

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **SENATE, No. 3078**

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 11, 2020

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 3078.

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

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

The following actions are prohibited by the amended bill:

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

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

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

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

(1) third-party harassment;

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

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

(4) employment practices such as recruitment, selection, hiring, training, promotion, advancement appointment, transfer, assignment,

layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development.

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

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

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

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

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

Under the amended bill, employees and supervisors are to go through additional training on the provisions of this bill at least once every two years. Certification of completion of the training for all employees and supervisors is to be submitted to the head of the State agency and would be public information.

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

The bill defines "state agency" as any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission, or other instrumentality within or created by such department, State colleges or universities, and any independent State authority, commission, instrumentality, or agency.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) clarify that a State Agency would take disciplinary action, if appropriate, or other corrective action for just cause only;

(2) add provision that the bill should not be used to discourage employees from exercising rights protected by other statutes,

including, but not limited to, rights protected by the “New Jersey Employer-Employee Relations Act,”;

(3) change the responsibility from the supervisor to the State agency to make every effort to maintain a work environment that is free from any form of prohibited discrimination or harassment;

(4) remove provision that provides that a supervisor may face administrative or disciplinary action for a failure to comply with the requirements in the bill;

(5) require records under this bill to be maintained as a government record and accessible to the extent permitted by and in accordance with current law; and

(6) permit a representative of a collective negotiation unit to accompany a complainant to a meeting or interview that is conducted under the bill.