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HOUSE BILL NO. 370

Offered January 10, 2024

Prefiled January 6, 2024

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:11, relating to employment; training and education; harassment and workplace discrimination.*

Patron—Martinez

Referred to Committee on Labor and Commerce

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 40.1-28.7:11 as follows:

§ 40.1-28.7:11. Employers to provide harassment and workplace discrimination training and education.

A. For the purposes of this section:

"Employer" means any employer as defined in § 40.1-2 that employs 50 or more employees. Notwithstanding the provisions of § 40.1-2.1, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions.

"Harassment" and "workplace discrimination" mean unlawful harassment, including sexual harassment, or discrimination that occurs in an employment context against an individual because of any characteristic of the individual protected by the Virginia Human Rights Act (§ 2.2-3900 et seq.).

B. By July 1, 2025, each employer shall provide (i) at least two hours of classroom or other effective interactive training and education regarding harassment and workplace discrimination to all supervisory employees and (ii) at least one hour of classroom or other effective interactive training and education regarding harassment and workplace discrimination to all nonsupervisory employees. Thereafter, each employer shall provide interactive training and education regarding harassment and workplace discrimination to its employees once annually. New nonsupervisory employees shall be provided such training and education within six months of hire. New supervisory employees shall be provided with such training and education within six months of the assumption of a supervisory position. An employer who has already provided such training and education to an employee in calendar year 2024 shall not be required to provide another such training and education again until one calendar year after the date of training in 2024.

C. An employer may provide the training and education required by this section in conjunction with other training provided to employees. An employer may develop its own training module to comply with the employer's obligations set forth in this section. Such training and education may be completed (i) by employees individually or as part of a group presentation; (ii) remotely or through an online platform; or (iii) in shorter segments, provided that the applicable hourly total requirement is met. The training and education required by this section shall be presented by an educator or human resources professional with knowledge and expertise in the prevention of harassment and workplace discrimination. The employer, online platform, educator, or human resources professional shall provide a method for employees who have completed such training and education to electronically save a certificate of completion. An employer shall provide such training and education inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of the training and education required by this section.

D. The training and education required by this section shall include the following information and guidance:

1. A statement that harassment or workplace discrimination will not be tolerated and that sanctions may be enforced against supervisory and nonsupervisory employees who knowingly allow such behavior to continue;

2. Information regarding relevant federal and state laws concerning prohibitions against and the prevention and correction of harassment and workplace discrimination and the remedies available to victims of harassment and workplace discrimination;

3. Practical examples for methods of preventing harassment and workplace discrimination, including methods to (i) address behaviors that may escalate to harassment or workplace discrimination; (ii) encourage bystander intervention and ally behavior, such as by providing specific techniques for intervening when an employee witnesses harassment or workplace discrimination; and (iii) explain how to report harassment or workplace discrimination as a target of or witness to such conduct, and how

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59 *the reporting and investigation process works;*

60 *4. Potential consequences for engaging in harassment or workplace discrimination; and*

61 *5. Internal and external resources available to employees who experience or witness harassment or*
62 *workplace discrimination.*

63 *E. Beginning January 1, 2025, for seasonal, temporary, or other employees who are hired to work*
64 *for less than six months, an employer shall provide at least one hour of interactive training and*
65 *education regarding harassment and workplace discrimination within 30 calendar days after the date of*
66 *hire. In the case of a temporary employee employed by a temporary services employer, such training*
67 *and education shall be provided by the temporary services employer, not the client employer. Beginning*
68 *January 1, 2025, harassment and workplace discrimination prevention training for migrant and seasonal*
69 *agricultural workers shall be consistent with the training and education for nonsupervisory employees as*
70 *described in subsection B.*

71 *F. The training and education required by this section shall include a written notification of the right*
72 *to file a charge of discrimination with the U.S. Equal Employment Opportunity Commission or the*
73 *Office of the Attorney General within 300 days after the alleged unlawful harassment or discriminatory*
74 *practice occurred.*

75 *G. Subject to any other provision of law, a claim that the training and education required by this*
76 *section did not reach a particular employee or employees shall not in itself result in the liability of any*
77 *employer to any present or former employee or applicant for employment in any action alleging*
78 *harassment or workplace discrimination. Subject to any other provision of law, an employer's*
79 *compliance with this section shall not insulate the employer from liability for harassment or workplace*
80 *discrimination of any current or former employee or applicant for employment.*

81 *H. If an employer fails to provide the training and education required by this section, the*
82 *Department may seek an order requiring the employer to comply with these requirements.*

83 *I. The training and education required by this section shall not be construed to discourage or relieve*
84 *any employer from providing for longer, more frequent, or more detailed training and education*
85 *regarding other forms of harassment or workplace discrimination.*

86 *J. Beginning January 1, 2025, the Department shall make online courses for the training and*
87 *education required by this section available to employers on its public website at no charge. The online*
88 *training courses shall contain an interactive feature that requires the viewer to respond to a question*
89 *periodically in order for the online training course to continue playing.*

90 *K. The Department shall promulgate certain rules and regulations as necessary to achieve the*
91 *objectives of this section.*