows the organization to respond promptly and thoroughly to reports of harassment that have been experienced or observed
- Employer representatives who take reports seriously
- A supportive environment where individuals feel safe to report harassing behavior to management
- Well-trained, objective, and neutral investigators
- Timely responses and investigations
- Investigators who document all steps taken from the point of first contact and who prepare a written report using guidelines to weigh credibility
- An investigation that protects the privacy of individuals who file complaints or reports, individuals who provide information during the investigation, and the person(s) alleged to have engaged in harassment, to the greatest extent possible
- Mechanisms to determine whether individuals who file reports or provide information during an investigation experience retribution, and authority to impose sanctions on those who engage in retaliation
- During the pendency of an investigation, systems to ensure individuals alleged to have engaged in harassment are not "presumed guilty" and are not "punished" unless and until a complete investigation determines that harassment has occurred
- A communication of the determination of the investigation to all parties and, where appropriate, a communication of the sanction imposed if harassment was found to have occurred

A reminder that this checklist is meant to be a useful tool in thinking about and taking steps to prevent harassment in the workplace, and responding to harassment when it occurs. It is not meant to convey legal advice or to set forth legal requirements relating to harassment. Checking all of the boxes does not necessarily mean an employer is in legal compliance; conversely, the failure to check any particular box does not mean an employer is not in compliance.

New York Law on Harassment and Discrimination 2019 Amendments

i. A08421 Summary:

BILL NO A08421

SAME AS SAME AS [S06577](#)

SPONSOR Simotas

COSPNSR Wright, Rozic, Titus, Crespo, Walker, Weinstein, Simon, Cruz, Nolan, Quart, Cook, Glick, Galef, Arroyo, Paulin, Lifton, Peoples-Stokes, Lupardo, Jaffee, Rosenthal L, Barrett, Fahy, Solages, Davila, Bichotte, Jean-Pierre, Joyner, Seawright, Woerner, Hunter, Hyndman, Richardson, De La Rosa, Dickens, Niou, Pheffer Amato, Williams, Fernandez, Frontus, Griffin, McMahon, Darling, Reyes, Romeo, Gottfried, Schimminger, Abbate, Aubry, Cahill, Englebright, Perry, Pretlow, Dinowitz, Colton, Magnarelli, Cymbrowitz, Rivera, Cusick, O'Donnell, Ramos, Benedetto, Lavine, Hevesi, Stirpe, Zebrowski, DenDekker, Miller MG, Thiele, Abinanti, Braunstein, Bronson, Rodriguez, Weprin, Ryan, Buchwald, Kim, Mosley, Otis, Steck, Pichardo, Blake, Barron, Barnwell, D'Urso, Jones, Vanel, Rosenthal D, Burke, Eichenstein, Epstein, Fall, Jacobson, Sayegh, DeStefano

MLTSPNSR Lentol

Amd §§292, 296, 296-b, 296-d, 297, 300 & 63, Exec L; amd §5-336, Gen Ob L; amd §§7515 & 5003-b, CPLR; amd §201-g, Lab L

Provides increased protections for protected classes and special protections for employees who have been sexually harassed; prohibits nondisclosure agreements related to discrimination; prohibits mandatory arbitration clauses related to discrimination; requires employers to provide employees notice of their sexual harassment prevention training program in writing in English and in employees' primary languages; extends the statute of limitations for claims resulting from unlawful or discriminatory practices constituting sexual harassment to three years; requires review and update of the model sexual harassment prevention guidance document and sexual harassment prevention policy; and directs the commissioner of labor to conduct a study on strengthening sexual harassment prevention laws.

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ii. A08421 Actions:

BILL NO A08421

06/16/2019 referred to codes

06/17/2019 reported referred to ways and means

06/18/2019 reported referred to rules

06/18/2019 reported
 06/18/2019 rules report cal.580
 06/18/2019 ordered to third reading rules cal.580
 06/19/2019 passed assembly
 06/19/2019 delivered to senate
 06/19/2019 REFERRED TO RULES
 06/19/2019 SUBSTITUTED FOR S6577
 06/19/2019 3RD READING CAL.1663
 06/19/2019 PASSED SENATE
 06/19/2019 RETURNED TO ASSEMBLY
 08/12/2019 delivered to governor
 08/12/2019 signed chap.160

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iii. A08421 Committee Votes:

Committee:CODES Chair:Lentol DATE:06/17/2019 AYE/NAY:16/4 Action: Favorable refer to committee Ways and Means

