

[First Reprint]

SENATE, No. 3078

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED OCTOBER 22, 2020

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SYNOPSIS

Codifies State Workplace Anti-Harassment and Discrimination Policy.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on December 10, 2020, with amendments.



(Sponsorship Updated As Of: 12/17/2020)

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 agency

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLP committee amendments adopted December 10, 2020.

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

2 A State agency shall take either disciplinary action, if
3 appropriate, or other corrective action ¹for just cause¹, to address
4 any conduct that violates this act, regardless of whether the conduct
5 satisfies the legal definition of discrimination or harassment. A
6 disciplinary or corrective action shall focus on any person who
7 violates this act rather than the complainant, whenever possible.

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

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

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

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

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

19 (1) third-party harassment

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

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

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

33 ¹e. The provisions of this act, P.L. , c. (C.)(pending before
34 the Legislature as this bill), shall not be used to discourage
35 employees from exercising rights protected by other statutes,
36 including, but not limited to, rights protected by the "New Jersey
37 Employer-Employee Relations Act," P.L.1944, c. 100 (C. 34:13A-1
38 et seq.), such as leafleting, picketing, filing grievances, representing
39 workers in grievance and other meetings and hearings and other
40 protected activities. It shall be a violation of this act for a State
41 agency or the representative of a public employer to use this act to
42 discourage employees from exercising rights protected by other
43 statutes.¹

44

45 3. a. Any employee or applicant for employment, or intern or
46 volunteer, who has been subjected to any form of prohibited
47 discrimination or harassment, or who witnesses others being
48 subjected to such discrimination or harassment, may promptly

1 report the incident to a supervisor or directly to the State agency's
2 Equal Employment Opportunity and Affirmative Action Officer, or
3 any other designated officer. A person who wishes to take action
4 about prohibited discrimination or harassment may file a criminal
5 complaint with the law enforcement agency of the municipality
6 where the incident occurred. A person may make both a report to a
7 law enforcement agency and a report to the individual's supervisor
8 or the State agency's Equal Employment Opportunity and
9 Affirmative Action Officer. ¹Nothing in this act shall prevent any
10 employee or applicant for employment, or intern or volunteer, from
11 filing a complaint directly with other agencies that investigate
12 discrimination or harassment claims, such as the New Jersey
13 Division on Civil Rights and the United States Equal Employment
14 Opportunity Commission or from filing a grievance under an
15 applicable collective negotiation unit, in addition to utilizing the
16 procedures set forth in this act. An individual shall contact the
17 specific agency to obtain exact timeframes for filing a complaint.
18 The deadlines shall run from the date of the last incident of alleged
19 discrimination or harassment, not from the date that the final letter
20 of determination is issued by the Public Employer's Equal
21 Employment Opportunity and Affirmative Action Officer, or that
22 person's designee.¹

23 All employees shall cooperate with investigations undertaken
24 pursuant to this act. Failure to cooperate in an investigation may
25 result in administrative and disciplinary action, up to and including
26 the termination of employment. A complainant may withdraw from
27 a discrimination or harassment complaint at any time and shall not
28 face any disciplinary actions for that withdrawal.

29 b. **¹【Supervisors】** A State agency¹ shall make every effort to
30 maintain a work environment that is free from any form of
31 prohibited discrimination or harassment. **¹【Supervisors】** A State
32 agency¹ shall immediately refer allegations of prohibited
33 discrimination or harassment to the State agency's Equal
34 Employment Opportunity and Affirmative Action Officer, or any
35 other designated officer. **¹【A supervisor's failure to comply with**
36 **these requirements may result in administrative and disciplinary**
37 **action, up to and including the termination of employment.】¹**

38 c. Each State agency shall annually distribute the provisions
39 described in this act, or a summarized notice thereof, to all of its
40 employees, including part-time and seasonal employees and interns.
41 This act, or a summarized notice thereof, shall be posted in
42 conspicuous locations throughout the buildings and grounds of each
43 State agency and on the State agency's Intranet site if one exists.
44 The Department of the Treasury shall distribute this act, or a
45 summarized notice thereof, to State vendors and contractors and
46 each State agency shall distribute this act, or a summarized notice

1 thereof, to vendors and contractors with whom the State agency has
2 a direct relationship.

