



SEXUAL HARASSMENT WORKING GROUP
2019 LEGISLATIVE AGENDA

Expand Baseline Statutory Protections for Workers

1. End the “severe or pervasive” standard for discriminatory harassment, additional protections

A7083A/S3817A: This bill encompasses multiple protections for workers, including clarifying how many employees an employer must have in order to be held accountable under the NYS Human Rights Law, extending protections against discriminatory and retaliatory harassment to all protected classes, lowers the severe or pervasive standard, eliminates part of the Faragher/Ellerth defense, sets out vicarious liability standards of employers based on the discriminatory actions of its employees and independent contractors, clarifies the basis for unlawful discriminatory practices relating to domestic workers, addresses circumstances under which employers are liable to non-employees in the workplace, extends punitive damages to employment discrimination actions, without limitation on the amount, to cases brought before the State Division of Human Rights. It also provides for punitive damages and provides for attorneys' fees to prevailing plaintiffs in all employment discrimination cases, not just those based on sex discrimination.¹

2. Require employer to take immediate and appropriate corrective action when he or she knows of a non-employee sexually harassing certain employees

A7220/S4513: Makes it unlawful for an employer to fail to take immediate and appropriate corrective action when he or she knows of a non-employee sexually harassing certain employees.²

¹ **A7083/S3817:** Assembly Sponsor/Co-Sponsor: SIMOTAS, ROZIC, DE LA ROSA, SIMON, QUART, LAVINE, MOSLEY, GOTTFRIED, PAULIN, ORTIZ, MILLER MG, BRAUNSTEIN, O'DONNELL, D'URSO, ZEBROWSKI, WEPRIN, HEVESI ; Senate Sponsor/Co-Sponsors: BIAGGI, HOYLMAN, KRUEGER, RIVERA, SALAZAR

² **A7220/S4513:** Assembly Sponsor/Co-Sponsor: CRUZ, COOK, BLAKE, SEAWRIGHT, GLICK, RIVERA, ORTIZ, SIMOTAS, EPSTEIN, SIMON, DESTEFANO, ASHBY, SAYEGH, RAMOS, JAFFEE; Senate Sponsor/Co-Sponsor: KRUEGER, SALAZAR

3. Update 2018 sexual harassment laws to apply to “discrimination”

A5976/S4109: Relates to the prevention of discrimination; replaces the term "sexual harassment" with "discrimination". **PASSED ASSEMBLY**³

Repair NDA laws to Protect Victims

4. Require independent consideration for confidentiality provision; prohibits liquidated damages in discrimination settlement for violation of non-disclosure agreement

A849-A/S5469: Requires independent consideration for each confidentiality provision included in a settlement agreement. The bill also prohibits the use of liquidated damages in the event that a plaintiff in a harassment or discrimination settlement violates a non-disclosure agreement.⁴

5. Require a written waiver explaining consequences of confidentiality agreement; voids confidentiality agreement if it prevents filing of complaint, participation in investigation, or disclosure of facts necessary to receive public benefits

A869/S2037: Requires that any party entering a confidentiality agreement first be given a written waiver explaining the full consequences of the agreement and the rights they would be surrendering. Additionally, under this bill, a confidentiality agreement would be void if it stopped a party from filing an official complaint with a local, state or federal agency, cooperating with an investigation (such as testifying, assisting, or participating), or filing or disclosing any facts necessary to receive unemployment insurance or other public benefits.⁵

6. Require employers to inform employees signing non-disclosure agreements in employment contracts that they retain the right to report

³ **A5976/S4109:** *Assembly Sponsor/Co-Sponsor:* WRIGHT, PEOPLES-STOKES, BARRON, BICHOTTE, COOK, CRESPO, DE LA ROSA, GALEF, O'DONNELL, ROZIC, SEAWRIGHT, SIMON, TAYLOR, ROSENTHAL, HUNTER, GLICK, ARROYO, ORTIZ, NIOU, GOTTFRIED, SIMOTAS, WALLACE, OTIS, BRONSON, WEPRIN, FALL, JAFFEE, STERN, FRONTUS, CRUZ, COLTON, DAVILA, REYES; *Senate Sponsor/Co-Sponsor:* PARKER, KRUEGER

⁴ **A849-A/S5469:** *Assembly Sponsor/Co-Sponsors:* SIMOTAS, QUART, PAULIN, SEAWRIGHT, MILLER MG, LENTOL, GOTTFRIED, CRUZ, THIELE, STIRPE, SIMON, ZEBROWSKI, CYMBROWITZ, STERN, GLICK, FERNANDEZ, MAGNARELLI, MOSLEY, LUPARDO, BLAKE, GALEF, EPSTEIN, MONTESANO; *Senate Sponsor:* BIAGGI, KRUEGER