Lentol	Aye	Ra	Aye
Schimminger	Absent	Giglio	Aye
Pretlow	Aye	Montesano	Nay
Cook	Aye	Morinello	Nay
Cymbrowitz	Aye	Palumbo	Nay
O'Donnell	Aye	Garbarino	Nay
Lavine	Aye		
Perry	Aye		
Zebrowski	Absent		
Abinanti	Aye		
Weprin	Aye		
Mosley	Aye		
Hevesi	Aye		
Fahy	Aye		
Seawright	Aye		
Rosenthal	Aye		

Committee:WAYS AND MEANS Chair:Weinstein

DATE:06/18/2019 AYE/NAY:27/6 Action: Favorable refer to committee Rules

Weinstein	Aye	Barclay	Nay
Lentol	Aye	Crouch	Nay
Schimminger	Aye	Fitzpatrick	Aye
Gantt	Excused	Hawley	Nay
Glick	Aye	Malliotakis	Aye
Nolan	Aye	Montesano	Nay
Pretlow	Aye	Ra	Aye
Perry	Aye	Blankenbush	Nay
Colton	Aye	Palmesano	Aye

Cook	Aye	Norris	Nay
Cahill	Aye		
Aubry	Aye		
Thiele	Aye		
Cusick	Aye		
Ortiz	Aye		
Benedetto	Aye		
Weprin	Aye		
Rodriguez	Absent		
Ramos	Aye		
Braunstein	Aye		
McDonald	Aye		
Rozic	Aye		
Simotas	Aye		
Dinowitz	Aye		
Miller	Aye		

Committee:RULES Chair:Gottfried

DATE:06/18/2019 AYE/NAY:19/6 Action: Favorable

Heastie	Excused	Kolb	Nay
Gottfried	Aye	Crouch	Nay
Lentol	Aye	Finch	Excused
Gantt	Excused	Barclay	Nay
Nolan	Excused	Raia	Nay
Weinstein	Aye	Hawley	Nay
Ortiz	Aye	Giglio	Nay
Pretlow	Aye	Malliotakis	Aye
Cook	Aye		
Glick	Aye		
Aubry	Aye		
Englebright	Aye		
Dinowitz	Aye		
Colton	Aye		
Magnarelli	Aye		
Perry	Aye		
Paulin	Excused		
Titus	Excused		
Peoples-Stokes	Aye		
Benedetto	Aye		
Lavine	Aye		
Lupardo	Aye		
Zebrowski	Aye		

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iv. A08421 Floor Votes:

DATE:06/19/2019 Assembly Vote YEA/NAY: 128/20

Abbate	Y	Crespo	Y	Gantt	ER	LiPetri	Y	Perry	Y	Simon	Y
Abinanti	Y	Crouch	NO	Garbarino	NO	Lupardo	Y	Pheffer Amato	Y	Simotas	Y
Arroyo	Y	Cruz	Y	Giglio	Y	Magnarelli	Y	Pichardo	Y	Smith	Y
Ashby	Y	Cusick	Y	Glick	ER	Malliotakis	Y	Pretlow	Y	Smullen	Y
Aubry	Y	Cymbrowitz	Y	Goodell	NO	Manktelow	Y	Quart	Y	Solages	Y
Barclay	NO	Davila	Y	Gottfried	Y	McDonald	Y	Ra	Y	Stec	Y
Barnwell	Y	De La Rosa	Y	Griffin	Y	McDonough	NO	Raia	Y	Steck	Y
Barrett	Y	DenDekker	Y	Gunther	Y	McMahon	Y	Ramos	Y	Stern	Y
Barron	Y	DeStefano	Y	Hawley	NO	Mikulin	Y	Raynor	Y	Stirpe	Y
Benedetto	Y	Dickens	Y	Hevesi	Y	Mill B	Y	Reilly	Y	Tague	NO
Bichotte	Y	Dilan	Y	Hunter	Y	Mill MG	Y	Reyes	Y	Taylor	Y
Blake	Y	Dinowitz	Y	Hyndman	Y	Mill ML	Y	Richardson	Y	Thiele	Y
Blankenbush	Y	DiPietro	NO	Jacobson	Y	Montesano	Y	Rivera	Y	Titus	Y
Brabenec	NO	D'Urso	Y	Jaffee	Y	Morinello	NO	Rodriguez	Y	Vanel	Y
Braunstein	Y	Eichenstein	Y	Jean- Pierre	Y	Mosley	Y	Romeo	Y	Walczyk	Y
Bronson	Y	Englebright	Y	Johns	Y	Niou	Y	Rose D	Y	Walker	Y
Buchwald	Y	Epstein	Y	Jones	Y	Nolan	Y	Rose L	Y	Wallace	Y
Burke	Y	Fahy	Y	Joyner	Y	Norris	NO	Rozic	Y	Walsh	NO
Buttenschon	Y	Fall	Y	Kim	Y	O'Donnell	Y	Ryan	Y	Weinstein	Y
Byrne	NO	Fernandez	Y	Kolb	NO	Ortiz	Y	Salka	Y	Weprin	Y
Byrnes	NO	Finch	NO	Lalor	NO	Otis	Y	Santabarbara	Y	Williams	Y
Cahill	Y	Fitzpatrick	NO	Lavine	Y	Palmesano	Y	Sayegh	Y	Woerner	Y
Carroll	Y	Friend	NO	Lawrence	NO	Palumbo	Y	Schimminger	Y	Wright	Y
Colton	Y	Frontus	Y	Lentol	Y	Paulin	Y	Schmitt	Y	Zebrowski	Y
Cook	Y	Galef	Y	Lifton	Y	Peoples- Stokes	Y	Seawright	Y	Mr Spkr	Y

