

SENATE, No. 3078

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED OCTOBER 22, 2020

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

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District 8 (Atlantic, Burlington and Camden)

Co-Sponsored by:

Senators Pou and Gill

SYNOPSIS

Codifies State Workplace Anti-Harassment and Discrimination Policy.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2020)

1 AN ACT concerning the submission of harassment and
2 discrimination complaints by State workers, and supplementing
3 Title 10 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the “State
9 Workplace Anti-Harassment and Discrimination Act.”

10
11 2. a. As used in this act, P.L. , c. (C.) (pending before the
12 Legislature as this bill):

13 “Sexual harassment” means unwelcome sexual advances,
14 requests for sexual favors, and other verbal or physical conduct of a
15 sexual nature.

16 “State agency” means any of the principal departments in the
17 Executive Branch of the State Government, and any division, board,
18 bureau, office, commission, or other instrumentality within or
19 created by such department, State colleges or universities, and any
20 independent State authority, commission, instrumentality, or
21 agency.

22 “Supervisor” means any individual of a State agency who has the
23 authority to direct and control the work environment and
24 performance of an employee, intern or volunteer, or any other staff
25 member and who has authority to take corrective action regarding
26 the violation of the law, rule, or regulation of which an employee,
27 intern, or other staff member complains.

28 “Third-party harassment” means unwelcome behavior involving
29 any of the protected categories referred to in subsection b. this
30 section that is not directed at an individual but exists in the
31 workplace and interferes with an individual's ability to do the
32 individual's job.

33 b. It shall be an unlawful employment practice, or, as the case
34 may be, an unlawful discrimination, for any person, whether an
35 employee or applicant for employment, or intern or volunteer, in
36 any State agency or Gubernatorial Transition Office, or person
37 doing business with the State to discriminate against or harass an
38 employee or applicant for employment, or intern or volunteer, based
39 upon the following protected categories: race, creed, color, national
40 origin, nationality, ancestry, age, sex, gender identity or expression,
41 affectional or sexual orientation, pregnancy, marital status, civil
42 union status, domestic partnership status, familial status, religion,
43 atypical hereditary cellular or blood trait, genetic information,
44 liability for service in the Armed Forces of the United States, or
45 disability.

46 Any conduct in violation of this act shall be prohibited.

47 A State agency shall take either disciplinary action, if
48 appropriate, or other corrective action, to address any conduct that

1 violates this act, regardless of whether the conduct satisfies the
2 legal definition of discrimination or harassment. A disciplinary or
3 corrective action shall focus on any person who violates this act
4 rather than the complainant, whenever possible.

5 c. The following actions shall be prohibited under this act:

6 (1) engaging in any employment practice or procedure that treats
7 an individual less favorably based upon any of the protected
8 categories referred to in subsection b. of this section;

9 (2) using derogatory or demeaning references regarding any of
10 the protected categories set forth in subsection b. of this section;
11 and

12 (3) engaging in sexual or gender-based harassment of any kind,
13 including hostile work environment harassment, quid pro quo
14 harassment, or same-sex harassment.

15 d. The provisions of this act shall apply to the following:

16 (1) third-party harassment;

17 (2) conduct that occurs in the workplace and conduct that occurs
18 at any location that can be reasonably regarded as an extension of
19 the workplace, including but not limited to, any field location, off-
20 site business-related social function, or facility where State business
21 is being conducted and discussed;

22 (3) posts on any social media site or electronic device, personal
23 or business, that adversely affects an individual's work
24 environment; and

25 (4) employment practices such as recruitment, selection, hiring,
26 training, promotion, advancement appointment, transfer,
27 assignment, layoff, return from layoff, termination, demotion,
28 discipline, compensation, fringe benefits, working conditions, and
29 career development.

