



Senate Bill No. 1111

Public Act No. 19-93

AN ACT CONCERNING SEXUAL HARASSMENT AND SEXUAL ASSAULT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (8) of section 46a-51 of the general statutes, as amended by section 2 of public act 19-16, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(8) "Discriminatory practice" means a violation of section 4a-60, 4a-60a, 4a-60g, 31-40y, [subdivisions (15) to (17), inclusive, of section 46a-54,] subparagraph (C) of subdivision (15) of section 46a-54, as amended by section 1 of public act 19-16, subdivisions (16) and (17) of section 46a-54, as amended by section 1 of public act 19-16 and this act, section 46a-58, 46a-59, 46a-60, as amended by [this act] public act 19-16, 46a-64, 46a-64c, 46a-66, 46a-68, as amended by [this act] public act 19-16, 46a-68c to 46a-68f, inclusive, or 46a-70 to 46a-78, inclusive, subsection (a) of section 46a-80 or sections 46a-81b to 46a-81o, inclusive;

Sec. 2. Subsection (c) of section 46a-55 of the general statutes, as amended by section 11 of public act 19-16, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(c) The executive director, through the supervising attorney, may,

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within available appropriations, assign a commission legal counsel to bring a civil action concerning an alleged discriminatory practice, in accordance with this subsection, in lieu of an administrative hearing pursuant to section 46a-84, as amended by this act, when the executive director determines that a civil action is in the public interest and if the parties to the administrative hearing mutually agree, in writing, to the bringing of such civil action by commission legal counsel. The commission legal counsel shall bring such a civil action in the Superior Court not later than ninety days following the date the commission legal counsel notifies the parties of the executive director's determination. Such civil action may be served by certified mail and shall not be subject to the provisions of section 46a-100, 46a-101 or 46a-102. The jurisdiction of the Superior Court in an action brought under this subsection shall be limited to such claims, counterclaims, defenses or the like that could be presented at an administrative hearing before the commission, had the complaint remained with the commission for disposition. A complainant may intervene as a matter of right without permission of the court or the parties. The civil action shall be tried to the court without a jury. If the commission legal counsel determines that the interests of the state will not be adversely affected, the complainant or attorney for the complainant shall present all or part of the case in support of the complaint. The court may grant any relief available under section 46a-104, as amended by [this act] public act 19-16. Where the Superior Court finds that a respondent has committed a discriminatory practice, the court shall grant the commission its fees and costs and award the commission a civil penalty, not exceeding ten thousand dollars, provided such discriminatory practice has been established by clear and convincing evidence, which shall be payable to the commission and used by the commission to advance the public interest in eliminating discrimination.

Sec. 3. Subsection (h) of section 46a-84 of the general statutes, as amended by section 8 of public act 19-16, is repealed and the following

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is substituted in lieu thereof (*Effective October 1, 2019*):

(h) The complainant, the respondent and the commission shall be afforded the opportunity to inspect and copy relevant and material records, papers and documents not in the possession of such party, except as otherwise provided by applicable state [or federal] law. The presiding officer may order a party to produce such records, papers and documents, and if a party fails to comply with such order within thirty days of the date of such order, the presiding officer may issue a nonmonetary order that the presiding officer deems just and appropriate, including, but not limited to, an order (1) finding that the matters that are the subject of the order are established in accordance with the claim of the party requesting such order, (2) prohibiting the party who has failed to comply with such order from introducing designated matters into evidence, (3) limiting the participation of the noncomplying party with regard to issues or facts relating to the order, and (4) drawing an adverse inference against the noncomplying party.