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v. A08421 Text:

STATE OF NEW YORK

8421

2019-2020 Regular Sessions

IN ASSEMBLY

June 16, 2019

Introduced by M. of A. SIMOTAS, WRIGHT, ROZIC, WEINSTEIN, SIMON, CRUZ --
read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to increased protections for protected classes and special protections for employees who have been sexually harassed; to amend the general obligations law, in relation to nondisclosure agreements; to amend the civil practice law and rules and the executive law, in relation to discrimination; to amend the labor law, in relation to requiring employers to provide employees notice of their sexual harassment prevention training program in writing in English and in employees' primary languages; to amend the executive law, in relation to extending the statute of limitations for claim resulting from unlawful or discriminatory practices constituting sexual harassment to three years; to amend the labor law, in relation to the model sexual harassment prevention guidance document and sexual harassment prevention policy; and directing the commissioner of labor to conduct a study on strengthening sexual harassment prevention laws

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

1 Section 1. Subdivision 5 of section 292 of the executive law, as
2 amended by chapter 363 of the laws of 2015, is amended to read as
3 follows:
4 5. The term "employer" [**does not include any employer with fewer than**
5 **four persons in his or her employ except as set forth in section two**
6 **hundred ninety-six-b of this article, provided, however, that in the**
7 **case of an action for discrimination based on sex pursuant to subdivi-**
8 **sion one of section two hundred ninety-six of this article, with respect**
9 **to sexual harassment only, the term "employer"] shall include all
10 employers within the state, including the state and all political subdi-
11 visions thereof.**

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

LBD13425-01-9

A. 8421

2

1 § 1-a. Section 292 of the executive law is amended by adding a new
2 subdivision 37 to read as follows:
3 **37. The term "private employer" as used in section two hundred nine-**
4 **ty-seven of this article shall include any person, company, corporation,**

5 **labor organization or association. It shall not include the state or any**
6 **local subdivision thereof, or any state or local department, agency,**
7 **board or commission.**

8 § 2. Subdivision 1 of section 296 of the executive law is amended by
9 adding a new paragraph (h) to read as follows:

10 **(h) For an employer, licensing agency, employment agency or labor**
11 **organization to subject any individual to harassment because of an indi-**
12 **vidual's age, race, creed, color, national origin, sexual orientation,**
13 **gender identity or expression, military status, sex, disability, predis-**
14 **posing genetic characteristics, familial status, marital status, domes-**
15 **tic violence victim status, or because the individual has opposed any**
16 **practices forbidden under this article or because the individual has**
17 **filed a complaint, testified or assisted in any proceeding under this**
18 **article, regardless of whether such harassment would be considered**
19 **severe or pervasive under precedent applied to harassment claims. Such**
20 **harassment is an unlawful discriminatory practice when it subjects an**
21 **individual to inferior terms, conditions or privileges of employment**
22 **because of the individual's membership in one or more of these protected**
23 **categories. The fact that such individual did not make a complaint about**
24 **the harassment to such employer, licensing agency, employment agency or**
25 **labor organization shall not be determinative of whether such employer,**
26 **licensing agency, employment agency or labor organization shall be**
27 **liable. Nothing in this section shall imply that an employee must demon-**
28 **strate the existence of an individual to whom the employee's treatment**
29 **must be compared. It shall be an affirmative defense to liability under**
30 **this subdivision that the harassing conduct does not rise above the**
31 **level of what a reasonable victim of discrimination with the same**
32 **protected characteristic would consider petty slights or trivial incon-**
33 **veniences.**