30

31 3. a. Any employee or applicant for employment, or intern or
32 volunteer, who has been subjected to any form of prohibited
33 discrimination or harassment, or who witnesses others being
34 subjected to such discrimination or harassment, may promptly
35 report the incident to a supervisor or directly to the State agency's
36 Equal Employment Opportunity and Affirmative Action Officer, or
37 any other designated officer. A person who wishes to take action
38 about prohibited discrimination or harassment may file a criminal
39 complaint with the law enforcement agency of the municipality
40 where the incident occurred. A person may make both a report to a
41 law enforcement agency and a report to the individual's supervisor
42 or the State agency's Equal Employment Opportunity and
43 Affirmative Action Officer.

44 All employees shall cooperate with investigations undertaken
45 pursuant to this act. Failure to cooperate in an investigation may
46 result in administrative and disciplinary action, up to and including
47 the termination of employment. A complainant may withdraw from

1 a discrimination or harassment complaint at any time and shall not
2 face any disciplinary actions for that withdrawal.

3 b. Supervisors shall make every effort to maintain a work
4 environment that is free from any form of prohibited discrimination
5 or harassment. Supervisors shall immediately refer allegations of
6 prohibited discrimination or harassment to the State agency's Equal
7 Employment Opportunity and Affirmative Action Officer, or any
8 other designated officer. A supervisor's failure to comply with
9 these requirements may result in administrative and disciplinary
10 action, up to and including the termination of employment.

11 c. Each State agency shall annually distribute the provisions
12 described in this act, or a summarized notice thereof, to all of its
13 employees, including part-time and seasonal employees and interns.
14 This act, or a summarized notice thereof, shall be posted in
15 conspicuous locations throughout the buildings and grounds of each
16 State agency and on the State agency's Intranet site if one exists.
17 The Department of the Treasury shall distribute this act, or a
18 summarized notice thereof, to State vendors and contractors and
19 each State agency shall distribute this act, or a summarized notice
20 thereof, to vendors and contractors with whom the State agency has
21 a direct relationship.

22
23 4. a. Each State agency shall follow the procedures adopted by
24 the Civil Service Commission for processing internal complaints
25 alleging discrimination or harassment in the workplace with regard
26 to reporting, investigating, and where appropriate, remediating
27 claims of discrimination or harassment pursuant to this section.
28 The procedures for internal complaints alleging discrimination or
29 harassment in the workplace shall include, but need not be limited
30 to, the following:

31 (1) Complaints of prohibited discrimination or harassment shall
32 be reported to the Equal Employment Opportunity and Affirmative
33 Action Officer, any supervisory employee of the State agency, or
34 any other designated officer. The names and titles of the
35 individuals designated to receive discrimination or harassment
36 complaints shall be listed on any materials informing employees or
37 applicants for employment of this act. To facilitate the reporting of
38 a complaint, discrimination and harassment complaint forms shall
39 be listed on the State agency's Intranet site if one exists, or the Civil
40 Service Commission's Internet site.

41 (2) Supervisory employees shall immediately report all alleged
42 violations of this act to the State agency's Equal Employment
43 Opportunity and Affirmative Action Officer, or that person's
44 designee. The report shall include both alleged violations reported
45 to a supervisor, and those alleged violations directly observed by
46 the supervisor.

47 (3) If reporting a complaint to any person set forth in this
48 section presents a conflict of interest, the complaint may be filed

1 directly with the Division of Equal Employment Opportunity and
2 Affirmative Action. Each State agency shall adopt a conflict of
3 interest policy that, at a minimum, describes the policies and
4 procedures in which a supervisor or investigator or other individual
5 who participates in any discrimination or harassment complaint
6 investigation shall recuse themselves due to a conflict of interest.

7 (4) In order to facilitate a prompt, thorough, and impartial
8 investigation, all complainants shall submit a discrimination and
9 harassment complaint form. An investigation may be conducted
10 whether or not the form is submitted.

