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HOUSE BILL NO. 2083

Offered January 9, 2019

Prefiled January 7, 2019

A BILL to amend and reenact §§ 30-129.4, 30-129.5, and 30-129.6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 30-129.5:1, relating to workplace harassment; legislative branch policies.

Patrons—Watts and Carr

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-129.4, 30-129.5, and 30-129.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-129.5:1 as follows:

CHAPTER 13.1.

SEXUAL LEGISLATIVE POLICY RELATING TO WORKPLACE HARASSMENT TRAINING ACT.

§ 30-129.4. Workplace harassment policy; legislative branch.

A. As used in this chapter, unless the context requires a different meaning:

"Commonwealth Workplace Harassment Policy" means the DHRM human resources policy on workplace harassment, as may be amended, which includes measures to help ensure a workplace free from workplace harassment.

"Department" means the Department of Human Resource Management.

"Legislative branch employee" means (i) a General Assembly member or member-elect; (ii) a General Assembly member's or member-elect's legislative assistant or other legislative staff compensated in whole, or in part, with state appropriations, working full-time for the member; and (iii) all other full-time employees, including contract employees, of each legislative branch agency of the Commonwealth.

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

"Workplace harassment" means any unwelcome verbal, written, or physical conduct that either denigrates or shows hostility or aversion toward a person on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, veteran status, political affiliation, genetics, or disability that (i) has the purpose or effect of creating an environment that a reasonable person would consider intimidating, hostile, or abusive; (ii) has the purpose or effect of unreasonably interfering with an employee's work performance; or (iii) affects an employee's employment opportunities or compensation.

B. 1. Every legislative branch employee shall once every two calendar years complete a sexual workplace harassment training course provided by the Office of the Clerk of the House of Delegates or the Office of the Clerk of the Senate. The sexual workplace harassment training course shall be (i) provided online; (ii) available 24 hours per day, seven days per week; and (iii) substantially similar to any sexual workplace harassment training course offered through the Commonwealth of Virginia Learning Center administered by the Department of Human Resource Management.

2. Legislative branch employees who are (i) members elected to the House of Delegates or legislative assistants or staff for such members or (ii) officers or employees of the Office of the Clerk of the House of Delegates shall complete the sexual workplace harassment training course provided by the Clerk of the House of Delegates. Legislative branch employees who are (a) members elected to the Senate or legislative assistants or staff for such members or (b) officers or employees of the Office of the Clerk of the Senate shall complete the sexual workplace harassment training course provided by the Clerk of the Senate. All other legislative branch employees shall complete the sexual workplace harassment training course provided by either the Clerk of the House of Delegates or the Clerk of the Senate. The content of the sexual workplace harassment training course provided by the Clerk of the House of Delegates and the Clerk of the Senate shall be substantially similar.

C. 1. The Clerk of the House of Delegates and the Clerk of the Senate shall maintain records for members elected to the House of Delegates and the Senate, respectively, completing the sexual workplace harassment training course. Each record at a minimum shall include the name of the General Assembly member completing the training, the date on which the training was successfully completed,

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59 and the name of the training course. The Clerk of the House of Delegates and the Clerk of the Senate
60 shall keep such records for at least five years for public inspection.

61 2. By no later than July 1, 2019, the Clerk of the House of Delegates and the Clerk of the Senate
62 shall ensure that the ~~sexual~~ workplace harassment training course is developed and provided in a manner
63 such that a person successfully completing the training course will have a means to print a certificate of
64 course completion that includes the person's name, the name of the state agency employing the person,
65 the date on which the training was successfully completed, the name of the training course, and a unique
66 serial number or other unique identifying information for each certificate.

67 *D. 1. Every agency in the legislative branch of the Commonwealth shall adopt and implement the*
68 *Commonwealth Workplace Harassment Policy. The Commonwealth Workplace Harassment Policy shall*
69 *apply to legislative branch employees in buildings or property owned or leased by the Commonwealth*
70 *within the Capitol District as defined in § 2.2-620 or performing official duties elsewhere. Such duties*
71 *include meetings, communications, or actions undertaken with other state employees, contract employees,*
72 *applicants for employment, customers, vendors, members of the media, members of the public,*
73 *volunteers, or lobbyists. Official duties shall include any activities of General Assembly members*
74 *covered as official duties under the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) and*
75 *activities related to election to the General Assembly. Managers, supervisors, members, and*
76 *members-elect who participate in or tolerate workplace harassment or who knowingly fail to take*
77 *appropriate corrective action regarding allegations of such behavior shall be in violation of the*
78 *Commonwealth Workplace Harassment Policy.*

79 2. Legislative branch agencies may adopt additional workplace policies that do not conflict with the
80 Commonwealth Workplace Harassment Policy to accommodate specific business needs.