34 § 3. Paragraph (b) of subdivision 2 of section 296-b of the executive
35 law, as amended by chapter 8 of the laws of 2019, is amended to read as
36 follows:

37 (b) Subject a domestic worker to [unwelcome] harassment [based on
38 gender, race, religion, sexual orientation, gender identity or
39 expression or national origin, where such harassment has the purpose or
40 effect of unreasonably interfering with an individual's work performance
41 by creating an intimidating, hostile, or offensive working environment]
42 **as set out in paragraph (h) of subdivision 1 of section two hundred**
43 **ninety-six of this article.**

44 § 4. Section 296-d of the executive law, as added by section 1 of
45 subpart F of part KK of chapter 57 of the laws of 2018, is amended to
46 read as follows:

47 § 296-d. [Sexual harassment] **Unlawful discriminatory practices** relat-
48 ing to non-employees. It shall be an unlawful discriminatory practice
49 for an employer to permit [sexual harassment of] **unlawful discrimination**
50 **against** non-employees in its workplace. An employer may be held liable

51 to a non-employee who is a contractor, subcontractor, vendor, consultant
52 or other person providing services pursuant to a contract in the work-
53 place or who is an employee of such contractor, subcontractor, vendor,
54 consultant or other person providing services pursuant to a contract in
55 the workplace, with respect to [**sexual harassment**] **an unlawful discrimi-**
56 **natory practice**, when the employer, its agents or supervisors knew or
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1 should have known that such non-employee was subjected to [**sexual**
2 **harassment**] **an unlawful discriminatory practice** in the employer's work-
3 place, and the employer failed to take immediate and appropriate correc-
4 tive action. In reviewing such cases involving non-employees, the extent
5 of the employer's control and any other legal responsibility which the
6 employer may have with respect to the conduct of the [**harasser**] **person**
7 **who engaged in the unlawful discriminatory practice** shall be considered.

8 § 5. Subdivision 1, paragraph c of subdivision 4 and subdivisions 9
9 and 10 of section 297 of the executive law, subdivision 1 and paragraph
10 c of subdivision 4 as amended by chapter 166 of the laws of 2000,
11 subparagraph (vi) of paragraph c of subdivision 4 as amended by section
12 1 of part AA of chapter 57 of the laws of 2009, subdivision 9 as amended
13 by section 16 of part D of chapter 405 of the laws of 1999 and subdivi-
14 sion 10 as amended by chapter 364 of the laws of 2015, are amended to
15 read as follows:

16 1. Any person claiming to be aggrieved by an unlawful discriminatory
17 practice may, by himself or herself or his **or** her attorney-at-law, make,
18 sign and file with the division a verified complaint in writing which
19 shall state the name and address of the person alleged to have committed
20 the unlawful discriminatory practice complained of and which shall set
21 forth the particulars thereof and contain such other information as may
22 be required by the division. The commissioner of labor or the attorney
23 general, or the chair of the commission on quality of care for the
24 mentally disabled, or the division on its own motion may, in like
25 manner, make, sign and file such complaint. In connection with the
26 filing of such complaint, the attorney general is authorized to take
27 proof, issue subpoenas and administer oaths in the manner provided in
28 the civil practice law and rules. Any employer whose employees, or some
29 of them, refuse or threaten to refuse to cooperate with the provisions
30 of this article, may file with the division a verified complaint asking
31 for assistance by conciliation or other remedial action.

32 c. Within one hundred eighty days after the commencement of such hear-
33 ing, a determination shall be made and an order served as hereinafter
34 provided. If, upon all the evidence at the hearing, the commissioner
35 shall find that a respondent has engaged in any unlawful discriminatory
36 practice as defined in this article, the commissioner shall state find-
37 ings of fact and shall issue and cause to be served on such respondent
38 an order, based on such findings and setting them forth, and including

39 such of the following provisions as in the judgment of the division will
40 effectuate the purposes of this article: (i) requiring such respondent
41 to cease and desist from such unlawful discriminatory practice; (ii)
42 requiring such respondent to take such affirmative action, including
43 (but not limited to) hiring, reinstatement or upgrading of employees,
44 with or without back pay, restoration to membership in any respondent
45 labor organization, admission to or participation in a guidance program,
46 apprenticeship training program, on-the-job training program or other
47 occupational training or retraining program, the extension of full,
48 equal and unsegregated accommodations, advantages, facilities and privi-
49 leges to all persons, granting the credit which was the subject of any
50 complaint, evaluating applicants for membership in a place of accommo-
51 dation without discrimination based on race, creed, color, national
52 origin, sex, disability or marital status, and without retaliation or
53 discrimination based on opposition to practices forbidden by this arti-
54 cle or filing a complaint, testifying or assisting in any proceeding
55 under this article; (iii) awarding of compensatory damages to the person
56 aggrieved by such practice; (iv) awarding of punitive damages, **in cases**

