

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 3352

STATE OF NEW JERSEY

DATED: JUNE 10, 2021

The Senate Labor Committee reports favorably Senate Committee Substitute for Senate Bill No. 3352.

This bill makes it an unlawful discrimination in violation of the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.)(“LAD”) to subject an individual, in employment, public accommodations, or housing, to sexual harassment or other unlawful harassment.

The bill extends the protections of the LAD to cover domestic workers, interns, and independent contractors.

The bill requires employers to establish written nondiscrimination workplace policies to prevent unlawful discrimination and harassment, which explain the policies, and stipulate procedures and remedies for violations.

The bill requires all employers to provide interactive training to all supervisory employees and all other employees regarding the prevention of unlawful discrimination and harassment in the workplace, and sets standards for the training and the responsibilities of supervisors under the bill.

The bill also sets requirements for each employer with 50 or more employees regarding the collection and reporting to the division by an employer of data regarding complaints of violations of the provisions of the bill.

The bill sets standards and procedures for determining when unlawful harassment occurs. It provides that:

1. Prior complaints of harassment or unlawful discriminatory practices by the same employer or relevant organization are discoverable and relevant, whether or not the complainant witnessed or had been aware of those complaints;
2. The harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment, even if the harassment is not shown to be severe or pervasive;
3. An individual does not have to make a complaint about the harassment to the individual’s employer or other relevant organization for the employer to be liable;
4. An employee is not required to demonstrate the existence of an individual to whom the employee's treatment must be compared;

5. It is a defense against liability that the harassing conduct does not rise above the level of what a reasonable victim of discrimination would consider petty slights or trivial inconveniences.

6. It is an unlawful for an employer to allow any family member or member of their household, regardless of age, to engage in sexual or other unlawful harassment, or for an employer to request or keep possession of the employee identification documents;

7. A complainant of unlawful harassment is not required to demonstrate loss of job benefits or to prove that the complainant's productivity declined because of the harassment.

The bill extends protections against age discrimination by:

1. Deleting the provisions of law permitting a governmental employer to require retirement when an employee attains a particular age if the employer can show "that the retirement age bears a manifest relationship to the employment in question";

2. Deleting the provisions of the LAD that permit an employer to refuse to hire a person for the sole reason of being more than 70 years old;

3. Providing that, if an employer unlawfully requires an employee to retire because of age, the employee has available all of the remedies provided by the LAD, instead of, as under current law, being limited to filing a complaint with the Attorney General, and limiting relief to reinstatement with back pay and interest; and

4. Repealing the law permitting institutions of higher education to compel tenured employees to retire at 70 years of age.

The bill provides that a claim made by an employee or a dependent of the employee for compensation under the workers' compensation law, R.S. 34:15-1 et seq., for an injury, occupational disease, or death shall not preclude the filing by, or on behalf of, the employee or dependent of a complaint regarding an unlawful employment practice with the Division on Civil Rights or in Superior Court pursuant to P.L.1945, c.169 (C.10:5-1 et seq.) seeking relief for damages caused by the unlawful employment practice, even if the damages include damages from injury, occupational disease, or death which may be compensable under the claim made for workers' compensation.

Finally, the bill sets or extends the periods of time in which certain actions regarding unlawful discrimination may be taken.