81 *E. In addition to the remedies available under the Commonwealth Workplace Harassment Policy, any*
82 *employee or other person may file a complaint of workplace harassment against a legislative branch*
83 *employee other than a member of the General Assembly with the Division of Human Rights established*
84 *under Article 4 (§ 2.2-520 et seq.) of Chapter 5 of Title 2.2. The Division of Human Rights may*
85 *investigate the complaint and use such other powers with regard to the complaint as authorized to the*
86 *Division of Human Rights under law.*

87 *F. Each house of the General Assembly shall adopt rules governing procedures and disciplinary*
88 *sanctions for General Assembly members and members-elect who are alleged to have committed*
89 *violations of this chapter.*

90 *Such rules also shall require that (i) any legislative branch employee informed of potential*
91 *workplace harassment by a claimant or who observes workplace harassment shall report the incident*
92 *immediately to the respective Clerk with all pertinent information; (ii) in investigating reports, all*
93 *parties involved shall be given every opportunity to relate their facts, perceptions, and observations; (iii)*
94 *preserving confidentiality to the extent feasible, the Clerk shall keep the presiding officer, the Chairman*
95 *of the Committee on Rules, the majority leader, and the minority leader of the respective house informed*
96 *of the status of any investigation undertaken, may request authorization to engage outside investigative*
97 *resources, and shall make written findings of any actions of a member or member-elect that constituted*
98 *workplace harassment; (iv) the Clerk with the presiding officer, majority leader, and minority leader of*
99 *the respective house shall determine when disclosure to law enforcement of information, including*
100 *personally identifiable information, is necessary to protect public safety; and (v) disciplinary action for*
101 *General Assembly members and members-elect shall include public reprimand, censure, or expulsion,*
102 *with any such disciplinary action taken recorded in the records of the Clerk. The rules regarding*
103 *members and members-elect shall be in addition to the requirements of each Clerk as manager of the*
104 *Office of the Clerk regarding other employees. Each Clerk shall annually publish summary information,*
105 *in a manner that protects the confidentiality of all claimants, about workplace harassment claims.*

106 *G. The remedies available under this chapter and the Commonwealth Workplace Harassment Policy*
107 *shall be in addition to any other civil remedies and criminal sanctions provided under law. A*
108 *complaining party may recover punitive damages in addition to compensatory damages if the*
109 *complaining party demonstrates that the offender engaged in a discriminatory practice or discriminatory*
110 *practices with malice or with reckless indifference to the protected rights of an aggrieved individual.*

111 **§ 30-129.5. Workplace harassment training for new employees and new General Assembly**
112 **members.**

113 A (i) legislative branch employee commencing or recommencing employment or (ii) new member of
114 the General Assembly elected after January 1, 2019, shall complete ~~sexual~~ workplace harassment
115 training required under this chapter within 90 days of commencing or recommencing employment or
116 such election, unless the person previously completed such training in the calendar year in which the
117 person commenced or recommenced employment as a legislative branch employee or was elected to the
118 General Assembly. Thereafter, the legislative branch employee or new member of the General Assembly
119 shall complete ~~sexual~~ workplace harassment training once every two calendar years.

120 **§ 30-129.5:1. Agencies to provide notice of Commonwealth Workplace Harassment Policy.**

121 *Each agency in the legislative branch of the Commonwealth shall post a copy of the Commonwealth*
122 *Workplace Harassment Policy on the premises of the agency at a prominent place where it can be read*
123 *conveniently and shall post at least one notice accessible to the public on each floor of the agency that*
124 *is open to the public that includes procedures by which a person can file a complaint of or report*
125 *workplace harassment. The Commonwealth Workplace Harassment Policy and the notice of procedures*
126 *for filing a workplace harassment complaint shall also be posted on each agency's website.*

127 **§ 30-129.6. Responsibility of agency heads for workplace harassment training.**

128 The head of each agency in the legislative branch shall be responsible for ensuring that the agency's
129 legislative branch employees comply with the *workplace harassment* training requirements established
130 under this chapter.

131 **2. That the provisions of this act shall become effective on January 1, 2020.**

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