11 (5) A copy of all complaints, regardless of the format in which
12 submitted, shall be submitted to the Division of Equal Employment
13 Opportunity and Affirmative Action, by the State agency's Equal
14 Employment Opportunity and Affirmative Action Officer, along
15 with a copy of the acknowledgement letters sent to the persons who
16 filed the complaint and, if applicable, the complaint notification
17 letter sent to the persons against whom the complaint has been filed.

18 If a written complaint has not been filed, the State agency's
19 Equal Employment Opportunity and Affirmative Action Officer, or
20 that person's designee, shall submit to the Division of Equal
21 Employment Opportunity and Affirmative Action a brief summary
22 of the allegations. Copies of complaints filed with the New Jersey
23 Division on Civil Rights, the United States Equal Employment
24 Opportunity Commission, or in court shall be submitted also to the
25 Division of Equal Employment Opportunity and Affirmative
26 Action.

27 (6) During the initial intake of a complaint, the State agency's
28 Equal Employment Opportunity and Affirmative Action Officer, or
29 that person's designee, shall obtain information regarding the
30 complaint, and determine if interim corrective measures are
31 necessary to prevent continued violations of this act.

32 (7) The State agency shall investigate all reasonable and good
33 faith complaints that implicate this act. The State agency shall
34 conduct a prompt, thorough, and impartial investigation into the
35 alleged harassment or discrimination.

36 (8) An investigative report shall be prepared by the State
37 agency's Equal Employment Opportunity and Affirmative Action
38 Officer, or that person's designee, when the investigation is
39 completed. The report shall include, at a minimum, a summary of
40 the complaint; a summary of the employee's positions; a summary
41 of the facts developed through the investigation; and an analysis of
42 the allegations and the facts. The State agency's Equal
43 Employment Opportunity and Affirmative Action Officer, or that
44 person's designee, shall make a determination as to whether the
45 allegation of this act has been substantiated. If a violation has
46 occurred, the head of the State agency shall execute the appropriate
47 corrective measures necessary, as determined by the State agency's

1 Equal Employment Opportunity and Affirmative Action Officer, or
2 that person's designee, to immediately remedy the violation.

3 (9) The State agency's Equal Employment Opportunity and
4 Affirmative Action Officer, or that person's designee, shall issue a
5 final letter of determination to both the complainant and the person
6 against whom the complaint was filed, setting forth the results of
7 the investigation and the right of appeal to the Civil Service
8 Commission as set forth in paragraphs (11) through (14) of this
9 subsection. To the extent possible, the privacy of all employees
10 involved in the process shall be maintained in the final letter of
11 determination. The Division of Equal Employment Opportunity
12 and Affirmative Action shall be furnished with a copy of the final
13 letter of determination. The letter shall include, at a minimum, a
14 brief summary of the employee's positions; a brief summary of the
15 facts developed during the investigation; and an explanation of the
16 determination, which shall include whether the allegations were
17 either substantiated and whether a violation of this act occurred.

18 (10) The investigation of a complaint shall be completed and a
19 final letter of determination shall be issued as soon as practicable,
20 but no later than 60 days following the initial intake of the
21 complaint referred to in paragraphs (4) through (7) of this section is
22 completed. The head of the State agency, or that person's designee,
23 shall provide the Division of Equal Employment Opportunity and
24 Affirmative Action and all employee's involved with written notice
25 of any extension and shall include in the notice an explanation of
26 the exceptional circumstances supporting the extension.

27 (11) A complainant who is in the career, unclassified, or senior
28 executive service, or who is an applicant for employment, who
29 disagrees with the final determination of the State agency's Equal
30 Employment Opportunity and Affirmative Action Officer, or that
31 person's designee, may submit a written appeal, within 20 days of
32 the receipt of the final letter of determination, to the Civil Service
33 Commission. The appeal shall be in writing and shall include all
34 materials presented by the complainant at the State agency level,
35 the final letter of determination, the reason for the appeal, and the
36 specific relief requested.

