
OLR Bill Analysis

sSB 420

AN ACT CONCERNING THE STATE WORKFORCE AND DISCRIMINATION AND RETALIATION IN THE WORKPLACE.

SUMMARY

This bill requires most branches and agencies of the state government to adopt a zero-tolerance policy for using managerial authority to discriminate or retaliate against employees who complain of discrimination. The bill (1) requires each state employer to ensure that it is safe for employees to make formal or informal complaints and (2) makes any violation of the bill a discriminatory employment practice as defined in state law. Existing state law prohibits the state as an employer from discrimination or retaliation in the workplace and authorizes the Commission on Human Rights and Opportunities (CHRO) to investigate complaints.

The bill also establishes the Office of the Racial Justice Ombudsperson (ORJO). It requires the ombudsperson to, among other things, (1) institute a diverse slate initiative that requires Black or African American and Hispanic or Latinx job candidates to be prioritized for interviews using a hiring or promotional process that meets certain requirements and (2) create a mechanism to deliver antiracism and bias trainings to all state employees, managers, state vendors, and consultants. Under existing law, unchanged by the bill, CHRO oversees the affirmative action hiring enforcement for all state agencies.

EFFECTIVE DATE: January 1, 2023

§§ 1 & 2 — ZERO-TOLERANCE POLICY FOR DISCRIMINATION AND RETALIATION

Under existing law, unchanged by the bill, it is a discriminatory employment practice to discriminate against anyone in compensation or

employment terms, conditions, or privileges, or to bar or terminate them from employment, due to race; color; religious creed; age; sex; gender identity or expression; marital status; national origin; ancestry; present or past history of mental disability, intellectual disability, learning disability, or physical disability, including blindness; or status as a veteran. There is also a similar provision in state law banning employment discrimination based on sexual orientation.

Under the bill, “discrimination” means any adverse action taken against an employee in whole or in part due to the race, color, religious creed, sex, gender identity or expression, marital status, age, national origin, ancestry, status as a veteran, intellectual disability, mental disability, learning disability, or physical disability. (This definition does not include sexual orientation.) “Manager” is any managerial employee as defined in state employee collective bargaining law.

This bill requires all branches and agencies of state government considered an employer under the state employee collective bargaining law to adopt a zero-tolerance policy for using managerial authority to discriminate or retaliate against employees who make discrimination complaints. This covers the executive and judicial branches, as well as the constituent units of higher education, quasi-public agencies, and any related boards, departments, or commissions. It does not include the legislative branch, State Board of Labor Relations, or State Board of Mediation and Arbitration.

The zero-tolerance policy must:

1. forbid any manager from taking or threatening to take any personnel action, retaliating, or discriminating against an employee who makes a discrimination complaint and
2. include performance and other sanctions against managers who (a) dissuade or seek to dissuade employees from filing discrimination complaints or (b) fail to investigate complaints objectively and fully, consistent with identified procedures after an incident, including notifying the complainant about the investigation’s status and outcome.

Each state employer must ensure employees that it is safe for them to formally or informally complain about managerial authority in violation of the bill.

Enforcement

Any state employer who takes any action against a covered employee in violation of the bill must be deemed to have committed a discriminatory employment practice as defined in CHRO law and to be in violation of the state's anti-retaliation employment law. Any employee who brings any action under any of these existing laws may recover, in addition to all other damages available, treble damages for any employment losses. (Presumably this refers to bringing civil action in Superior Court, but the bill does not say.)

Under the bill, terminating an employee in violation of the bill must be conclusively presumed to create irreparable harm for purposes of any temporary or permanent injunction that may be brought to redress the violation. And there must be an irrebuttable presumption that there is not adequate remedy at law. (The bill does not provide a process to determine whether there has been a violation of its provisions and it does not name the person or agency that would make this determination. The bill expressly states that a violation will be conclusively presumed to create irreparable harm, but it does not state more specifically what situation the presumption can be applied in.)

Under existing law, a court will generally not order an injunction unless the party accused of the violation is notified and given the opportunity to respond. But the law also allows a complainant to prove to a court from the specific facts shown by affidavit or by verified complaint that irreparable loss or damage will result to the complainant before the matter can be heard and the injunction must be granted immediately.

Additionally, under the bill the doctrine of exhaustion of administrative remedies must not apply in any action to redress a discharge or other termination of employment.

Current law authorizes CHRO to investigate discrimination complaints and discriminatory employment practices in the state workforce (CGS Chap. 814c).

§ 3 — RACIAL JUSTICE OMBUDSPERSON

Beginning January 1, 2023, the bill establishes the ORJO and gives the office several duties related to hiring and training state employees. The bill does not specify how the ORJO authority interacts with the existing statutory authority of (1) the Department of Administrative Services regarding state hiring practices and (2) CHRO regarding discrimination investigations.

Under the bill, the office must:

1. establish working definitions for all key terms and descriptors to lay the foundation for its work;
2. institute a diverse slate initiative that requires Black or African American and Hispanic or Latinx employment candidates to not simply be among those considered, but prioritized for interviews for positions using a hiring or promotional process that would require the hiring manager to screen and interview all candidates using a standard antiracist screening and interview protocol;
3. create a structure or mechanism to (a) deliver antiracism and bias trainings to all state employees, managers, vendors, and consultants and (b) track participation to show disaggregated data by position, length of service, and demographic profile;
4. design a culture and climate survey to (a) assess the physical, racial, linguistic, and cultural safety of everyone in an agency, and (b) the extent to which each person feels valued and believes the agency's policies and practices are equitable and just;
5. submit a theory of action and plan for making constant progress towards eliminating systemic racism in state government and implementing strategies and structures to maintain a workplace that (a) affords physical, racial, linguistic and cultural safety, and

(b) privileges the ability of all employees to challenge racism and aggressions (the bill does not specify to whom the theory of action and plan should be submitted; it is not clear what the term “privileges” means in this context);

6. ensure that all employees get full and fair grievance hearings, without fear of retaliation, and ensure fair and racially just outcomes (the bill does not legally connect the ORJO to any employee hearing process);
7. foster a workplace where managerial authorities are accountable to lead and model antiracist practices and make changes needed to ensure an antiracist, equitable workplace for all;
8. track and review the performance review process and protocols and performance reviews, to identify discrepancies between white workers and black and brown workers in terms of education, time in position, job education provided, opportunities for professional development and growth to immediately create remediation plans to address racial disparities (performance reviews are generally confidential and the bill does not expressly give ORJO access to them);
9. analyze and recommend solutions to hiring, training, and promotion practices which have resulted in \$10,000 pay differentials between black and white workers;
10. focus on specific and actionable steps that those with supervisory or managerial authority can implement within their workplace to eliminate their unconscious or conscious racial biases; and
11. review complaints and administered discipline, and recommend remediation plans where evidence of disparate discipline, responses to complaints, and manner of investigation differed by employees’ race.

The ombudsperson must (1) be appointed by a mutual agreement of the State Employees Bargaining Agent Coalition (SEBAC) Racial Justice

Committee and the governor and (2) be an expert in matters relating to the history, root causes, manifestations and persistent effects of racism. The bill does not explicitly authorize the ombudsperson to hire staff or establish deadlines to complete the various tasks in the bill.

The ombudsperson must report to a joint committee consisting of the SEBAC Justice Committee, the governor, or his designee, and the Labor Committee.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/24/2022)