
OLR Bill Analysis

HB 6861

AN ACT ADOPTING THE RECOMMENDATIONS OF THE TASK FORCE TO STUDY THE STATE WORKFORCE AND RETIRING EMPLOYEES.

SUMMARY

This bill requires most state agencies to take certain steps to address discrimination, retaliation, and disparities in the workplace, including requiring them to adopt a zero-tolerance policy against using managerial authority to discriminate or retaliate against employees who make discrimination complaints.

The bill also creates two new positions in state government to pursue equity and racial justice in state agencies:

1. a chief diversity, equity, and inclusion officer to oversee a transformative hiring process in state government and
2. a racial justice ombudsperson within the Commission on Human Rights and Opportunities (CHRO), who must be an expert in the history and persistent effects of racism.

The bill requires the ombudsperson to, among other things, institute a diverse slate initiative that assures that all state employment applicants, regardless of their protected class status, are not disadvantaged in the hiring process.

It also creates an Equity Advisory Committee that, with the General Assembly's approval, must appoint the chief diversity, equity and inclusion officer. Additionally, the bill requires each state agency to assess its diversity needs and submit the assessment to the chief diversity officer, the governor, the General Assembly, and the Equity Advisory Committee.

EFFECTIVE DATE: Upon passage, except that the provisions requiring a zero-tolerance policy by state agencies and establishing the Office of Racial Justice Ombudsperson (ORJO) are effective January 1, 2024.

§§ 1 & 2 — DISCRIMINATION AND RETALIATION POLICY

The 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 against 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.

Under the bill, “discrimination” is a violation of state government management and human rights laws that prohibit discrimination in employment, housing, public accommodation, and credit practices, among others. These specifically apply to discrimination based on a person’s race; color; religious creed; age; sex; sexual orientation; 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; status as a veteran; or status as a domestic violence victim. The laws also (1) prohibit discrimination in awarding public contracts, certain employer inquiries about erased criminal records, and denial of employment based on conviction information and (2) require sexual harassment and diversity training.

Existing state law prohibits the state as an employer from discriminating in the workplace and authorizes CHRO to investigate complaints (CGS § 46a-51 et seq).

Policy Requirements

Under the bill, 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.

Violations

The bill requires each state employer to assure employees that it is safe for them to raise a complaint formally or informally about the misuse of managerial authority that violates the zero-tolerance policy. It prohibits state employers from taking or threatening to take any personnel action or otherwise discriminating against any employee for formally or informally raising a complaint.

The bill creates a presumption that discharging or terminating an employee in violation of these provisions creates irreparable harm for any temporary or permanent injunctive action that may be brought to redress the violation. The bill establishes an irrebuttable presumption that there is no adequate remedy at law.

Under the bill, the doctrine of exhaustion of administrative remedies does not apply in any action to redress a discharge or other employment termination. Any initial notice required for an action over a violation of these provisions must include service on CHRO, and the bill allows the commission to intervene as a matter of right.

Separately, the bill requires that state employees be awarded double damages in any action brought for a violation of any provision of the state human rights law (CGS Chap. 814c) in addition to all other damages available under that chapter.

§ 5 — EQUITY ADVISORY COMMITTEE

The bill establishes an Equity Advisory Committee to monitor whether state agencies are (1) implementing the recommendations issued in the equity in state government programs and actions study (PA 21-2, June Special Session, § 81) and (2) meeting the bill's assessment goals (see § 4 below).

Under the bill, the 18-member committee consists of the following:

1. one member the governor appoints,
2. the executive director of CHRO or her designee,
3. two members the CHRO executive director appoints,
4. seven members that representatives of each constituent union in the State Employee Bargaining Agent Coalition (SEBAC) appoint,
5. three members the Black and Puerto Rican Caucus of the General Assembly appoints, and
6. four members the Task Force to Study the State Workforce and Retiring Employees appoints. (However, this task force terminated when it submitted its final report to the legislature on February 8, 2022.)

Of the four members the task force appoints, one must be appointed by each chairperson, and one must be appointed by each ranking member. (It is unclear (1) if former task force members may make the appointments to the committee and (2) who must make the ranking member appointments, as the task force did not have ranking members. By law, its members included the four ranking members of the Labor and Public Employees and Government Administration and Elections committees.)