Sec. 4. Section 46a-84 of the general statutes, as amended by section 8 of public act 19-16, is amended by adding subsection (i) as follows (*Effective October 1, 2019*):

(NEW) (i) When the executive director of the commission has determined that there are available appropriations and otherwise approves a request, the Chief Human Rights Referee may appoint any magistrate, who is on the list of available magistrates maintained by the Chief Court Administrator, to act as a presiding officer at any proceeding conducted pursuant to this section, subsection (l) of section 46a-83, subsection (c) or (d) of section 46a-56 or subsection (e) of section 4-61dd. Any magistrate so appointed shall have the same powers and duties as a human rights referee appointed pursuant to section 46a-57 and be compensated in accordance with the provisions of section 51-193r from such funds as may be available to the commission. The Chief Human Rights Referee may request the

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appointment of a magistrate whenever the total number of complaints pending in the commission's office of public hearings exceeds one hundred.

Sec. 5. Section 46a-97 of the general statutes, as amended by section 9 of public act 19-16, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(a) Any employer, employment agency or labor organization which fails to post such notices of statutory provisions as the commission may require pursuant to [subsection] subdivision (13) of section 46a-54, as amended by, [this act] section 1 of public act 19-16, shall be fined not more than [one thousand] seven hundred fifty dollars.

(b) Any person who fails to post such notices of statutory provisions as the commission may require pursuant to [subsection] subdivision (14) of section 46a-54, as amended by [this act] section 1 of public act 19-16, shall be fined not more than [one thousand] seven hundred fifty dollars.

(c) Any employer who fails to provide the training and education concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment, as required pursuant to subdivision (15) of section 46a-54, as amended by [this act] section 1 of public act 19-16, shall be fined not more than [one thousand] seven hundred fifty dollars.

(d) [The] During the twelve-month period following the date on which a complaint against an employer has been filed with the commission by an employee or, if the executive director of the commission reasonably believes that an employer is in violation of the provisions of subdivision (13), (14) or (15) of section 46a-54, as amended by section 1 of public act 19-16, the executive director of the commission may assign a designated representative of the commission

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to enter an employer's place of business during normal business hours for purposes of: (1) Ensuring compliance with the posting requirements prescribed in subdivisions (13), (14) and (15) of section 46a-54, as amended by [this act] section 1 of public act 19-16, and (2) examining records, policies, procedures, postings and sexual harassment training materials maintained by the employer in connection with the requirements of subdivisions (13), (14) and (15) of section 46a-54, as amended by [this act] section 1 of public act 19-16. A designated representative of the commission, who is carrying out the duties set forth in this subsection, shall ensure that such activities do not unduly disrupt the business operations of the employer. If the employer's place of business is a residential home, the designated representative of the commission shall not enter such residential home without the express permission of such homeowner.

Sec. 6. Subsection (b) of section 46a-86 of the general statutes, as amended by section 7 of public act 19-16, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(b) In addition to any other action taken under this section, upon a finding of a discriminatory employment practice, the presiding officer shall (1) issue an order to eliminate the discriminatory employment practice complained of and to make the complainant whole, including restoration to membership in any respondent labor organization, and (2) may (A) determine the amount of damages suffered by the complainant, including the actual costs incurred by the complainant as a result of the discriminatory employment practice, and (B) allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant. Liability for back pay shall not accrue from a date more than two years prior to the filing or issuance of the complaint. Interim earnings, including unemployment compensation and welfare assistance or amounts which could have

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been earned with reasonable diligence on the part of the person to whom back pay is awarded shall be deducted from the amount of back pay to which such person is otherwise entitled. The amount of any deduction for interim unemployment compensation or welfare assistance shall be paid by the respondent to the commission which shall transfer such amount to the appropriate state or local agency. Not later than October 1, 2020, and annually thereafter, the executive director of the commission shall report, in accordance with the provisions of section 11-4a, to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary on the commission's award of reasonable attorney's fees and costs under this section. Such report shall include, but not be limited to: (i) The awards of reasonable attorney's fees and a comparison of such awards to awards of damages; (ii) the category of complaint for which damages and attorney's fees are awarded; (iii) the commission's methodology for calculating awards of reasonable attorney's fees and costs, if such methodology may be ascertained; (iv) data on the number of employees employed by respondents who were subject to awards of reasonable attorney's fees and costs; and (v) the percentage of complainants and respondents represented by counsel in matters in which awards of reasonable attorney's fees and costs are made.