37 (12) Employees filing appeals that raise issues for which there is
38 another specific appeal procedure shall utilize those procedures.
39 The commission may require any appeal that raises issues of alleged
40 discrimination or harassment and other issues, such as examination
41 appeals, to be processed using the procedures set forth in this
42 section or a combination of procedures as the commission deems
43 appropriate.

44 (13) If an appeal under this act raises issues concerning the
45 employee not receiving an advancement appointment, the
46 commission shall decide those issues in the course of its
47 determination. The Civil Service Commission shall decide the
48 appeal on a review of the written record or such other proceeding as

1 the commission deems appropriate. The appellant shall have the
2 burden of proof in all discrimination or harassment appeals brought
3 before the Civil Service Commission.

4 (14) In a case where a violation has been substantiated, and no
5 disciplinary action recommended, the party or parties against whom
6 the complaint was filed may appeal the determination to the Civil
7 Service Commission within 20 days of receipt of the final letter of
8 determination by State agency's Equal Employment Opportunity
9 and Affirmative Action Officer, or that person's designee. The
10 burden of proof shall be on the appellant. The appeal shall be in
11 writing and include the final letter of determination, the reason for
12 the appeal, and the specific relief requested. If disciplinary action
13 has been recommended in the final letter of determination, any
14 party charged who is in the career service may appeal using the
15 procedures set forth by the Civil Service Commission.

16 (15) The Director of the Division of Equal Employment
17 Opportunity and Affirmative Action shall be placed on notice of,
18 and given the opportunity to submit comment on, appeals filed with
19 the Civil Service Commission of decisions on discrimination or
20 harassment complaints, regardless of whether the complaint was
21 initially filed directly with the Division of Equal Employment
22 Opportunity and Affirmative Action.

23 (16) Any employee or applicant for employment, or intern or
24 volunteer, may file a complaint directly with other agencies that
25 investigate discrimination or harassment claims, such as the New
26 Jersey Division on Civil Rights and the United States Equal
27 Employment Opportunity Commission, in addition to utilizing this
28 procedure. An individual shall contact the specific agency to obtain
29 exact timeframes for filing a complaint. The deadlines shall run
30 from the date of the last incident of alleged discrimination or
31 harassment, not from the date that the final letter of determination is
32 issued by the State agency's Equal Employment Opportunity and
33 Affirmative Action Officer, or that person's designee.

34 b. In addition to the State agency's Equal Employment
35 Opportunity and Affirmative Action Officer, or that person's
36 designee, each State agency shall designate alternate persons to
37 receive claims of discrimination or harassment. The State agency's
38 Equal Employment Opportunity and Affirmative Action Officer, or
39 that person's designee, shall investigate such complaints, and
40 recommend appropriate remediation of such complaints.

41 All complaints and investigations involving discrimination or
42 harassment claims shall be handled, to the extent possible, in a way
43 that respects the privacy interests of all persons involved in that
44 complaint or investigation. The investigations shall be conducted in
45 a prompt, thorough, and impartial manner. The results of the
46 investigations shall be forwarded to the respective head of the State
47 agency.

1 c. When a violation of this act is found to have occurred, the
2 head of the State agency shall take prompt and corrective action, as
3 determined by the Equal Employment Opportunity and Affirmative
4 Action Officer, or that person's designee, to stop the behavior and
5 deter its reoccurrence. The State agency shall have the authority to
6 take such action before a final determination has been made
7 regarding whether a violation of this act has occurred. The
8 corrective action taken may include counseling, training,
9 intervention, mediation, the separation of persons involved, the
10 initiation of disciplinary action up to and including the termination
11 of employment, or the involvement of law enforcement, when
12 appropriate, for instances involving bodily harm or serious bodily
13 harm. Any corrective action that requires the participation of the
14 complainant shall not be implemented without the consent of that
15 complainant. The case may also be referred to any other
16 appropriate authority for review for possible violations of State and
17 federal statutes.