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1 **of employment discrimination related to private employers, and,** in cases
2 of housing discrimination [**only**], **with damages in housing discrimination**
3 **cases** in an amount not to exceed ten thousand dollars, to the person
4 aggrieved by such practice; (v) requiring payment to the state of
5 profits obtained by a respondent through the commission of unlawful
6 discriminatory acts described in subdivision three-b of section two
7 hundred ninety-six of this article; and (vi) assessing civil fines and
8 penalties, in an amount not to exceed fifty thousand dollars, to be paid
9 to the state by a respondent found to have committed an unlawful discrimi-
10 natory act, or not to exceed one hundred thousand dollars to be paid
11 to the state by a respondent found to have committed an unlawful discrimi-
12 natory act which is found to be willful, wanton or malicious; (vii)
13 requiring a report of the manner of compliance. If, upon all the
14 evidence, the commissioner shall find that a respondent has not engaged
15 in any such unlawful discriminatory practice, he or she shall state
16 findings of fact and shall issue and cause to be served on the complain-
17 ant an order based on such findings and setting them forth dismissing
18 the said complaint as to such respondent. A copy of each order issued by
19 the commissioner shall be delivered in all cases to the attorney gener-
20 al, the secretary of state, if he or she has issued a license to the
21 respondent, and such other public officers as the division deems proper,
22 and if any such order issued by the commissioner concerns a regulated
23 creditor, the commissioner shall forward a copy of any such order to the
24 superintendent. A copy of any complaint filed against any respondent who
25 has previously entered into a conciliation agreement pursuant to para-
26 graph a of subdivision three of this section or as to whom an order of

27 the division has previously been entered pursuant to this paragraph
28 shall be delivered to the attorney general, to the secretary of state if
29 he or she has issued a license to the respondent and to such other
30 public officers as the division deems proper, and if any such respondent
31 is a regulated creditor, the commissioner shall forward a copy of any
32 such complaint to the superintendent.

33 9. Any person claiming to be aggrieved by an unlawful discriminatory
34 practice shall have a cause of action in any court of appropriate juris-
35 diction for damages, including, in cases of **employment discrimination**
36 **related to private employers and** housing discrimination only, punitive
37 damages, and such other remedies as may be appropriate, including any
38 civil fines and penalties provided in subdivision four of this section,
39 unless such person had filed a complaint hereunder or with any local
40 commission on human rights, or with the superintendent pursuant to the
41 provisions of section two hundred ninety-six-a of this chapter, provided
42 that, where the division has dismissed such complaint on the grounds of
43 administrative convenience, on the grounds of untimeliness, or on the
44 grounds that the election of remedies is annulled, such person shall
45 maintain all rights to bring suit as if no complaint had been filed with
46 the division. At any time prior to a hearing before a hearing examiner,
47 a person who has a complaint pending at the division may request that
48 the division dismiss the complaint and annul his or her election of
49 remedies so that the human rights law claim may be pursued in court, and
50 the division may, upon such request, dismiss the complaint on the
51 grounds that such person's election of an administrative remedy is
52 annulled. Notwithstanding subdivision (a) of section two hundred four of
53 the civil practice law and rules, if a complaint is so annulled by the
54 division, upon the request of the party bringing such complaint before
55 the division, such party's rights to bring such cause of action before a
56 court of appropriate jurisdiction shall be limited by the statute of

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1 limitations in effect in such court at the time the complaint was
2 initially filed with the division. Any party to a housing discrimination
3 complaint shall have the right within twenty days following a determi-
4 nation of probable cause pursuant to subdivision two of this section to
5 elect to have an action commenced in a civil court, and an attorney
6 representing the division of human rights will be appointed to present
7 the complaint in court, or, with the consent of the division, the case
8 may be presented by complainant's attorney. A complaint filed by the
9 equal employment opportunity commission to comply with the requirements
10 of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not
11 constitute the filing of a complaint within the meaning of this subdivi-
12 sion. No person who has initiated any action in a court of competent
13 jurisdiction or who has an action pending before any administrative
14 agency under any other law of the state based upon an act which would be

15 an unlawful discriminatory practice under this article, may file a
16 complaint with respect to the same grievance under this section or under
17 section two hundred ninety-six-a of this article.

