OLR Bill Analysis
sSB 761

AN ACT PROMOTING THE USE OF HONEST RECOMMENDATIONS BETWEEN EMPLOYERS AND PROHIBITING AN EMPLOYER'S USE OF A NONDISCLOSURE AGREEMENT RELATING TO ACTS OF DISCRIMINATION OCCURRING IN THE EMPLOYER'S WORKPLACE.

SUMMARY

This bill requires employers, when recommending or positively commenting on a current or former employee to a prospective employer, to disclose to the prospective employer any known act of sexual harassment or assault occurring in their workplace by the current or former employee. It also makes the employer liable to any employee of the prospective (new) employer, if the new employer relied on the recommendation or comment, for any sexual harassment or assault the former employee commits in the new workplace.

Also, the bill prohibits an employer from entering into a contract with an employee that, as condition of employment, contains a nondisclosure or nondisparagement clause that prevents an employee from disclosing or discussing discrimination, including harassment, occurring in the workplace. For violations of this prohibition, the bill (1) creates a Labor Department civil penalty of up to $500 and (2) permits a civil action in court for compensatory damages, costs, punitive damages, and equitable relief.

EFFECTIVE DATE: October 1, 2019

RECOMMENDATIONS BETWEEN EMPLOYERS

Definitions

The bill includes the following definitions:

1. “Sexual harassment” by the employer or the employer's agent, is any unwelcome sexual advances or requests for sexual favors or
any conduct of a sexual nature when (a) submission is made, even implicitly, a condition of a person’s employment, (b) submission to, or rejection of, the conduct is used in employment decisions, or (c) the conduct substantially interferes with the person’s work performance or creates a hostile or offensive working environment (CGS § 46a-60).

2. “Sexual assault” is any of eight types of criminal sexual assault ranging from first to fourth degree (CGS §§ 53a-70 to -71, -72a, -72b, & -73a).

3. “Occurring in the workplace” includes attendance at an off-premises work-related event that is coordinated by or through the employer, between employees, or between an employer and an employee.

**Duty to Disclose Harassment and Assault**

Under current law, an employer can only reveal limited information about an employee (i.e., dates of employment, title, and salary) without the employee’s permission, unless the circumstances meet specific exceptions (see BACKGROUND).

The bill supersedes this law to require employers, when giving a recommendation or positive comment regarding a current or former employee to a prospective employer, to disclose in a timely way to the prospective employer any known act of sexual harassment or assault committed by the current or former employee. It applies to all employers including the state, municipalities, and any other political subdivision of the state (such as quasi-public agencies).

The bill establishes separate standards for when the employer knows of (1) sexual harassment or (2) sexual assault. An employer knows about an act of sexual harassment when the employer’s employee or agent, who provides the recommendation or positive comment, (1) knows of the harassment and (2) a complaint alleging the sexual harassment was filed with the Commission on Human Rights and Opportunities (CHRO) or a court of competent jurisdiction. (It is not clear whether the employer or the employer’s agent would know
about a CHRO complaint.)

An employer knows about an act of sexual assault when the employer’s employee or agent, who provides the recommendation or positive comment, knows of the assault. For both sexual harassment and assault the duty to disclose is linked to the person giving the recommendation knowing of the act in question, but the bill is not clear about what constitutes knowledge in this context (e.g., first-hand knowledge of the act, a finding of a violation of an employer’s personal policy, or a criminal conviction).

The bill does not appear to apply to employers who provide neutral comments regarding former or current employees.

**Employer Liability from Duty to Disclose**

If an employer fails to meet the duty to disclose related to incidents of sexual harassment or assault as required under the bill and the new employer relied on the (former) employer’s recommendation or positive comment, then the former employer is liable to any of the new employer’s employees for actions committed by the former employee in the new employer’s workplace.

Under the bill, employers who fail to disclose sexual harassment are liable for sexual harassment committed by the former employee, while employers who fail to disclose sexual assault are liable for both sexual harassment and sexual assault by the former employee.

**PROHIBITING NONDISCLOSURE AND NONDISPARAGEMENT CLAUSES**

The bill prohibits an employer from entering into or negotiating a contract with an employee or prospective employee, that as a condition of employment, continued employment, promotion, compensation, or employment benefits, contains a nondisclosure or nondisparagement clause, waiver, or other provision that prevents the employee from disclosing or discussing discrimination, including harassment, occurring in the employer’s workplace or at an off-premises work-related event, coordinated by or through the employer, between employees, or between an employer and an employee.
The Labor Department may issue a civil penalty of up to $500 for violations. The bill also allows employees or prospective employees to seek redress of violations in a court of competent jurisdiction and violators may be liable for compensatory damages, attorney’s fees and costs, punitive damages, and legal and equitable relief that the court deems just and proper.

BACKGROUND

Limited Exceptions for Employers to Disclose Personnel File Information

The Personnel Files Act (1) requires employers to provide employees with access to the employee's personnel file and medical records and (2) generally prohibits the disclosure of information from the file without the employee's consent, but allows an employer to disclose an employee’s dates of employment, title, and salary.

The law permits the additional following disclosures without the employee’s permission:

1. to a third party who prepares employment-related records or performs services for the employer;
2. in response to an administrative summons, court order, or government audit;
3. in response to a law enforcement agency request for an employee’s home address and dates of work attendance;
4. due to a medical emergency;
5. required by local, state, or federal law; or
6. when the information is disseminated as part of a union contract (CGS § 31-128f).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 29  Nay 10  (04/10/2019)