18 d. Each State agency shall implement and adhere to the
19 procedures provided in this section, and may add additional
20 provisions to reflect the structure of the organization, and shall file
21 a copy of the completed procedure with the Division of Equal
22 Employment Opportunity and Affirmative Action.

23

24 5. a. Each State agency shall maintain a written record of the
25 discrimination or harassment complaints received. Written records,
26 consisting of the investigative report and any attachments, including
27 witness statements, shall be maintained as confidential records to
28 the extent practicable and appropriate and shall remain so
29 indefinitely.

30 b. Retaliation against any employee or applicant for
31 employment, or intern or volunteer, who alleges that the employee
32 or applicant, or intern or volunteer, was the victim of discrimination
33 or harassment, provides information in the course of an
34 investigation into claims of discrimination or harassment in the
35 workplace, or opposes a discriminatory practice shall be prohibited.
36 No employee or applicant for employment, or intern or volunteer,
37 bringing a complaint, providing information for an investigation, or
38 testifying in any proceeding under this act shall be subjected to
39 adverse employment or internship consequences based upon such
40 involvement or be the subject of other retaliation.

41 c. The burden shall be on the complainant to articulate a
42 sufficient nexus between the alleged conduct and a protected
43 category pursuant to this act. An employee or applicant for
44 employment, or intern or volunteer, who knowingly makes a false
45 accusation of prohibited discrimination or harassment, or knowingly
46 provides false information in the course of an investigation of a
47 complaint, shall be subjected to administrative or disciplinary
48 action, up to and including the termination of employment.

1 Complaints made in good faith, even if found to be unsubstantiated,
2 shall not be considered a false accusation.

3

4 6. To the extent practical and appropriate under the
5 circumstances, confidentiality shall be maintained throughout the
6 investigative process. An investigator may discuss the claims with
7 the persons against whom the complaint was filed and with other
8 persons who may have relevant knowledge, or who have a
9 legitimate need to know about the claims.

10 All persons interviewed, including complainants and witnesses,
11 shall be asked to use discretion in communicating any aspect of the
12 investigation to avoid interfering with the investigation.

13 All complainants shall be permitted to be accompanied with a
14 support person or advisor of their choice to any meeting or
15 interview that is conducted under this act. A support person or
16 advisor shall not represent a complainant in a meeting or interview
17 or otherwise interfere in the investigation process.

18 Nothing in this section shall be interpreted as any restriction
19 upon any State employee's rights under State or federal law,
20 including their right of free speech or to communicate any
21 allegations to another person.

22 Each State agency shall notify in writing any State employee
23 who has signed or signs confidentiality forms related to, or as a
24 party to a contract or settlement agreement which has, the purpose
25 or effect of concealing the details relating to a claim of
26 discrimination, retaliation, or harassment that such forms, contracts,
27 and agreements are deemed to be against public policy and
28 unenforceable pursuant to sections 1 and 2 of P.L.2019, c.39
29 (C.10:5-12.7 and C.10:5-12.8), respectively.

30

31 7. The State agency's Equal Employment Opportunity and
32 Affirmative Action Officer, or that person's designee, shall issue an
33 annual report, which shall include, but need not be limited to,
34 information on the total number of discrimination or harassment
35 complaints filed at that State agency, the number of complaints that
36 were substantiated, the number of disciplinary or corrective actions
37 taken, and the number of complaints that resulted in any legal
38 actions against that State agency. The State agency shall make the
39 report available to the public through the Internet site of that State
40 agency.

41

42 8. A State agency shall provide all new employees with
43 training on the provisions and procedures set forth in this act no
44 later than 30 days after the employee's appointment date and at least
45 once every two years, thereafter. Additional training shall be
46 provided to all supervisors no later than 30 days after the
47 supervisor's appointment date and at least once every two years,

1 thereafter, regarding their obligations and duties and the procedures
2 as set forth under this act.