Sec. 7. Subsection (b) of section 14 of public act 19-16 is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The task force shall consist of the following members:

(1) One appointed by the speaker of the House of Representatives, who is an attorney who has represented two or more plaintiffs in a civil action concerning sexual abuse, sexual exploitation or sexual assault;

(2) One appointed by the president pro tempore of the Senate, who is a victim of sexual abuse, sexual exploitation or sexual assault;

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(3) One jointly appointed by the president pro tempore of the Senate and the speaker of the House of Representatives;

(4) One appointed by the majority leader of the House of Representatives, who is (A) a representative of an entity named as a defendant in a civil action for sexual abuse, sexual exploitation or sexual assault; or (B) a lawyer who has represented two or more clients named as a defendant in a civil action for sexual abuse, sexual exploitation or sexual assault;

(5) One appointed by the majority leader of the Senate who is a representative of the Connecticut Alliance to End Sexual Violence;

(6) One appointed by the minority leader of the House of Representatives, who is (A) a representative of an entity named as a defendant in a civil action for sexual abuse, sexual exploitation or sexual assault; or (B) a lawyer who has represented two or more clients named as a defendant in a civil action for sexual abuse, sexual exploitation or sexual assault;

(7) One appointed by the minority leader of the Senate; and

[(8) The executive director of the Connecticut Trial Lawyers Association, or said executive director's designee; and]

[(9)] (8) One appointed by the Chief Court Administrator, who is a judge of the Superior Court or who previously served as a judge of the Superior Court.

Sec. 8. Subdivision (8) of subsection (b) of section 46a-60 of the general statutes, as amended by section 4 of public act 19-16, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(8) For an employer, by the employer or the employer's agent, for an

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employment agency, by itself or its agent, or for any labor organization, by itself or its agent, to harass any employee, person seeking employment or member on the basis of sex or gender identity or expression. If an employer takes immediate corrective action in response to an employee's claim of sexual harassment, such corrective action shall not modify the conditions of employment of the employee making the claim of sexual harassment unless such employee agrees, in writing, to any modification in the conditions of employment. "Corrective action" taken by an employer, includes, but is not limited to, employee relocation, assigning an employee to a different work schedule or other substantive changes to an employee's terms and conditions of employment. Notwithstanding an employer's failure to obtain a written agreement from an employee concerning a modification in the conditions of employment, the commission may find that corrective action taken by an employer was reasonable and not of detriment to the complainant based on the evidence presented to the commission by the complainant and respondent. As used in this subdivision, "sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (C) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;

Sec. 9. Section 53a-72a of the general statutes, as amended by section 15 of public act 19-16, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(a) A person is guilty of sexual assault in the third degree when such person (1) compels another person to submit to sexual contact (A)

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by the use of force against such other person or a third person, or (B) by the threat of use of force against such other person or against a third person, which reasonably causes such other person to fear physical injury to himself or herself or a third person, or (2) subjects another person to sexual contact and such other person is mentally incapacitated or impaired because of mental disability or disease to the extent that such other person is unable to consent to such sexual contact, or (3) engages in sexual intercourse with another person whom the actor knows to be related to him or her within any of the degrees of kindred specified in section 46b-21.

(b) Sexual assault in the third degree is a class D felony or, if the victim of the offense is under sixteen years of age, a class C felony.

Sec. 10. Section 53a-73a of the general statutes, as amended by section 16 of public act 19-16, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or (B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or (C) [impaired because of mental disability or disease to the extent that such other person is unable to consent to such sexual contact, or (D)] physically helpless, or [(E)] (D) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or [(F)] (E) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (2) such person subjects another person to sexual contact without such other person's consent; or (3) such person engages in sexual contact with an animal or dead body; or (4) such person is a psychotherapist and subjects another person to

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sexual contact who is (A) a patient of the actor and the sexual contact occurs during the psychotherapy session, or (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age; or (9) such person subjects another person to sexual contact who is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is under sixteen years of age, a class D felony.