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HOUSE BILL NO. 653

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:6, relating to the duty of employers to provide sexual harassment training; civil penalty.*

Patron—Murphy

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:6 as follows:

§ 40.1-28.7:6. Sexual harassment training.

A. Every employer with 15 or more employees who are located at a workplace within the Commonwealth:

1. Shall conduct an education and training program for all new employees within one year of commencement of employment, which training shall encompass the illegality of sexual harassment; the definition of sexual harassment under state and federal laws and federal regulations, including the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.); a description of sexual harassment, utilizing examples; the employer's sexual harassment complaint process available to the employee; legal recourse and complaint processes; and protections against retaliation; and

2. Shall conduct additional training for all supervisors and managers within one year of assuming their supervisory or managerial positions that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

B. The Department shall develop a compliance checklist for employers covering the requirements under subsection A. The checklist shall be made available on the Department's publicly accessible website. Employers shall use the checklist to develop a sexual harassment training program and shall keep a record of the training, including a record of employees who have received the required training. Training records must be maintained for at least three years and must be made available for inspection by the Department upon request.

C. Any employer who violates the provisions of this section shall be subject to a civil penalty not to exceed \$100 for each violation. The Commissioner shall, by certified mail or overnight delivery service, notify any employer who he alleges has violated any provision of this section. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following its receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the Treasury of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed penalties that are not contested by employers.

INTRODUCED

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