3
4 4. a. Each State agency shall follow the procedures adopted by
5 the Civil Service Commission for processing internal complaints
6 alleging discrimination or harassment in the workplace with regard
7 to reporting, investigating, and where appropriate, remediating
8 claims of discrimination or harassment pursuant to this section.
9 The procedures for internal complaints alleging discrimination or
10 harassment in the workplace shall include, but need not be limited
11 to, the following:

12 (1) Complaints of prohibited discrimination or harassment shall
13 be reported to the Equal Employment Opportunity and Affirmative
14 Action Officer, any supervisory employee of the State agency, or
15 any other designated officer. The names and titles of the
16 individuals designated to receive discrimination or harassment
17 complaints shall be listed on any materials informing employees or
18 applicants for employment of this act. To facilitate the reporting of
19 a complaint, discrimination and harassment complaint forms shall
20 be listed on the State agency's Intranet site if one exists, or the Civil
21 Service Commission's Internet site.

22 (2) Supervisory employees shall immediately report all alleged
23 violations of this act to the State agency's Equal Employment
24 Opportunity and Affirmative Action Officer, or that person's
25 designee. The report shall include both alleged violations reported
26 to a supervisor, and those alleged violations directly observed by
27 the supervisor.

28 (3) If reporting a complaint to any person set forth in this
29 section presents a conflict of interest, the complaint may be filed
30 directly with the Division of Equal Employment Opportunity and
31 Affirmative Action. Each State agency shall adopt a conflict of
32 interest policy that, at a minimum, describes the policies and
33 procedures in which a supervisor or investigator or other individual
34 who participates in any discrimination or harassment complaint
35 investigation shall recuse themselves due to a conflict of interest.

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

40 (5) A copy of all complaints, regardless of the format in which
41 submitted, shall be submitted to the Division of Equal Employment
42 Opportunity and Affirmative Action, by the State agency's Equal
43 Employment Opportunity and Affirmative Action Officer, along
44 with a copy of the acknowledgement letters sent to the persons who
45 filed the complaint and, if applicable, the complaint notification
46 letter sent to the persons against whom the complaint has been filed.

47 If a written complaint has not been filed, the State agency's
48 Equal Employment Opportunity and Affirmative Action Officer, or

1 that person's designee, shall submit to the Division of Equal
2 Employment Opportunity and Affirmative Action a brief summary
3 of the allegations. Copies of complaints filed with the New Jersey
4 Division on Civil Rights, the United States Equal Employment
5 Opportunity Commission, or in court shall be submitted also to the
6 Division of Equal Employment Opportunity and Affirmative
7 Action.

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

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

17 (8) An investigative report shall be prepared by the State
18 agency's Equal Employment Opportunity and Affirmative Action
19 Officer, or that person's designee, when the investigation is
20 completed. The report shall include, at a minimum, a summary of
21 the complaint; a summary of the employee's positions; a summary
22 of the facts developed through the investigation; and an analysis of
23 the allegations and the facts. The State agency's Equal
24 Employment Opportunity and Affirmative Action Officer, or that
25 person's designee, shall make a determination as to whether the
26 allegation of this act has been substantiated. If a violation has
27 occurred, the head of the State agency shall execute the appropriate
28 corrective measures necessary, as determined by the State agency's
29 Equal Employment Opportunity and Affirmative Action Officer, or
30 that person's designee, to immediately remedy the violation.

31 (9) The State agency's Equal Employment Opportunity and
32 Affirmative Action Officer, or that person's designee, shall issue a
33 final letter of determination to both the complainant and the person
34 against whom the complaint was filed, setting forth the results of
35 the investigation and the right of appeal to the Civil Service
36 Commission as set forth in paragraphs (11) through (14) of this
37 subsection. To the extent possible, the privacy of all employees
38 involved in the process shall be maintained in the final letter of
39 determination. The Division of Equal Employment Opportunity
40 and Affirmative Action shall be furnished with a copy of the final
41 letter of determination. The letter shall include, at a minimum, a
42 brief summary of the employee's positions; a brief summary of the
43 facts developed during the investigation; and an explanation of the
44 determination, which shall include whether the allegations were
45 either substantiated and whether a violation of this act occurred.