The bill does not (1) indicate how the committee chooses a chairperson or chairpersons or where it is administratively housed in state government or (2) set a date by which appointing authorities must

make their appointments.

§§ 3 & 5 — CHIEF DIVERSITY, EQUITY, AND INCLUSION OFFICER

The bill requires the Equity Advisory Committee to appoint a chief diversity, equity, and inclusion officer within six months after it is established. The appointment must be made with the General Assembly's approval, and the officer must report to the Equity Advisory Committee. (The bill does not indicate if the chief diversity officer is a paid state employee or what agency the officer is affiliated with.)

Under the bill, the officer must oversee a transformative hiring process in state government. The committee must annually evaluate the benchmarks for success and evaluation in order to evaluate the officer's work.

§ 4 — AGENCY DIVERSITY NEEDS ASSESSMENT

The bill requires each state agency commissioner, within 30 days after the bill becomes effective, to address the agency's diversity needs by (1) reviewing "The State of Connecticut Workforce: An Analysis of Representation and Compensation Equity Across Gender and Race-Ethnicity" and (2) assessing the agency.

Under the bill, the assessment must include (1) recruitment and retention rates for women and people of color employed by the agency during the previous five years and (2) a plan for achieving an appropriate and fair balance in filling vacancies left by retiring employees. The assessments must be used to address any racial and gender disparities, including a review of each agency's recruitment strategies. Within three months after starting the assessment, a commissioner must submit it to the governor, the Labor and Public Employees Committee, the chief diversity officer, and the Equity Advisory Committee.

Under existing law and unchanged by the bill, each agency must also develop an affirmative action plan and submit it to CHRO for review and approval. CHRO monitors the implementation of the plans and may issue a certificate of noncompliance, which imposes a hiring freeze

on the agency.

§ 6 — OFFICE OF THE RACIAL JUSTICE OMBUDSMAN (ORJO)

The bill establishes ORJO within CHRO and gives the office several duties related to hiring and training state employees. The ombudsperson (1) is appointed by the CHRO executive director, with SEBAC's Racial Justice Committee's advice and consent, and (2) must be an expert in matters relating to the history, root causes, manifestations, and persistent effects of racism.

Under the bill, the ombudsperson serves at the pleasure of the CHRO executive director and without tenure. The executive director may remove the ombudsperson with the approval of a majority of the members of the commission. These same provisions apply to the CHRO deputy director under existing law.

In addition to reporting to the CHRO executive director, the ombudsperson must report to a joint committee consisting of (1) the SEBAC Racial Justice Committee, (2) the governor, or the governor's designee, and (3) the Equity Advisory Committee created in the bill.

Duties

Under the bill, the ombudsman must:

1. establish working definitions for all key terms and descriptors to lay the foundation for the office's work;
2. institute a diverse slate initiative that assures that all state employee applicants, regardless of race, creed, color, national origin, or any other protected class under the general statutes, are not disadvantaged among those prioritized for interviews for roles or positions using an external or internal hiring or promotional process that would require the hiring manager, or entity, to screen and interview all candidates using a standard antiracist screening and interview protocol that scores applicant answers;
3. 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;
4. ensure that all employees get full and fair grievance hearings, without fear of retaliation, and ensure fair and racially just outcomes (the bill does add ORJO to any employee hearing process);
 5. 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;
 6. track and review the performance review processes and protocols, as well as 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);
 7. analyze and recommend solutions to hiring, training and promotion practices that have resulted in pay disparities between workers on the basis of protected class status;
 8. 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
 9. review complaints filed and discipline administered, and recommend remediation plans where evidence of disparate discipline, responses to complaints, and manner of investigation differed by employee race.

The bill does not specify how ORJO's authority interacts with the

existing statutory authority of (1) the Department of Administrative Services regarding state hiring practices and (2) CHRO regarding discrimination investigations.

Reporting

The bill requires the ombudsperson, on a quarterly basis, to meet with and submit a written report to the SEBAC Racial Justice Committee and the Equity Advisory Committee to discuss his or her duties and responsibilities under the bill and as otherwise directed by the committees. The written report must be posted on CHRO's website.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 4 (03/23/2023)