

2019 -- S 0330

LC001320

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES -
- SEXUAL HARASSMENT

Introduced By: Senators Cano, Goldin, Euer, Murray, and Lynch Prata

Date Introduced: February 13, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-5-6 and 28-5-7.3 of the General Laws in Chapter 28-5 entitled
2 "Fair Employment Practices" are hereby amended to read as follows:

3 **28-5-6. Definitions.**

4 When used in this chapter:

5 (1) "Age" means anyone who is at least forty (40) years of age.

6 (2) "Because of sex" or "on the basis of sex" include, but are not limited to, because of or
7 on the basis of pregnancy, childbirth, or related medical conditions, and women affected by
8 pregnancy, childbirth, or related medical conditions shall be treated the same for all employment
9 related purposes, including receipt of benefits under fringe benefit programs, as other persons not
10 so affected but similar in their ability or inability to work, and nothing in this chapter shall be
11 interpreted to permit otherwise.

12 (3) "Commission" means the Rhode Island commission against discrimination created by
13 this chapter.

14 (4) "Conviction" means, for the purposes of this chapter only, any verdict or finding of
15 guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.

16 (5) "Disability" means a disability as defined in § 42-87-1.

17 (6) "Discriminate" includes segregate or separate.

18 (7) "Employee" does not include any individual employed by his or her parents, spouse,

1 or child, ~~or in the domestic service of any person.~~

2 (8)(i) "Employer" includes the state and all political subdivisions of the state and any
3 person in this state employing four (4) or more individuals, and any person acting in the interest
4 of an employer directly or indirectly.

5 (ii) Nothing in this subdivision shall be construed to apply to a religious corporation,
6 association, educational institution, or society with respect to the employment of individuals of its
7 religion to perform work connected with the carrying on of its activities.

8 (9) "Employment agency" includes any person undertaking with or without compensation
9 to procure opportunities to work, or to procure, recruit, refer, or place employees.

10 (10) "Firefighter" means an employee the duties of whose position includes work
11 connected with the control and extinguishment of fires or the maintenance and use of firefighting
12 apparatus and equipment, including an employee engaged in this activity who is transferred or
13 promoted to a supervisory or administrative position.

14 (11) "Gender identity or expression" includes a person's actual or perceived gender, as
15 well as a person's gender identity, gender-related self image, gender-related appearance, or
16 gender-related expression; whether or not that gender identity, gender-related self image, gender-
17 related appearance, or gender-related expression is different from that traditionally associated
18 with the person's sex at birth.

19 (12) "Labor organization" includes any organization which exists for the purpose, in
20 whole or in part, of collective bargaining or of dealing with employers concerning grievances,
21 terms or conditions of employment, or of other mutual aid or protection in relation to
22 employment.

23 (13) "Law enforcement officer" means an employee the duties of whose position include
24 investigation, apprehension, or detention of individuals suspected or convicted of offenses against
25 the criminal laws of the state, including an employee engaged in such activity who is transferred
26 or promoted to a supervisory or administrative position. For the purpose of this subdivision,
27 "detention" includes the duties of employees assigned to guard individuals incarcerated in any
28 penal institution.

29 (14) "Person" includes one or more individuals, partnerships, associations, organizations,
30 corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

31 (15) "Religion" includes all aspects of religious observance and practice, as well as belief,
32 unless an employer, union or employment agency demonstrates that it is unable to reasonably
33 accommodate to an employee's or prospective employee's or union member's religious
34 observance or practice without undue hardship on the conduct of its business.

1 (16) "Sexual orientation" means having or being perceived as having an orientation for
2 heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of
3 persons and does not render lawful any conduct prohibited by the criminal laws of this state nor
4 impose any duty on a religious organization. This definition does not confer legislative approval
5 of that status, but is intended to assure the basic human rights of persons to obtain and hold
6 employment, regardless of that status.

7 (17) The terms, as used regarding persons with disabilities:

8 (i) "Auxiliary aids and services" and "reasonable accommodation" shall have the same
9 meaning as those items are defined in § 42-87-1.1; and

10 (ii) "Hardship" means an "undue hardship" as defined in § 42-87-1.1.

11 **28-5-7.3. Discriminatory practice need not be sole motivating factor.**

12 An unlawful employment practice may be established in an action or proceeding under
13 this chapter when the complainant demonstrates that race, color, religion, sex, sexual orientation,
14 gender identity or expression, disability, age, ~~or~~ country of ancestral origin, or retaliation was a
15 motivating factor for any employment practice, even though the practice was also motivated by
16 other factors. Nothing contained in this section shall be construed as requiring direct evidence of
17 unlawful intent or as limiting the methods of proof of unlawful employment practices under § 28-
18 5-7.

19 SECTION 2. Sections 28-51-1, 28-51-2 and 28-51-3 of the General Laws in Chapter 28-
20 51 entitled "Sexual Harassment, Education and Training in the Workplace" are hereby amended
21 to read as follows:

22 **28-51-1. Definitions.**

23 (a) As used in this chapter, "Employer" means any entity employing ~~fifty (50)~~ four (4) or
24 more employees.