46 (10) The investigation of a complaint shall be completed and a
47 final letter of determination shall be issued as soon as practicable,
48 but no later than 60 days following the initial intake of the

1 complaint referred to in paragraphs (4) through (7) of this section is
2 completed. ¹【The head of the State agency, or that person's
3 designee, shall provide the Division of Equal Employment
4 Opportunity and Affirmative Action and all employee's involved
5 with written notice of any extension and shall include in the notice
6 an explanation of the exceptional circumstances supporting the
7 extension】 If an investigation cannot be completed within 60 days,
8 the complainant, the employee who is the subject of the complaint,
9 and other employees involved in the processing of the complaint
10 shall be notified of the additional time required to complete the
11 investigation and of the exceptional circumstances requiring the
12 extension¹.

13 (11) A complainant who is in the career, unclassified, or senior
14 executive service, or who is an applicant for employment, who
15 disagrees with the final determination of the State agency's Equal
16 Employment Opportunity and Affirmative Action Officer, or that
17 person's designee, may submit a written appeal, within 20 days of
18 the receipt of the final letter of determination, to the Civil Service
19 Commission. The appeal shall be in writing and shall include all
20 materials presented by the complainant at the State agency level,
21 the final letter of determination, the reason for the appeal, and the
22 specific relief requested.

23 (12) Employees filing appeals that raise issues for which there is
24 another specific appeal procedure shall utilize those procedures.
25 The commission may require any appeal that raises issues of alleged
26 discrimination or harassment and other issues, such as examination
27 appeals, to be processed using the procedures set forth in this
28 section or a combination of procedures as the commission deems
29 appropriate.

30 (13) If an appeal under this act raises issues concerning the
31 employee not receiving an advancement appointment, the
32 commission shall decide those issues in the course of its
33 determination. The Civil Service Commission shall decide the
34 appeal on a review of the written record or such other proceeding as
35 the commission deems appropriate. The appellant shall have the
36 burden of proof in all discrimination or harassment appeals brought
37 before the Civil Service Commission.

38 (14) In a case where a violation has been substantiated, and no
39 disciplinary action recommended, the party or parties against whom
40 the complaint was filed may appeal the determination to the Civil
41 Service Commission within 20 days of receipt of the final letter of
42 determination by State agency's Equal Employment Opportunity
43 and Affirmative Action Officer, or that person's designee. The
44 burden of proof shall be on the appellant. The appeal shall be in
45 writing and include the final letter of determination, the reason for
46 the appeal, and the specific relief requested. If disciplinary action
47 has been recommended in the final letter of determination, any

1 party charged who is in the career service may appeal using the
2 procedures set forth by the Civil Service Commission.

3 (15) The Director of the Division of Equal Employment
4 Opportunity and Affirmative Action shall be placed on notice of,
5 and given the opportunity to submit comment on, appeals filed with
6 the Civil Service Commission of decisions on discrimination or
7 harassment complaints, regardless of whether the complaint was
8 initially filed directly with the Division of Equal Employment
9 Opportunity and Affirmative Action.

10 (16) Any employee or applicant for employment, or intern or
11 volunteer, may file a complaint directly with other agencies that
12 investigate discrimination or harassment claims, such as the New
13 Jersey Division on Civil Rights and the United States Equal
14 Employment Opportunity Commission, in addition to utilizing this
15 procedure. An individual shall contact the specific agency to obtain
16 exact timeframes for filing a complaint. The deadlines shall run
17 from the date of the last incident of alleged discrimination or
18 harassment, not from the date that the final letter of determination is
19 issued by the State agency's Equal Employment Opportunity and
20 Affirmative Action Officer, or that person's designee.

21 b. In addition to the State agency's Equal Employment
22 Opportunity and Affirmative Action Officer, or that person's
23 designee, each State agency shall designate alternate persons to
24 receive claims of discrimination or harassment. The State agency's
25 Equal Employment Opportunity and Affirmative Action Officer, or
26 that person's designee, shall investigate such complaints, and
27 recommend appropriate remediation of such complaints.

28 All complaints and investigations involving discrimination or
29 harassment claims shall be handled, to the extent possible, in a way
30 that respects the privacy interests of all persons involved in that
31 complaint or investigation. The investigations shall be conducted in
32 a prompt, thorough, and impartial manner. The results of the
33 investigations shall be forwarded to the respective head of the State
34 agency.