18 10. With respect to all cases of housing discrimination and housing
19 related credit discrimination in an action or proceeding at law under
20 this section or section two hundred ninety-eight of this article, the
21 commissioner or the court may in its discretion award reasonable attor-
22 ney's fees to any prevailing or substantially prevailing party; and with
23 respect to a claim of [**employment or**] credit discrimination where sex is
24 a basis of such discrimination, **and with respect to all claims of**
25 **employment discrimination** in an action or proceeding at law under this
26 section or section two hundred ninety-eight of this article, the commis-
27 sioner or the court [**may in its discretion**] **shall** award reasonable
28 attorney's fees attributable to such claim to any prevailing party;
29 provided, however, that a prevailing respondent or defendant in order to
30 recover such reasonable attorney's fees must make a motion requesting
31 such fees and show that the action or proceeding brought was frivolous;
32 and further provided that in a proceeding brought in the division of
33 human rights, the commissioner may only award attorney's fees as part of
34 a final order after a public hearing held pursuant to subdivision four
35 of this section. In no case shall attorney's fees be awarded to the
36 division, nor shall the division be liable to a prevailing or substan-
37 tially prevailing party for attorney's fees, except in a case in which
38 the division is a party to the action or the proceeding in the divi-
39 sion's capacity as an employer. In cases of employment discrimination, a
40 respondent shall only be liable for attorney's fees under this subdivi-
41 sion if the respondent has been found liable for having committed an
42 unlawful discriminatory practice. In order to find the action or
43 proceeding to be frivolous, the court or the commissioner must find in
44 writing one or more of the following:

45 (a) the action or proceeding was commenced, used or continued in bad
46 faith, solely to delay or prolong the resolution of the litigation or to
47 harass or maliciously injure another; or

48 (b) the action or proceeding was commenced or continued in bad faith
49 without any reasonable basis and could not be supported by a good faith
50 argument for an extension, modification or reversal of existing law. If
51 the action or proceeding was promptly discontinued when the party or
52 attorney learned or should have learned that the action or proceeding
53 lacked such a reasonable basis, the court may find that the party or the
54 attorney did not act in bad faith.

55 § 6. Section 300 of the executive law, as amended by chapter 166 of
56 the laws of 2000, is amended to read as follows:

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1 § 300. Construction. The provisions of this article shall be construed
2 liberally for the accomplishment of the **remedial** purposes thereof,

3 **regardless of whether federal civil rights laws, including those laws**
4 **with provisions worded comparably to the provisions of this article,**
5 **have been so construed. Exceptions to and exemptions from the provisions**
6 **of this article shall be construed narrowly in order to maximize deter-**
7 **rence of discriminatory conduct.** Nothing contained in this article shall

8 be deemed to repeal any of the provisions of the civil rights law or any
9 other law of this state relating to discrimination [**because of race,**
10 **creed, color or national origin**]; but, as to acts declared unlawful by
11 section two hundred ninety-six of this article, the procedure herein
12 provided shall, while pending, be exclusive; and the final determination
13 therein shall exclude any other **state civil** action[, **civil or criminal,**]
14 based on the same grievance of the individual concerned. If such indi-
15 vidual institutes any action based on such grievance without resorting
16 to the procedure provided in this article, he or she may not subsequent-
17 ly resort to the procedure herein.

18 § 7. Section 5-336 of the general obligations law, as added by section
19 1 of subpart D of part KK of chapter 57 of the laws of 2018, is amended
20 to read as follows:

21 § 5-336. Nondisclosure agreements. **1. (a)** Notwithstanding any other
22 law to the contrary, no employer, its officers or employees shall have
23 the authority to include or agree to include in any settlement, agree-
24 ment or other resolution of any claim, the factual foundation for which
25 involves [**sexual harassment**] **discrimination, in violation of laws**
26 **prohibiting discrimination, including but not limited to, article**
27 **fifteen of the executive law,** any term or condition that would prevent
28 the disclosure of the underlying facts and circumstances to the claim or
29 action unless the condition of confidentiality is the complainant's
30 preference.

31 **(b)** Any such term or condition must be provided **in writing** to all
32 parties **in plain English, and, if applicable, the primary language of**
33 **the complainant,** and the complainant shall have twenty-one days to
34 consider such term or condition. If after twenty-one days such term or
35 condition is the complainant's preference, such preference shall be
36 memorialized in an agreement signed by all parties. For a period of at
37 least seven days following the execution of such agreement, the
38 complainant may revoke the agreement, and the agreement shall not become
39 effective or be enforceable until such revocation period has expired.