⁵ **A869/S2037:** *Assembly Sponsor/Co-Sponsors:* SIMOTAS, ORTIZ, DINOWITZ, EPSTEIN, STIRPE, MOSLEY, GOTTFRIED, ABINANTI, D'URSO, WALLACE, QUART, PAULIN, SEAWRIGHT, LENTOL, MILLER MG, RA, CRUZ, THIELE, SIMON, ZEBROWSKI, CYMBROWITZ, STERN, GLICK, FERNANDEZ, MAGNARELLI, DENDEKKER, LUPARDO, BLAKE, GALEF; *Senate Sponsor:* BIAGGI, HOYLMAN, KRUEGER, SALAZAR, GOUNARDES

A1115/S2035: Requires employers to inform employees signing non-disclosure agreements that they retain the right to report to law enforcement, the equal employment opportunity commission, the division of human rights or a local human rights commission.⁶

Establish Trauma-Informed Statutes of Limitations

7. Extend time to file a discrimination complaint with the NYS Division of Human Rights from one to three years, tolls statute of limitations during pendency of investigation

A1042/S2036: Extends the time to file a sexual harassment or discrimination complaint with the NYS Division of Human Rights from one year to three years. Additionally, this bill would help state and legislative employees by giving them up to 6 months to file notice of intention to sue for unlawful discrimination in the Court of Claims, an extension from the short limitation of 90 days in some circumstances. The bill would also stop the statute of limitations clock during the pendency of any investigation or administrative proceedings related to the alleged discriminatory practice.⁷

8. Extend statute of limitations for actions based on harassment to six years

A304/ no same-as: Relates to the statute of limitations for actions based on harassment; six years.⁸

Expand Constitutionally-Protected Classes

9. Amend the NYS Constitution to prohibit sex discrimination, additional protections

A272/S517: Prohibits discrimination on the basis of ethnicity, nationality, national origin, sex including pregnancy, sexual orientation and gender identity or expression, disability, age, or like grounds used to deprive a class of the people of New York of their equal opportunity to enjoy a full and productive life.⁹

⁶ **A1115/S2035:** *Assembly Sponsor/Co-Sponsors:* SIMOTAS, ORTIZ, DINOWITZ, EPSTEIN, STIRPE, MOSLEY, GOTTFRIED, ABINANTI, D'URSO, WALLACE, QUART, PAULIN, SEAWRIGHT, LENTOL, CRUZ, M. G. MILLER, RA, THIELE, DenDEKKER, LUPARDO, BRAUNSTEIN, GALEF, CYMBROWITZ, SIMON, ZEBROWSKI, FERNANDEZ, MAGNARELLI ; *Senate Sponsor:* BIAGGI, GOUNARDES, HOYLMAN, KRUEGER, SALAZAR

⁷ **A1042/S2036:** *Assembly Sponsor/Co-Sponsor:* SIMOTAS, ORTIZ, DINOWITZ, EPSTEIN, STIRPE, MOSLEY, GOTTFRIED, ABINANTI, D'URSO, WALLACE, QUART, PAULIN, SEAWRIGHT, MILLER MG, RA, LENTOL, CRUZ, THIELE, SIMON, ZEBROWSKI, CYMBROWITZ, STERN, GLICK, FERNANDEZ, MAGNARELLI, DenDEKKER; LUPARDO, BRAUNSTEIN, BLAKE, GALEF *Senate Sponsor/Co-Sponsor:* BIAGGI, GOUNARDES, HOYLMAN, KRUEGER, SALAZAR

⁸ **A304/ no same-as:** *Assembly Sponsor:* ROSENTHAL

⁹ **A272/S517:** *Assembly Sponsor/Co-Sponsor:* SEAWRIGHT, OTIS, SIMOTAS; *Senate Sponsor/Co-Sponsors:* KRUEGER, BAILEY, BENJAMIN, BIAGGI, BRESLIN, CARLUCCI, COMRIE, HOYLMAN, JACKSON, KAPLAN, MAY, MAYER, METZGER, PARKER, PERSAUD, SANDERS, SEPULVEDA, SERRANO, STAVISKY

Improve Language Access

10. Requires employers to provide employees notice of their sexual harassment prevention policy and sexual harassment prevention training program in employees' primary languages

A3646-A/S3343-A: Requires employers to provide employees notice of their sexual harassment prevention policy and sexual harassment prevention training program in writing in English and in employees' primary languages. The bill also requires the commissioner of labor to create dual language templates of model sexual harassment prevention policies and training programs.¹⁰

¹⁰ **A3646-A/S3343-A:** Assembly Sponsor/Co-Sponsor: ROZIC, DE LA ROSA, RIVERA, CRUZ, DINOWITZ, BUTTENSCHON, DENDEKKER, D'URSO, JEAN-PIERRE, CRESPO, ORTIZ, SIMON, EPSTEIN, MILLER MG, ROMEO, MCMAHON, GOTTFRIED, GRIFFIN, COLTON, GALEF, JAFFEE, REYES, GLICK, MCDONOUGH; FALL, NIOU, FERNANDEZ, RAYNOR, TAYLOR, COOK, DESTEFANO, HEVESI; Senate Sponsor/Co-Sponsor: RAMOS, GAUGHRAN, KENNEDY, KRUEGER