25 (b) As used in this chapter, "Sexual harassment" means any unwelcome sexual advances
26 or requests for sexual favors or any other verbal or physical conduct of a sexual nature when:

27 (1) Submission to that conduct or those advances or requests is made either explicitly or
28 implicitly a term or condition of an individual's employment; or

29 (2) Submission to or rejection of the conduct or advances or requests by an individual is
30 used as the basis for employment decisions affecting the individual; or

31 (3) The conduct or advances or requests have the purpose or effect of unreasonably
32 interfering with an individual's work performance or creating an intimidating, hostile, or
33 offensive working environment.

34 **28-51-2. Adoption of workplace policy and statement.**

1 (a) All employers and employment agencies shall promote a workplace free of sexual
2 harassment.

3 (b) Every employer shall:

4 (1) Adopt a policy against sexual harassment that shall include:

5 (i) A statement that sexual harassment in the workplace is unlawful;

6 (ii) A statement that it is unlawful to retaliate against an employee for filing a complaint
7 of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment;

8 (iii) A description and examples of sexual harassment;

9 (iv) A statement of the range of consequences for employees who are found to have
10 committed sexual harassment;

11 (v) A description of the process for filing internal complaints about sexual harassment
12 and the work addresses and telephone numbers of the person or persons to whom complaints
13 should be made; and

14 (vi) The identity of the appropriate state and federal employment discrimination
15 enforcement agencies, and directions as to how to contact these agencies.

16 (2) Provide to all employees a written copy of the employer's policy against sexual
17 harassment; provided, that a new employee shall be provided such a copy at the time of his or her
18 employment.

19 (c) Employers are ~~encouraged~~ required to conduct an education and training program for
20 new employees and members, within one ~~year~~ month of commencement of employment or
21 membership, which includes at a minimum the information set forth in this section. Employers
22 are ~~encouraged~~ required to conduct additional training for new supervisory and managerial
23 employees within one ~~year~~ month of commencement of employment which shall include at a
24 minimum the information set forth in subsection (b) of this section, the specific responsibilities of
25 supervisory and managerial employees and the methods that these employees should take to
26 ensure immediate and appropriate corrective action in addressing sexual harassment complaints.
27 Employers and appropriate state agencies are ~~encouraged~~ required to cooperate in making this
28 training available.

29 (d) Employers shall provide copies of their written policies on sexual harassment to all
30 employees upon their request.

31 (e) Employers shall be required to maintain copies of their written policies on sexual
32 harassment at their business premises, and copies of such policies shall be made available to any
33 state or federal employment discrimination enforcement agency upon request.

34 **28-51-3. Education and training programs.**

1 Employers are ~~encouraged~~ required to conduct an education and training program on
2 sexual harassment consistent with the aims and purposes of this chapter for all employees,
3 including, but not limited to supervisory or managerial personnel, on or before ~~September 1, 1997~~
4 September 1, 2019.

5 SECTION 3. Chapter 28-51 of the General Laws entitled "Sexual Harassment, Education
6 and Training in the Workplace" is hereby amended by adding thereto the following section:

7 **28-51-4. Enforcement.**

8 (a) The commission for human rights is empowered and directed, as hereinafter provided,
9 to prevent any employer or employment agency from violating any of the provisions of this
10 chapter; provided, that before instituting a formal hearing, it shall attempt by informal methods of
11 conference, persuasion and conciliation, to induce compliance with those provisions. Upon the
12 commission's own initiative or whenever an aggrieved individual or an organization chartered for
13 the purpose of combating discrimination, such individual or organization being hereinafter
14 referred to as "the complainant", makes a charge to the commission that any employer or
15 employment agency hereinafter referred to as "the respondent", has violated or is violating any of
16 the provisions of this chapter, the commission may proceed in the same manner and with the
17 same powers as provided in § 28-5-13 and the provisions of §§ 28-5-16 through 28-5-36, as to the
18 powers, duties and rights of the commission, its members, hearing examiners, the complainant,
19 and respondent under this section.

20 (b) The department of labor and training is empowered and directed, as hereinafter
21 provided, to prevent any employer or employment agency from violating any of the provisions of
22 this chapter. The director of labor and training shall have the same powers and duties as set forth
23 in chapter 12 and chapter 14 of title 28 to investigate, inspect, subpoena, and enforce through
24 administrative hearings, complaints that allege that an employer or employment agency has
25 violated or is violating any of the provisions of this chapter.

26 (c) The commission and the department of labor shall cooperate in the investigation of
27 complaints filed under this section when the allegations are within the jurisdiction of both
28 agencies.

29 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES -
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- 1 This act would extend protection to persons employed in domestic service and include
2 retaliation as an unlawful employment practice. This act would require employers of four (4) or
3 more employees rather than fifty (50) to comply with the sexual harassment education and
4 workplace training requirements, conduct such a program for new employees within one month
5 of the date of employment and for all other employees before September 1, 2019. Enforcement
6 would be vested in the commission for human rights and/or the department of labor and training.
7 This act would take effect upon passage.

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