40 **(c) Any such term or condition shall be void to the extent that it**
41 **prohibits or otherwise restricts the complainant from: (i) initiating,**
42 **testifying, assisting, complying with a subpoena from, or participating**
43 **in any manner with an investigation conducted by the appropriate local,**
44 **state, or federal agency; or (ii) filing or disclosing any facts neces-**
45 **sary to receive unemployment insurance, Medicaid, or other public bene-**
46 **fits to which the complainant is entitled.**

47 **2. Notwithstanding any provision of law to the contrary, any provision**
48 **in a contract or other agreement between an employer or an agent of an**

49 **employer and any employee or potential employee of that employer entered**
50 **into on or after January first, two thousand twenty, that prevents the**
51 **disclosure of factual information related to any future claim of**
52 **discrimination is void and unenforceable unless such provision notifies**
53 **the employee or potential employee that it does not prohibit him or her**
54 **from speaking with law enforcement, the equal employment opportunity**
55 **commission, the state division of human rights, a local commission on**

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1 **human rights, or an attorney retained by the employee or potential**
2 **employee.**

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

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

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

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

27 § 5003-b. Nondisclosure agreements. Notwithstanding any other law to
28 the contrary, for any claim or cause of action, whether arising under
29 common law, equity, or any provision of law, the factual foundation for
30 which involves **[sexual harassment] discrimination, in violation of laws**
31 **prohibiting discrimination, including but not limited to, article**
32 **fifteen of the executive law,** in resolving, by agreed judgment, stipu-
33 lation, decree, agreement to settle, assurance of discontinuance or
34 otherwise, no employer, its officer or employee shall have the authority
35 to include or agree to include in such resolution any term or condition
36 that would prevent the disclosure of the underlying facts and circum-
37 stances to the claim or action unless the condition of confidentiality

38 is the plaintiff's preference. Any such term or condition must be
39 provided to all parties, and the plaintiff shall have twenty-one days to
40 consider such term or condition. If after twenty-one days such term or
41 condition is the plaintiff's preference, such preference shall be memo-
42 rialized in an agreement signed by all parties. For a period of at least
43 seven days following the execution of such agreement, the plaintiff may
44 revoke the agreement, and the agreement shall not become effective or be
45 enforceable until such revocation period has expired.

46 § 10. Subdivisions 9 and 10 of section 63 of the executive law, subdi-
47 vision 9 as amended by chapter 359 of the laws of 1969, are amended to
48 read as follows:

49 9. Bring and prosecute or defend upon request of the [**industrial**]
50 commissioner **of labor** or the state division of human rights, any civil
51 action or proceeding, the institution or defense of which in his judg-
52 ment is necessary for effective enforcement of the laws of this state
53 against discrimination by reason of age, race, **sex**, creed, color [**or**],
54 national origin, **sexual orientation, gender identity or expression,**
55 **military status, disability, predisposing genetic characteristics, fami-**
56 **lial status, marital status, or domestic violence victim status,** or for

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1 enforcement of any order or determination of such commissioner or divi-
2 sion made pursuant to such laws.

3 10. Prosecute every person charged with the commission of a criminal
4 offense in violation of any of the laws of this state against discrimi-
5 nation because of **age**, race, **sex**, creed, color, [**or**] national origin,
6 **sexual orientation, gender identity or expression, military status,**
7 **disability, predisposing genetic characteristics, familial status, mari-**
8 **tal status, or domestic violence victim status,** in any case where in his
9 judgment, because of the extent of the offense, such prosecution cannot
10 be effectively carried on by the district attorney of the county wherein
11 the offense or a portion thereof is alleged to have been committed, or
12 where in his judgment the district attorney has erroneously failed or
13 refused to prosecute. In all such proceedings, the attorney-general may
14 appear in person or by his deputy or assistant before any court or any
15 grand jury and exercise all the powers and perform all the duties in
16 respect of such actions or proceedings which the district attorney would
17 otherwise be authorized or required to exercise or perform.

18 § 11. Paragraph b of subdivision 1 of section 201-g of the labor law,
19 as added by section 1 of subpart E of part KK of chapter 57 of the laws
20 of 2018, is amended and a new subdivision 2-a is added to read as
21 follows:

22 b. Every employer shall adopt the model sexual harassment prevention
23 policy promulgated pursuant to this subdivision or establish a sexual
24 harassment prevention policy to prevent sexual harassment that equals or
25 exceeds the minimum standards provided by such model sexual harassment

26 prevention policy. Such sexual harassment prevention policy shall be
27 provided to all employees in writing **as required by subdivision two-a of**
28 **this section**. Such model sexual harassment prevention policy shall be
29 publicly available and posted on the websites of both the department and
30 the division of human rights.

