



#HARASSMENTFREEALBANY

Sexual Harassment Working Group

2021 Legislative Agenda

A[TBD](Niou)/S3395(Gounardes): Includes New York State and all public employers as employers subject to the provisions of the human rights law.¹

- This bill eliminates the "license to harass" by codifying that under the New York State Human Rights Law, staff of elected and appointed officials are employees of the governmental entity(ies) for which they work, whether it is New York State, or a city, county or municipality.
- This bill is essential because federal Title VII contains a carve-out for the "personal staff" of elected officials, exempting those workers from protections against discrimination and harassment. This has been used to deny employees recourse; for example, with victims harassed by former New York State Assemblymember Gabryzak.
- Currently, some government entities argue that they are not the employer of a victim who works for an elected or appointed official. This distinction has been used to try to deny employees legal recourse for the harassment, discrimination, abuse, or retaliation they suffered.
- New York State law should provide a safeguard for victims, and assume responsibility for the actions of elected and appointed officials, especially as federal worker rights protections have deteriorated.
- Without state-level recourse, workers may be left with no protection at all.

A[TBD](Cruz)/S1096(Liu): Ensures that legislative and judicial staff who report violations of law or other improper conduct are not retaliated against or subject to disciplinary action.²

- Current civil service whistleblower law does not protect legislative or judicial staff because it excludes those employees from the definition of "public employee."
- Adding all public staff to the definition of "public employee" in the civil service law will close this unreasonable loophole.

A[TBD](Rozic)/S738(Biaggi): Prevents sexual harassment or discrimination settlement agreements from including provisions that force victims to pay a specified amount in damages upon their violation of a non-disclosure agreement.³

- This legislation seeks to protect survivors from automatic financial penalties for speaking out about their lived experience.
- In 2018, New York State banned non-disclosure agreements except in cases of a "complainant's preference." This was intended to provide a victim with privacy if they want it, not for employers to continue to punish victims if they decide to speak.
- But, some non-disclosure agreements specify an agreed-upon amount of money a victim would have to pay if they violate the agreement--known as a liquidated damages clause.

¹ Legislative History: 2020 A8847(Niou)/S6828(Gounardes)

² Legislative History: 2020 A09904(Simotas)/S7841(Liu)

³ Legislative History: 2020 A849B(Simotas)/S5469-A(Biaggi)
2019 A849A(Simotas)/S5469(Biaggi)



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- Setting a price on the victim's silence is highly inappropriate in sexual harassment and discrimination cases.
- Liquidated damages are used in other types of matters, and legally, liquidated damages are not supposed to be punitive. However, these liquidated damages clauses function solely to punish and terrify workers
- Due to other common provisions in worker settlement agreements, a liquidated damages clause is likely to be enforced in mediation, outside the court system and the public eye.

A233(Rosenthal)/S849(Gounardes): Extends the statute of limitations for harassment suits to six years.⁴

- Currently, survivors only have three years to file their claim in court before the statute of limitations expires.
- We know that processing trauma, and choosing to move forward in a formal and public way, can take much longer than three years.
- This bill takes the need to process trauma into consideration by extending the amount of time a victim can file a suit.

A2079(Cruz)/S766(Gounardes): Bans "no-rehire" clauses in workplace settlement agreements.⁵

- Known as a "do not darken my door" clause, employers include these in settlement agreements as a way to keep victims silent, especially in the very workplace that the conduct took place.
- This bill protects survivors from victim-punishment by ensuring that victims do not have to choose between moving on with their life with a settlement and losing a job to which they are qualified.

A[TBD](Cruz)/S[TBD](Liu): Requires people registered as lobbyist with New York State to take an annual online anti-sexual harassment training.

- Lobbyists play a unique role in our state government, and are oftentimes in the same spaces as legislators and their staff.
- While current law requires all workplaces to conduct anti-harassment and discrimination training, it is important that lobbyists understand the power dynamics as they exist outside of their workplace, but while conducting official business.
- This bill adds another layer of accountability by requiring registered lobbyists to participate in an anti-sexual harassment training provided by the State.

⁴ Legislative History: 2020 A304(Rosenthal)/S6322(Gounardes)
2019 A304(Rosenthal)

⁵ Legislative History: 2020 A9993(Cruz)/S7819(Gounardes)