3 Certification of completion of such training for all employees
4 and supervisors shall be submitted to the head of the State agency
5 and shall be public information.

6

7 9. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill codifies the New Jersey Workplace and Anti-
13 harassment and Discrimination Policy (N.J.A.C.4A:7-3.1),
14 including the model procedures for internal complaints alleging
15 discrimination in the workplace (N.J.A.C.4A:7-3.2).

16 Under the bill, it is an unlawful employment practice, or, as the
17 case may be, an unlawful discrimination, for any person, whether an
18 employee or applicant for employment, or intern or volunteer, in
19 any State agency or Gubernatorial Transition Office, or person
20 doing business with the State to discriminate against or harass
21 another employee based upon protected categories. Under the bill,
22 the State agencies may reserve the right to take either disciplinary
23 action, if appropriate, or other corrective action, to address any
24 unacceptable conduct that violates the provisions in the bill,
25 regardless of whether the conduct satisfies the legal definition of
26 discrimination or harassment.

27 Under the bill, the following actions are prohibited:

28 (1) engaging in any employment practice or procedure that treats
29 an individual less favorably based upon any of the protected
30 categories referred to in the bill;

31 (2) using derogatory or demeaning references regarding any of
32 the protected categories set forth in the bill; and

33 (3) engaging in sexual or gender-based harassment of any kind,
34 including hostile work environment harassment, quid pro quo
35 harassment, or same-sex harassment.

36 Additionally, the provisions of the bill apply to the following:

37 (1) third-party harassment;

38 (2) conduct that occurs in the workplace and conduct that occurs
39 at any location that can be reasonably regarded as an extension of
40 the workplace;

41 (3) posts on any social media site or electronic device, personal
42 or business, that adversely affect an individual's work environment;
43 and

44 (4) employment practices such as recruitment, selection, hiring,
45 training, promotion, advancement appointment, transfer,
46 assignment, layoff, return from layoff, termination, demotion,
47 discipline, compensation, fringe benefits, working conditions, and
48 career development.

1 Each State agency, under the bill, is required to:

2 (1) implement the procedures provided in this bill and file a copy
3 of the procedure with the Division of Equal Employment Opportunity
4 and Affirmative Action;

5 (2) maintain a written record of the discrimination or harassment
6 complaints received. Written records, consisting of the investigative
7 report and any attachments, including witness statements, would be
8 required to be maintained as confidential records to the extent
9 practicable and appropriate and would remain so indefinitely;

10 (3) notify in writing any State employee who has signed or signs
11 confidentiality forms related to, or as a party to a contract or
12 settlement agreement which has, the purpose or effect of concealing
13 the details relating to a claim of discrimination, retaliation, or
14 harassment that such forms, contracts, and agreements are deemed
15 to be against public policy and unenforceable; and

16 (4) provide all new employees with training on the provisions
17 and procedures.

18 Under the bill, employees and supervisors must go through
19 additional training on the provisions of this bill at least once every
20 two years. Certification of completion of the training for all
21 employees and supervisors must be submitted to the head of the
22 State agency and would be public information.

23 The State agency's Equal Employment Opportunity and
24 Affirmative Action Officer would also be required to issue an
25 annual report, which must include, but need not be limited to,
26 information on the total number of discrimination or harassment
27 complaints filed at that State agency, the number of complaints that
28 were substantiated, the number of disciplinary or corrective actions
29 taken, and the number of complaints that resulted in any legal
30 actions against that State agency. The report must be made
31 available to the public through the Internet site of that State agency.

32 As used in this bill:

33 "State agency" means any of the principal departments in the
34 Executive Branch of the State Government, and any division, board,
35 bureau, office, commission, or other instrumentality within or
36 created by such department, State colleges or universities, and any
37 independent State authority, commission, instrumentality, or
38 agency.