31 **2-a. a. Every employer shall provide his or her employees, in writing**
32 **in English and in the language identified by each employee as the prima-**
33 **ry language of such employee, at the time of hiring and at every annual**
34 **sexual harassment prevention training provided pursuant to subdivision**
35 **two of this section, a notice containing such employer's sexual harass-**
36 **ment prevention policy and the information presented at such employer's**
37 **sexual harassment prevention training program.**

38 **b. The commissioner shall prepare templates of the model sexual**
39 **harassment prevention policy created and published pursuant to subdivi-**
40 **sion one of this section and the model sexual harassment prevention**
41 **training program produced pursuant to subdivision two of this section.**
42 **The commissioner shall determine, in his or her discretion, which**
43 **languages to provide in addition to English, based on the size of the**
44 **New York state population that speaks each language and any other factor**
45 **that the commissioner shall deem relevant. All such templates shall be**
46 **made available to employers in such manner as determined by the commis-**
47 **sioner.**

48 **c. When an employee identifies as his or her primary language a**
49 **language for which a template is not available from the commissioner,**
50 **the employer shall comply with this subdivision by providing that**
51 **employee an English-language notice.**

52 **d. An employer shall not be penalized for errors or omissions in the**
53 **non-English portions of any notice provided by the commissioner.**

54 § 12. The commissioner of labor in collaboration with the commissioner
55 of human rights shall conduct a study on how to build on the require-
56 ments of section two hundred one-g of the labor law, in order to further

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1 combat unlawful harassment and discrimination in the workplace. The
2 study shall include but not be limited to: a review of the section two
3 hundred one-g of the labor law requirements for employers to provide a
4 sexual harassment training and policy to all employees and comparison
5 with similar requirements across other jurisdictions; a review of the
6 full scope of discriminatory practices in the workplace made unlawful by
7 relevant state and federal laws; engagement with relevant stakeholders
8 on the most effective tools to prevent and remediate such discriminatory
9 practices; and the efficacy of requiring such training in the workplace
10 in reducing discrimination. On or before December 1, 2019, the commis-
11 sioner of labor shall submit his report and recommendations to the
12 governor, the temporary president of the senate and the speaker of the
13 assembly.

14 § 13. Subdivision 5 of section 297 of the executive law, as amended by
15 chapter 958 of the laws of 1968, is amended to read as follows:

16 5. Any complaint filed pursuant to this section must be so filed with-
17 in one year after the alleged unlawful discriminatory practice. **In cases**
18 **of sexual harassment in employment, any complaint filed pursuant to this**
19 **section must be so filed within three years after the alleged unlawful**
20 **discriminatory practices.**

21 § 14. Section 201-g of the labor law is amended by adding a new subdi-
22 vision 4 to read as follows:

23 **4. Beginning in the year two thousand twenty-two, and every succeeding**
24 **four years thereafter, the department in consultation with the division**
25 **of human rights shall evaluate, using the criteria within this section,**
26 **the impact of the current model sexual harassment prevention guidance**
27 **document and sexual harassment prevention policy. Upon the completion**
28 **of each evaluation the department shall update the model sexual harass-**
29 **ment prevention guidance document and sexual harassment prevention poli-**
30 **cy as needed.**

31 § 15. Severability clause. If any clause, sentence, paragraph, subdi-
32 vision, section or subpart of this act shall be adjudged by any court of
33 competent jurisdiction to be invalid, such judgment shall not affect,
34 impair, or invalidate the remainder thereof, but shall be confined in
35 its operation to the clause, sentence, paragraph, subdivision, section
36 or subject thereof directly involved in the controversy in which such
37 judgment shall have been rendered. It is hereby declared to be the
38 intent of the legislature that this act would have been enacted even if
39 such invalid provisions had not been included herein.

40 § 16. This act shall take effect immediately, provided, however:

41 (a) Sections one of this act shall take effect on the one hundred
42 eightieth day after it shall have become a law.

43 (b) Sections one-a, two, three, four, five, seven, eight and nine of
44 this act shall take effect on the sixtieth day after it shall have
45 become a law.

46 (c) Section thirteen of this act shall take effect one year after it
47 shall have become a law.

48 (d) Sections one, one-a, two, three, four, five, six and thirteen
49 shall only apply to claims filed under such sections on or after the
50 effective date of such sections.

51 (e) Effective immediately, the addition, amendment and/or repeal of
52 any rule or regulation necessary for the implementation of this act on
53 its effective date are authorized and directed to be made and completed
54 on or before such effective date.