35 c. When a violation of this act is found to have occurred, the
36 head of the State agency shall take prompt and corrective action, as
37 determined by the Equal Employment Opportunity and Affirmative
38 Action Officer, or that person's designee, to stop the behavior and
39 deter its reoccurrence. The State agency shall have the authority to
40 take such action before a final determination has been made
41 regarding whether a violation of this act has occurred. The
42 corrective action taken may include counseling, training,
43 intervention, mediation, the separation of persons involved, the
44 initiation of disciplinary action 'for just cause'¹ up to and including
45 the termination of employment, or the involvement of law
46 enforcement, when appropriate, for instances involving bodily harm
47 or serious bodily harm. Any corrective action that requires the
48 participation of the complainant shall not be implemented without

1 the consent of that complainant. The case may also be referred to
2 any other appropriate authority for review for possible violations of
3 State and federal statutes.

4 d. Each State agency shall implement and adhere to the
5 procedures provided in this section, and may add additional
6 provisions to reflect the structure of the organization, and shall file
7 a copy of the completed procedure with the Division of Equal
8 Employment Opportunity and Affirmative Action.

9
10 5. a. Each State agency shall maintain a written record of the
11 discrimination or harassment complaints received. Written records,
12 consisting of the investigative report and any attachments, including
13 witness statements, shall be maintained as **¹["confidential"]**
14 **government¹ records¹** **¹["to the extent practicable and appropriate and**
15 **¹shall remain so indefinitely]** **and shall be accessible under**
16 **P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et**
17 **al.) to the extent permitted by and in accordance with those laws.¹**

18 b. Retaliation against any employee or applicant for
19 employment, or intern or volunteer, who alleges that the employee
20 or applicant, or intern or volunteer, was the victim of discrimination
21 or harassment, provides information in the course of an
22 investigation into claims of discrimination or harassment in the
23 workplace, or opposes a discriminatory practice shall be prohibited.
24 No employee or applicant for employment, or intern or volunteer,
25 bringing a complaint, providing information for an investigation, or
26 testifying in any proceeding under this act shall be subjected to
27 adverse employment or internship consequences based upon such
28 involvement or be the subject of other retaliation.

29 c. The burden shall be on the complainant to articulate a
30 sufficient nexus between the alleged conduct and a protected
31 category pursuant to this act. An employee or applicant for
32 employment, or intern or volunteer, who knowingly makes a false
33 accusation of prohibited discrimination or harassment, or knowingly
34 provides false information in the course of an investigation of a
35 complaint, shall be subjected to administrative or disciplinary
36 action **¹for just cause¹**, up to and including the termination of
37 employment. Complaints made in good faith, even if found to be
38 unsubstantiated, shall not be considered a false accusation.

39
40 6. To the extent practical and appropriate under the
41 circumstances, confidentiality shall be maintained throughout the
42 investigative process. An investigator may discuss the claims with
43 the persons against whom the complaint was filed and with other
44 persons who may have relevant knowledge, or who have a
45 legitimate need to know about the claims.

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

4 All complainants shall be permitted to be accompanied with a
5 support person or advisor of their choice ¹, including a
6 representative of a collective negotiation unit,¹ to any meeting or
7 interview that is conducted under this act. A support person or
8 advisor shall not represent a complainant in a meeting or interview
9 or otherwise interfere in the investigation process.

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

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

22

23 7. The State agency's Equal Employment Opportunity and
24 Affirmative Action Officer, or that person's designee, shall issue an
25 annual report, which shall 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 State agency shall make the
31 report available to the public through the Internet site of that State
32 agency.

33

34 8. A State agency shall provide all new employees with
35 training on the provisions and procedures set forth in this act no
36 later than 30 days after the employee's appointment date and at least
37 once every two years, thereafter. Additional training shall be
38 provided to all supervisors no later than 30 days after the
39 supervisor's appointment date and at least once every two years,
40 thereafter, regarding their obligations and duties and the procedures
41 as set forth under this act.

42 Certification of completion of such training for all employees
43 and supervisors shall be submitted to the head of the State agency
44 and shall be public information.

45

46 9. This act shall take effect immediately.